

***Oak Park and River Forest High School
District 200***

201 North Scoville Avenue • Oak Park, IL 60302-2296

TO: Board of Education

FROM: Dr. Gwendolyn Walker-Qualls, Director of Personnel Services
Ron Johnson, Director of Purchasing & Transportation

DATE: June 23, 2016

RE: Presentation of Occupational Therapy Service Contract

BACKGROUND:

This report was presented to the Finance Committee at the June 14th meeting at which time the vote was 3-0 to recommend to the Board of Education for approval as presented at its June 23, 2016 meeting.

Oak Park and River Forest High School Special Education Department provides services to a large number of students with special needs as defined by their Individual Education Plans (IEP's). While the District employs professionals to provide students with the services required, there are times when the nature and/or volume of services necessary exceed the capacity of our staff. The District contracts with outside contracted service providers to cover the additional need.

Contract Term: July 1, 2016 thru June 30, 2017

Contract Amount: \$69,300; \$75 per hour, 3 days per week or 21 hours per week for 44 weeks
No increase in hourly rate** **Increase of 1 day

Previous Contract Amount: \$41,580; \$75 per hour, 2 days per week or 12.6 hours per week for 44 weeks

SUMMARY OF FINDINGS:

The District has historically contracted with a service provider equipped to provide a range of services. Attached is the recommended contract to secure services HealthPRO Rehabilitation which will be used to provide Occupational Therapy. The recommended service contract replicates this past years' contract for the same nature of services.

RECOMMENDATION:

MOTION: To approve the contract with HealthPRO Rehabilitation as presented.

THERAPY STAFFING AGREEMENT

This Therapy Staffing Agreement (this "Agreement") made this 16th day of May, 2016 by and between **Oak Park / River Forest High School** located at 201 North Scoville Ave., Oak Park, IL 60302 ("School") and **Comprehensive Therapeutics, Ltd.**, dba HealthPRO® Rehabilitation, an Illinois corporation with its principal office at 3703 West Lake Avenue, Suite 200, Glenview, IL 60026 ("Provider") (School and Provider also referred to herein individually as "Party" and collectively "Parties").

WHEREAS, the School provides therapeutic programming, including occupational, physical, and speech therapy services, along with all other Related Service Providers listed on Addendum A.

WHEREAS, Provider provides fully licensed and qualified therapists and therapy assistants ("Personnel") in various health care settings, including schools and educational systems to provide occupational, physical, and speech therapy services ("Services"); and

WHEREAS, School desires to make arrangements for the provision of Services from Provider.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. TERM.

This agreement shall have an initial term of one (1) year, commencing on July 1, 2016 and expiring on June 30, 2017 unless earlier terminated pursuant to the terms hereof. Unless earlier terminated as provided for in this Agreement, this Agreement shall automatically renew for consecutive additional terms of one (1) year each, unless either Party delivers to the other Party, not less than thirty (30) days prior to the expiration of the preceding term, written notice of such Party's intention not to renew the term of this Agreement.

2. TERMINATION.

Either Party may terminate this Agreement with cause upon thirty days prior written notice to the other Party. Any unsatisfied obligations arising prior to the termination date shall survive the termination date until satisfied. Within fifteen (15) days after this Agreement is terminated for any reason, any manuals, equipment, and supplies belonging to one of the Parties, but in the possession of the other Party, shall be returned at the cost and expense of the Party in possession. Notwithstanding anything herein to the contrary, Section 6, 7, 12, 13 and 14 shall survive the termination of this Agreement.

3. SERVICES.

- (a) **Applicable Rules.** Provider's shall provide the Services pursuant to the terms and conditions of this Agreement and in accordance with all applicable federal, state, and local laws, rules and regulations; together with all applicable rules and regulations of School's third party reimbursement payors. School shall notify Provider of all applicable rules and regulations regarding its third party reimbursement payors and any changes thereto.
- (b) **Treatment Plan.** Provider's Personnel shall adhere to the scope and limitations set forth in the individual education and/or treatment plan communicated to Provider for each student (except in the case of adverse reaction). Provider agrees to consult with the student's case manager/staffing team in the development of a written plan for each student receiving therapy services from Provider.
- (c) **Licensing.** Services shall be performed only by duly licensed Personnel. Additionally, Personnel shall at all times when providing Services conform to the applicable policies, practices, procedures, and rules set forth by the standards of practice and codes of ethics set forth by their professional associations.

4. SCHOOL TO PROVIDE.

The School shall provide the following:

- (a) **Responsibility.** Maintain full administrative and professional responsibility for the treatment and care of all of its students receiving Services.
- (b) **Schedule.** Schedule students for Provider's Personnel. Scheduling of therapy treatments will be arranged between Provider and the School. Cancellation of any scheduled Services shall be made by the School in advance; otherwise the School shall pay the full amount for the scheduled Services for the day.
- (c) **Cancellation of Services.** The following minimal time frames are acceptable without penalty for cancelled Services provided by Provider:
 - (i) If assignment is 4 weeks or less in duration, a 7 day notice is required to Provider.
 - (ii) More than 4 weeks in duration, a four-week notice is required to Provider, unless otherwise specified in the "Confirmation of Assignment" notice sent prior to initiation of Services.

5. INDEPENDENT CONTRACTOR.

Provider shall provide Services hereunder as an independent contractor for all purposes, including federal tax purposes, and employees of Provider shall not be entitled to any of the rights or privileges established for the employees of the School, including but not limited to: vacations and vacation pay, sick leave with pay, paid holidays, life, accident or health insurance, or severance pay upon termination of this Agreement. The School will not withhold from any payments made to Provider pursuant to this Agreement, any sums for federal, state or local income taxes, unemployment insurance, Social Security, or any other amount which is required by law to be withheld by an employer for an employee. All payments and withholdings of any nature that may be required by law from Provider for Provider's Personnel and employees are Provider's sole responsibility, and Provider covenants and agrees to indemnify and save harmless the School from any and all claims as a result of Provider's failure to make any such payments.

6. COMPENSATION.

- (a) **Service Logs.** Provider shall timely complete and submit to School all necessary billing forms and service logs in a form reasonably acceptable to the School and its payor sources.
- (b) **Invoices.** Provider shall invoice the School for the Personnel provided hereunder at the rates set out on Exhibit A, attached hereto and fully incorporated herein, on or before the 15th day of the month for Services rendered for the preceding month. The invoice shall state:
 - (i) The name(s) of the Personnel/therapist(s) who provided the Services;
 - (ii) Each of the Services provided; and
 - (iii) The dates and number of hours of Services on each date.
- (c) **Payment.** School shall pay Provider the full amount of each invoice on or before the date thirty (30) days from the date of Provider's invoice (the "Due Date"). All amounts not paid within 30 days of the Due Date shall bear interest at the rate of eighteen percent (18%) per annum until paid in full. School must notify Provider in writing of any dispute of any portion of an invoice within 30 days of receipt of the invoice. Failure to notify Provider within this 30 day period shall be deemed School's confirmation of its obligation under this Agreement to pay Provider in full for the invoice.

- (d) **Overtime / Holiday Rate.** Any hours worked over 40 at the School by one Provider employee in one week will be billed at time and one-half (1½). All hours worked on one of the six major holidays (i.e., New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas) will also be billed at time and one-half (1½).

7. RECORDS.

- (a) **Individual Student Records.** School and Provider acknowledge and agree that all of School's individual student records within the Premises which are used by the Personnel under this Agreement shall be and remain the property of School. Provider and Provider's Personnel shall have the right to use these records for treatment and other proper business purposes that do not violate patient privacy rights.
- (b) **Government Inquiry.** Pursuant to Subsection 1395 (X)(V)(1)(A) of Title 42 of United States Code, until the expiration of four (4) years after the termination of this Agreement, Provider shall make available, upon written request of the Secretary of the United States Department of Health and Human Service, or upon request of the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the Services provided by Provider under this Agreement.
- (c) **Subcontractor Records.** Provider further agrees that in the event Provider carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000.00) or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that, until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Service, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs.
- (d) **Claim Defense.** Each Party to this Agreement shall make available to the other Party to this Agreement all information in its possession reasonable to the defense of any claim. Should School deny Provider access to any medical or other records pertaining to or regarding Services provided by or on behalf of Provider, School agrees to indemnify and hold Provider harmless from and against any and all costs and damages, including but not limited to attorney's fees and court costs, that Provider may incur as a result of School's denial of access to records; and School agrees and stipulates to Provider's acquisition

of an injunction imposed by any court with jurisdiction against School, which such injunction would compel School to grant Provider access to such records.

8. TRAINING.

Provider shall advise and participate in the development of the School's safety and training programs to the extent School requests such service, including School's in-service education training program and, with Provider's prior consent, advise or serve upon any committees designated by the School.

9. PROVIDER'S QUALIFICATIONS.

Within ten (10) days of School's request, Provider shall submit a resume of the qualifications and experience of all individuals who will provide Services to the School on behalf of Provider. The resume shall include, without limitation, proof of current licenses and/or registrations with renewals as applicable, professional memberships, and formal training certifications and/or diplomas within that person's specialty.

10. WORKING AREA EQUIPMENT.

- (a) **Premises.** The School shall, at its sole cost and expense and at no cost to Provider, set aside, make available to Provider's Personnel, and maintain within the Premises adequate supplies, reporting forms, equipment, working areas, and storage spaces which are appropriate, in Provider's reasonable determination, to enable Provider to properly provide Services hereunder. Any and all supplies and equipment furnished by Provider and used in the Premises shall remain the sole and separate property of Provider and may be removed by Provider at any time for any reason.
- (b) **License.** Provider and School shall do nothing which would jeopardize the licensure of the School, Provider, or the Personnel or their respective participation in any third party reimbursement program.
- (c) **Compliance.** At all times, School and Provider shall comply with all federal, state and local laws, rules and regulations now in effect or later adopted applicable to the School, the Personnel, and the Services provided hereunder.

11. INSURANCE.

- (a) **Provider Malpractice Insurance.** Provider shall obtain and maintain professional liability insurance coverage in the minimum amounts of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year, with an insurance carrier or carriers approved and duly authorized to engage in the business of insurance under the laws of the State of Illinois in order to provide adequate liability protection and coverage relating to Provider's performance under this

Agreement. Inability to obtain and maintain insurance under this provision shall be, at the School's option, cause for immediate termination by the School of this Agreement. Upon request, Provider shall provide the School with a certificate of insurance upon request in such form as Provider's insurance carrier may issue without additional charge to Provider.

- (b) **School Malpractice Insurance.** School shall obtain and maintain general and professional liability insurance coverage in the minimum amounts of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year, with an insurance carrier or carriers approved and duly authorized to engage in the business of insurance under the laws of the State of Illinois in order to provide adequate liability protection and coverage relating to the School's performance under this Agreement. Inability to obtain and maintain insurance under this provision shall be, at Provider's option, cause for immediate termination by Provider of this Agreement. Upon request, the School shall provide Provider with a certificate of insurance upon request in such form as the School's insurance carrier may issue without additional charge to the School.

12. INDEMNIFICATION.

Each Party agrees to indemnify and hold harmless the other Party from and against any and all manner of claims, demands, causes of action, liabilities, damages, costs, and expenses (including costs and reasonable attorney's fees) arising from or incident to the performance of such Party's, or such Party's employees, agents, or contractors, duties hereunder, except for negligent or willful acts or omissions of the other Party. Notwithstanding anything to the contrary, a Party's obligations with respect to indemnification for acts described in this article shall not apply to the extent that such application would nullify any existing insurance coverage of such Party or as to that portion of any claim of loss in which insurer is obligated to defend or satisfy.

13. REPRESENTATION AND WARRANTIES.

- (a) **License.** Provider and School each represent and warrant to the other that each is, together with all of their respective employees, agents, and servants, duly licensed and certified by all applicable local, state, and/or federal agencies to perform the Services and provide all items contemplated herein.
- (b) **Confidential Information.** Neither School nor Provider shall, during or after the term of this Agreement, disclose any confidential information of the other to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever.
- (c) **Non-Solicitation.** During the term of this Agreement and for twenty-four (24) months after the termination or expiration of this Agreement, School agrees that neither it, nor any corporation, agency, or other entity controlled, affiliated or contracted with School, shall, directly or indirectly, hire, solicit,

recruit, contact, retain, or allow to provide services at School any current or former Personnel or other employee of Provider who provided Services at School pursuant to this Agreement. School agrees that it will not attempt to induce any Personnel or employee of Provider to terminate his or her relationship with Provider; will not provide the name or contact information of any Personnel or employee of Provider to any person or entity without the express written consent of Provider. School acknowledges that the restrictions contained in this section are reasonable and necessary to protect the legitimate business interests of Provider and that any breach of this provision would result in irreparable harm to Provider.

14. DAMAGES.

In the event School breaches Section 13 of this Agreement, Provider shall be entitled to, and School hereby agrees to, any one or more of the following, selected by Provider in its sole and absolute election, in addition to such other remedies as may be available to Provider for such breach:

- (a) **Injunction.** An injunction preventing School, for a period of two (2) years following the termination of this Agreement, from employing, contracting with, or using the services of an employee of Provider who had supplied Services to School under this Agreement; or
- (b) **Damages.** A judgment for liquidated damages in the amount of Fifty Thousand Dollars (\$50,000.00) for each Personnel or employee employed, contracted with, or used in violation of Section 13 of this Agreement.

15. MISCELLANEOUS.

- (a) **Amendment.** No amendment, revocation, change or modification of this Agreement shall be valid unless the same be in writing and signed by the Parties hereto.
- (b) **Assignment.** This Agreement may not be assigned by a Party without the express prior written consent of the other Party.
- (c) **Authority.** Each Party represents and warrants to the other Party that:
 - (i) It has the full power and authority to enter into and perform this Agreement; and
 - (ii) Each Party further acknowledges that it has read this entire Agreement, understands it, and agrees to be bound by it.
- (d) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

- (e) **Enforcement Costs.** If any legal action or other proceeding, including arbitration, is brought by Provider or School for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement the prevailing Party shall be entitled to recover reasonable attorney's fees, court costs and other expenses, incurred in that action or proceeding, including all appeals, in addition to any other relief to which Provider may be entitled.
- (f) **Entire Agreement.** This Agreement (together with all attachments hereto) contains a complete statement of all of the terms of this Agreement between the Parties with respect to the matters provided for herein and supersedes any previous agreements and understandings (whether written or oral) between the Parties. All attachments to this Agreement shall be deemed part of this Agreement and incorporated as if fully set forth herein.
- (g) **Force Majeure.** In the event Provider is prevented from providing Services pursuant to the terms of this Agreement by forces or events beyond its control, Provider's noncompliance shall be excused for the duration of such force or event.
- (h) **Governing Law.** This Agreement shall be governed in accordance with the laws of the State of Illinois.
- (i) **Headings.** The headings, titles and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- (j) **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. mail, postage prepaid, sent registered or certified mail, return receipt requested or sent via a nationally recognized and receipted overnight courier service, to the Parties at their respective principal office of record as set forth above or designated in writing from time to time. No notice of a change of address shall be effective until received by the other Party.
- (k) **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held to be invalid, illegal or unenforceable in any respect by any court or other entity having the authority to do so, the remainder of this Agreement, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall be in no way affected, prejudiced or disturbed, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
- (l) **Successors.** This Agreement and all the terms and provisions hereof shall be binding upon and shall inure to the benefit of the Parties, and their respective

legal representatives, heirs, successors and assigns, except as expressly prohibited herein.

- (m) **Waiver.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. Any Party may waive compliance by the other Party with any of the provisions of this Agreement if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date written below.

SCHOOL:
**Oak Park/
River Forest High School**

PROVIDER:
HealthPRO® Rehabilitation.

By: _____

By:_____

Its: _____

Its:_____

Date: _____

Date: _____

Exhibit A

Hourly Bill Rates: Related Service Providers

Effective __July 1, 2016_____

OCCUPATIONAL THERAPY	RATE PER HOUR
OTR/L	\$74.00
COTA	\$62.00
PHYSICAL THERAPY	
Licensed PT	\$74.00
PTA	\$62.00
SPEECH THERAPY	
Licensed Speech/Language Pathologist	\$74.00
Bilingual SLP	\$78.00
OTHER PROFESSIONAL SERVICES	
Licensed Social Workers	\$62.00
Bilingual Social Worker	\$66.00
Registered Nurses	\$60.00
Psychologists	\$85.00
Bilingual Psychologist	\$90.00
School Administrators	\$75.00
Special Education Teacher	\$62.00

The above listed Related Service Providers are guaranteed to work 37.5 hours per week. However, if school is closed, for example, in observance of a holiday, HealthPRO will not bill for those hours. HealthPRO will only bill for hours worked by Related Service Provider, therefore, for example, if Related Service Provider calls out sick, HealthPRO will not bill School District.

Overtime hours must be pre-approved by authorized school district representative and authorized HealthPRO representative.

As required by the Illinois Practice Act for Occupational Therapy Assistants, all Assistants must have a minimum of 5% of hours worked supervised by an Occupational Therapist.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is effective as of July 1, 2016, and is by and between Oak Park / River Forest High School (“Covered Entity”) and HealthPRO Therapy Services, LLC dba: HealthPRO® Rehabilitation (“Business Associate”).

RECITALS

Covered Entity and Business Associate are parties to an agreement or arrangement pursuant to which Business Associate performs certain services for Covered Entity.

In connection with the performance of its services, Business Associate may receive from, or create or receive on behalf of Covered Entity health information that is considered PHI (as defined below).

To the extent that such PHI is shared between the parties, this Agreement shall apply and shall set forth the party’s obligations with respect to such PHI.

The provisions of this Agreement shall become binding on the parties beginning on the date on which PHI is first shared between the parties and shall terminate in accordance with the terms of this Agreement.

TERMS

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules (as defined below), the HITECH Standards (as defined below) or any future regulations promulgated or guidance issued by the Secretary (as defined below) thereunder.

- a) Breach. “Breach” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.
- b) Electronic Health Record. “Electronic Health Record” shall mean an electronic record of health-related information on an Individual (as defined below) that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- c) Electronic PHI. “Electronic PHI” shall have the same meaning as the term “electronic PHI” at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- d) HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the implementation regulations thereunder, including without limitation the HIPAA Rules (as defined below) and the HITECH

Standards (as defined below), and all future regulations promulgated thereunder.

- e) HIPAA Rules. “HIPAA Rules” means the Privacy Rule (as defined below) and the Security Rule (as defined below).
- f) HITECH Standards. “HITECH Standards” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), found at Title XIII of the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder, including all amendments to the HIPAA Rules.
- g) Individual. “Individual” shall have the same meaning as the term “individual” at 45 C.F.R. § 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- h) Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164.
- i) Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- j) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- k) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- l) Security Incident. “Security Incident” shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.
- m) Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Parts 160, 162, and 164.
- n) Unsecured PHI. “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.

2. Relationship of Parties

In the performance of the work, duties and obligations described in this Agreement or under any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no

time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

3. Ownership of PHI

Business Associate acknowledges that all right, title and interest in and to any PHI furnished to Business Associate vests solely and exclusively with Covered Entity or the Individual to whom such PHI relates.

4. Obligations and Activities of Business Associate

- a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, any underlying agreement between the parties, or as Required By Law.
- b) Business Associate will make reasonable efforts, to the extent practicable, to limit requests for and the use and disclosure of PHI to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by Business Associate, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement, any underlying agreement, or as Required By Law.
- c) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
- d) Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall comply with the applicable requirements of the Security Rule in the same manner such provisions apply to Covered Entity.
- e) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- f) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware. To the extent that Business Associate creates, receives, maintains or transmits

Electronic PHI, Business Associate agrees to report as soon as practicable to Covered Entity any Security Incident, as determined by Business Associate, involving PHI of which Business Associate becomes aware. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such unsuccessful Security Incidents is required. However, to the extent that Business Associate becomes aware of an unusually high number of such unsuccessful Security Incidents due to the repeated acts of a single party, Business Associate shall notify Covered Entity of these attempts and provide the name, if available, of said party. At the request of Covered Entity, Business Associate shall identify the date of the Security Incident, the scope of the Security Incident, Business Associate's response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known.

- g) Following Business Associate's discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of the Breach without unreasonable delay, and in no event later than ten (10) calendar days after Business Associate, or any of its employees or agents, discovered the Breach. Such notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach and any other information available to Business Associate about the Breach which is required to be included in the notification of the Breach provided to the Individual in accordance with 45 C.F.R. §164.404(c). A Breach of Unsecured PHI shall be treated as discovered as of the first day on which such Breach is known to Business Associate or should have been known to Business Associate by exercising reasonable diligence.
- h) In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate agrees to ensure any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's Electronic PHI.

- i) Business Associate shall provide access, at the request of Covered Entity, and in a time and manner mutually acceptable to Business Associate and Covered Entity, to PHI in a Designated Record Set to Covered Entity, or, as directed by Covered Entity, to an Individual or another person properly designated by the Individual, in order to meet the requirements under 45 C.F.R. § 164.524. If Business Associate maintains PHI electronically in a Designated Record Set and if the Individual requests an electronic copy of such information, Business Associate must provide Covered Entity, or the Individual or person properly designated by the Individual, as directed by Covered Entity, access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor and supply costs in responding to the request.
- j) Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, and in a time and manner mutually acceptable to Business Associate and Covered Entity.
- k) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. As of the compliance date set forth in the regulations promulgated under HITECH or as otherwise determined by the Secretary, in addition to the accounting of disclosure obligations required under 45 C.F.R. § 164.528, Business Associate shall account for all disclosures of PHI made through an Electronic Health Record in accordance with the HITECH Standards and any future regulations promulgated thereunder.
- l) Within ten (10) business days (or such other date that Business Associate and Covered Entity may reasonably agree upon) of receiving written notice from Covered Entity that Covered Entity has received a request for an accounting of disclosures of PHI, Business Associate agrees to provide to Covered Entity information collected to permit Covered Entity to make the accounting required in accordance with 45 C.F.R. § 164.528.
- m) Business Associate shall make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI

received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

- n) To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligation.

5. **General Use and Disclosure Provisions**

Except as otherwise limited in this Agreement:

- a) Business Associate reserves the right to **use** PHI for the proper management and administration of Business Associate, to carry out the legal responsibilities of Business Associate, and to provide data aggregation services to Covered Entity.
- b) Business Associate may **use or disclose** PHI to perform functions, activities, or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- c) Business Associate may **disclose** PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

6. **Obligations of Covered Entity**

- a) Covered Entity shall notify Business Associate in writing of any limitation(s) in its notice of privacy practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any change in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
- c) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI, which Covered

Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- d) Covered Entity shall have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Covered Entity directs and authorizes Business Associate to disclose PHI.

7. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity.

8. Term and Termination

- a) Term. The term of this Agreement shall commence on the Effective Date, and shall terminate when Business Associate ceases providing services to or for Covered Entity that involves creating, receiving, maintaining or transmitting PHI on behalf of Covered Entity.
- b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall either:
 - i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
 - ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

Business Associate shall ensure that it maintains the termination rights in this Section in any agreement it enters into with a subcontractor pursuant to Section 4(h) hereof.

- c) Effect of Termination.
 - i) Except as provided in paragraph (ii) of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain copies of the PHI.

- ii) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon determination that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

9. Miscellaneous

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties. Notwithstanding the foregoing, the parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary from time to time for the parties to comply with the requirements of HIPAA. Covered Entity shall provide written notice to Business Associate to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires an amendment to this Agreement to comply with HIPAA. The parties agree to negotiate an amendment to the Agreement in good faith; however, either party may terminate this Agreement upon ninety (90) days written notice to the other party if the parties are unable to reach an agreement.
- c) Survival. The respective rights and obligations of Business Associate under Section 8 of this Agreement shall survive the termination of this Agreement, unless expressly stated otherwise.
- d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA.
- e) Notice. Any notice, report or other communication required under this Agreement shall be in writing and shall be delivered personally, telegraphed, emailed, sent by facsimile transmission, or sent by U.S. mail.

- f) Governing Law. The rights, duties and obligations of the parties to this Agreement and the validity, interpretation, performance and legal effect of this Agreement shall be governed and determined by applicable federal law with respect to the Privacy Rule and the Security Rule and otherwise by the laws of the State of in which the Facility is located.

- g) Counterparts. This Agreement may be executed in one or more original counterparts and will become operative when each party has executed and delivered at least one counterpart. Each original counterpart will be deemed to be an original for all purposes, and all counterparts will together constitute one instrument.

- h) Signatures. This Agreement may be signed electronically and delivered by email, facsimile or similar transmission, and an email, facsimile or similar transmission evidencing execution, including PDF copies of executed counterparts, will be effective as a valid and binding agreement between the Parties for all purposes.

IN WITNESS THEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

COVERED ENTITY:

Oak Park/River Forest High School

BUSINESS ASSOCIATE:

HealthPRO® Rehabilitation

Authorized Signature

Authorized Signature

Title

Title

Date

Date