

# OMIC BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed this 1st day of September, 2013, by Ophthalmic Mutual Insurance Company, a risk retention group (OMIC).

## Recitals

OMIC and the insured have a contractual relationship by virtue of a professional and limited office premises liability insurance policy ("Insurance Policy") issued by OMIC, the insurer, to the insured. Under HIPAA, the insured may be considered a "Covered Entity" and OMIC may be considered its "Business Associate" since OMIC's performance of services under the Insurance Policy may involve the creation, receipt, maintenance, or transmission of Protected Health Information ("PHI") received from the insured Covered Entity. Covered Entities and Business Associates are required to comply with the Standards for Privacy of Individually Identifiable Health Information and for the Security of Electronic Protected Health Information, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing rules and regulations, and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") of the American Recovery and Reinvestment Act of 2009 ("ARRA") and its implementing rules and regulations, each as may be amended from time to time, including those regulatory amendments of the Department of Health and Human Services published at 78 Fed. Reg. 5566 (Jan. 25, 2013). OMIC is committed to complying with these statutes, rules, and regulations and agrees as follows:

## Section 1: Definitions

- 1.1 Terms in HIPAA Rules:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: breach, data aggregation, designated record set, disclosure, health care operations, individual, minimum necessary, notice of privacy practices, protected health information, required by law, secretary, security incident, subcontractor, unsecured protected health information, and use.
- 1.2 Business Associate (BA):** "Business Associate" or "BA" shall generally have the same meaning as the term business associate at 45 CFR §160.103, and in reference to the party to this Agreement shall mean Ophthalmic Mutual Insurance Company (OMIC).
- 1.3 Covered Entity (CE):** "Covered Entity" or "CE" shall generally have the same meaning as the term covered entity at 45 CFR §160.103, and in reference to the party to this Agreement shall mean the insured.
- 1.4 HIPAA Rules:** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

## **Section 2: Obligations of Business Associate**

- 2.1 Limit PHI Use and Disclosure.** BA agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 2.2 Use Safeguards.** BA agrees to use appropriate safeguards and, with respect to electronic PHI, comply with Subpart C of 45 CFR Part 164 to prevent the use or disclosure of PHI other than as provided for by this Agreement or as otherwise required by law.
- 2.3 Report Inappropriate Uses or Disclosures, Security Incidents, and Breaches of Unsecured PHI.** Upon discovery, BA agrees to report to CE in writing any use or disclosure of PHI by BA not permitted by this Agreement; any Security Incident; and any breach of unsecured PHI as required by 45 CFR §164.410 as follows:

In the event that BA discovers a breach of unsecured PHI, BA agrees to notify CE without unreasonable delay, and in no case later than 60 calendar days after BA first becomes aware of the incident. BA is deemed to have become aware of the breach as of the first day such breach is known or, with the exercise of reasonable diligence, would have been known to any person, other than the person committing the breach, who is an employee, officer, or other agent of BA. The notice must include, to the extent possible, the identification of each individual whose unsecured PHI was the subject of the breach; a brief description of what happened; the date of the breach and the date of the discovery of the breach, if known; a description of the types of unsecured PHI that were involved in the breach (such as full name, social security number, date of birth, and home address); any steps the individuals should take to protect themselves from potential harm resulting from the breach; and a brief description of what BA is doing to investigate the breach, mitigate losses, and protect against further breaches.

- 2.4 Mitigate Harmful Effects.** To the extent practicable, BA agrees to mitigate any harmful effects known to BA that are caused by the use or disclosure of PHI in violation of this Agreement.
- 2.5 Require Compliance of Subcontractors.** In compliance with CFR §§164.502(e)(1)(ii) and 164.308(b)(2), BA agrees to obtain from any subcontractors that create, receive, maintain, or transmit PHI on behalf of BA satisfactory assurances that the subcontractor will appropriately safeguard the PHI and agree to the same restrictions and conditions that apply to BA with respect to such information.
- 2.6 Provide Access to Information.** BA agrees to make available to CE, within a reasonable time, PHI in a designated record set as necessary for CE to satisfy its obligations under 45 CFR §164.524. If BA receives a request for access to PHI in a designated record set directly from an individual, BA will promptly forward the individual's request to CE to fulfill the request.

- 2.7 Incorporate Amendments.** BA agrees to make any amendment(s) to PHI in a designated record set as directed by CE in writing pursuant to 45 CFR §164.526, or to take other measures as necessary to satisfy CE's obligations under 45 CFR §164.526. If BA receives a request for amendment to PHI in a designated record set directly from an individual, BA will promptly forward the individual's request to CE to fulfill the request.
- 2.8 Make Available Information for Accounting of Disclosures.** Upon written request by CE, BA agrees to maintain and make available the information required to provide an accounting of disclosures to CE as necessary to satisfy CE's obligations under 45 CFR §164.528. If BA receives a request for an accounting of disclosures directly from an individual, BA will promptly forward the individual's request to CE to fulfill the request.
- 2.9 Compliance with Subpart E.** To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 CFR Part 164, BA agrees to comply with the requirements of Subpart E that apply to the CE in the performance of such obligations.
- 2.10 Make Available Practices, Books, and Records.** Unless otherwise prohibited by applicable law, BA agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from CE or created or received by BA on behalf of CE available to the secretary for purposes of determining compliance with the HIPAA Rules.

### **Section 3: Permitted Uses and Disclosures by Business Associate**

- 3.1 Purpose and Services.** Under the Insurance Policy, BA provides CE with insurance products and services, hereinafter "Services" that may involve the receipt, use, and disclosure of PHI, consisting of, but not limited to, records of patient histories, diagnoses, treatments, and outcomes, in order to provide Services to CE. Broadly, these Services include underwriting the Insurance Policy for determination of acceptance for coverage, processing of claims made under the Insurance Policy, and providing risk management services to holders of the Insurance Policy. Specifically, these Services may include, among others, receiving, evaluating, defending, and making payments related to incidents, claims, and lawsuits; loss prevention; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting risk management programs to minimize the risk of malpractice claims against providers; arranging for legal services; conducting or arranging for audits to improve compliance; and other functions necessary to perform these Services. BA may disclose PHI to third parties, such as insurance service providers, settlement brokers, and third party administrators, in order to provide Services to CE.
- 3.2 Use and Disclosure of PHI to Provide Services.** BA may use or disclose PHI in order to perform the Services described above in accordance with the provisions of this Agreement.

- 3.3 Use Minimum Necessary.** BA agrees to limit the request, use, and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request in order to perform the Services described above.
- 3.4 De-Identification.** BA may use PHI to create de-identified information consistent with the standards set forth at 45 CFR §164.514(a)-(c).
- 3.5 Use and Disclosure Cannot Violate Subpart E.** BA may not use or disclose PHI in a manner that would violated Subpart E of 45 CFR Part 164 if done by CE, except:
- 3.5.1 Use of PHI for Administration and Legal Responsibilities.** BA may use PHI for the proper management and administration of BA or to carry out its legal responsibilities.
- 3.5.2 Disclosure of PHI for Administration and Legal Responsibilities.** BA may disclose PHI for the proper management and administration of BA and to carry out its legal responsibilities, provided (i) the disclosure is required by law or (ii) the BA obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person notifies BA of any breach of the confidentiality of the information of which it becomes aware.
- 3.5.3 Data Aggregation Services.** BA may use PHI to provide data aggregation services related to the health care operations of the CE.

#### **Section 4: CE's Restrictions and Requests**

- 4.1** BA understands CE shall not agree to any restrictions on the use or disclosure of PHI that might adversely affect BA's ability to perform the Services described above. If CE agrees to restrictions that materially affect BA's ability to perform the Services, or the costs of performing the Services, BA may terminate the Agreement.
- 4.2** BA understands CE shall not request that BA use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by CE, except for those activities described in 3.5.1-3 above.

#### **Section 5: Term and Termination**

- 5.1 Term.** This Agreement is effective as of the date of execution above or when, thereafter, the insured joins OMIC as a member-insured and extends through the term of the Insurance Policy (including any extended reporting period) between BA and CE, and terminates when the term of the Insurance Policy (or extended reporting period) expires.

## 5.2 Termination for Cause.

**5.2.1 Termination by CE.** Upon CE's knowledge of a violation of a material term of the Agreement by BA, CE shall provide an opportunity for BA to cure the breach or end the violation. CE may terminate this Agreement if BA has violated a material term of this Agreement and cure is not possible.

**5.2.2 Termination by BA.** BA may terminate the Agreement because of CE's agreement to adverse restrictions per Section 4.1 above.

**5.2.3 Termination of Underlying Contract.** If this Agreement is terminated, BA may terminate the Insurance Policy, with due notice given thereunder, in order to maintain compliance with the HIPAA Rules.

**5.3 Disposition of PHI at Termination.** Upon termination of the Agreement, BA shall, where feasible, destroy or return to CE, and retain no copies of, all PHI received from CE, or created or received by BA on behalf of CE, that BA still maintains in any form. If such return or destruction is not feasible, the duties of BA under this Agreement are extended to protect the PHI retained by BA. Further use and disclosure of such PHI is limited to those purposes that make the return or destruction of the PHI infeasible. Notwithstanding any other limitation in this section, BA agrees that it is not necessary to return or destroy PHI received from CE, or created or received by BA on behalf of CE, if patient authorizations permitting such retention have been executed.

**5.4 Survival.** The obligations of BA under this Section shall survive the termination of this Agreement.

## Section 6: General Provisions

**6.1 Regulatory References.** A reference in this Agreement to a Section in the HIPAA Rules means the Section in effect or as amended, and for which compliance is required.

**6.2 Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules and other applicable law.

**6.3 Enforceability.** If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability attaches only to such provision and does not in any way affect or render invalid or unenforceable any other provision of this Agreement.

**6.4 Amendment.** BA, at its discretion, may amend this Agreement from time to time, to comply with the HIPAA Rules and any other applicable laws.

- 6.5 Notices.** All notices or communications required or permitted pursuant to the terms of this Agreement shall be in writing. All such notices will be deemed given upon delivery by service or in person, on the third business day after deposit with the U.S. Postal Service, or on the first business day after sending by facsimile or email. The BA may, at its discretion, post this Agreement and any Amendments to this Agreement on its website ([www.omic.com](http://www.omic.com)) for the insured to read and download, instead of mailing or otherwise delivering a copy of this Agreement or Amendments to the insured.
- 6.6 Agreement in Effect.** This Agreement supersedes all previous Business Associate Agreements by and between OMIC and the insured.

**On Behalf of Ophthalmic Mutual Insurance Company**

A handwritten signature in black ink, appearing to read 'Kimberly Wynkoop', with a long horizontal flourish extending to the right.

Kimberly Wynkoop  
Legal Counsel