

## **NCMIC Insurance Company**

### **Business Associate Agreement re HIPAA Rules**

#### **I. Purpose of Agreement**

This Agreement reflects NCMIC Insurance Company's agreement to comply with the following terms and conditions whenever NCMIC Insurance Company is provided access to Protected Health Information created or maintained by any of its Insureds. This Agreement is intended to permit both NCMIC Insurance Company and its Insureds to comply with the HIPAA Rules, in the context of their business relationship in which NCMIC Insurance Company provides or administers professional liability insurance to its Insureds.

#### **II. Definitions**

- a) Business Associate. "Business Associate" shall mean NCMIC Insurance Company ("NCMIC").
- b) Covered Entity. "Covered Entity" shall mean any "Insured" who is also considered a "covered entity" pursuant to 45 CFR § 160.103.
- c) Designated Record Set. "Designated Record Set" shall have the meaning given to such term in 45 C.F.R. § 164.501.
- d) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- e) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- f) Insured. "Insured" shall mean any individual or company either defined as an "insured" or otherwise entitled to coverage pursuant to the provisions of any insurance policy issued or administered by NCMIC Insurance Company.
- g) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A & E.
- h) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- i) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103
- j) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- k) Other terms. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

### **III. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to develop and use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement.
- c. Business Associate agrees to limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule. Covered Entity may reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- d. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR § 164.410, and any security incident of which it becomes aware.
- f. Business Associate agrees to, in accordance with 45 CFR § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- g. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524. This provision *will*

*not* apply to a request by a Covered Entity or Individual for “Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.” 45 CFR § 164.524(a)(1)(ii). This provision may not apply in other situations exempted by appropriate rule. *See* 45 CFR § 164.524.

- h. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner. This provision *will not* apply to a request by a Covered Entity or Individual to amend information which “would not be available for inspection” pursuant to applicable rule, including but not limited to “Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.” *See* 45 CFR §§ 164.526(a)(2)(iii), 164.524(a)(1)(ii).
- i. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity available to the Secretary for purposes of determining the Covered Entity's compliance with Subpart E of 45 CFR Part 164.
- j. Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR § 164.528. However, it is anticipated that most disclosures of Protected Health Information to or by Business Associate will be related to Covered Entity's need “To carry out treatment, payment and health care operations as provided in § 164.506”, and thus will be exempt from any accounting of disclosures. *See* 45 CFR § 164.528 (a)(1)(i).
- k. Business Associate agrees to, to the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- l. Business Associate hereby agrees to fully comply with the “Business Associate” requirements under HIPAA, throughout the term of this Agreement. Further, Business Associate agrees that every agent, employee, subsidiary, and affiliate of Business Associate to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity will be required to fully comply with HIPAA, and will be bound by written agreement to the same restrictions and terms and conditions as set forth in this Agreement.
- m. Nothing in any of the foregoing provisions may be construed to require Business Associate to disclose information or documents in any format whatsoever which

may be protected by: a) attorney-client privilege as defined by either Iowa law or the laws of the state where the Covered Entity is located; or b) work-product doctrine as defined by either Federal Rule of Civil Procedure 26(b)(3) or Iowa Rule of Civil Procedure 1.503(3), or successor versions of these rules. This limitation applies to requests for disclosures of information and documents by Covered Entity, an Individual, the Secretary, or any other third party.

#### **IV. Permitted Uses and Disclosures by Business Associate**

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information, or perform functions, activities, or services for, or on behalf of, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:
  - i. To determine or verify Covered Entity's eligibility for coverage pursuant to an insurance policy issued or administered by Business Associate;
  - ii. To investigate, analyze, and evaluate any potential or actual claim against Covered Entity which may be covered pursuant to an insurance policy issued or administered by Business Associate, including use of outside legal counsel and expert witnesses;
  - iii. To litigate and defend any potential or actual claim against Covered Entity and/or Business Associate which may be covered pursuant to an insurance policy issued or administered by Business Associate, including use of outside legal counsel and expert witnesses;
  - iv. To perform any underwriting or actuarial functions or activities associated with an insurance policy issued or administered by Business Associate;
  - v. To investigate, analyze, evaluate, respond to, and defend against any regulatory, licensing, or other issue, inquiry, or dispute involving any State or Federal administrative agency, which in any way actually or potentially relates to or concerns claims or other matters of any kind arising from an insurance policy issued or administered by Business Associate; and
  - vi. To enable Business Associate to fulfill in any reasonable manner its statutory, regulatory, contractual, or other legal obligations to Covered Entity pursuant to an insurance policy issued or administered by Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement, Business Associate may disclose

Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- d. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **V. Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## **VI. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

## **VII. Term and Termination**

Term. The Term of this Agreement shall be effective as of the date of execution of this Agreement or the date coverage commences pursuant to the terms of the insurance policy, whichever is earlier. This Agreement shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or

received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section.

#### Termination.

- a. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information, except to the extent that retention of Protected Health Information may be Required By Law, or is reasonably necessary to the proper management and administration of the Business Associate.
- b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

#### **VIII. Miscellaneous**

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules and any other applicable law.
- c. Survival. The respective rights and obligations of Business Associate under Section VII of this Agreement shall survive the termination of this Agreement.
- d. Severability and Reformation. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.
- f. Interpretation. Any ambiguity in this Agreement shall be resolved to permit

Covered Entity and Business Associate to comply with the HIPAA Rules.

- g. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.
- h. Further Assurances. Each party shall execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

**Acknowledged and agreed to by:**



01/08/2014

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**Rod Warren, President  
For NCMIC Insurance Company**

**Date**