

## HIPAA BUSINESS ASSOCIATE AGREEMENT

**This HIPAA Business Associate Agreement** ("Agreement") supplements and is made a part of the Master Service Agreement ("Service Agreement") by and between \_\_\_\_\_ ("Covered Entity") and Interstate Optical Co. ("Business Associate"), and is effective as of \_\_\_\_\_ (the "Effective Date").

### RECITALS

**WHEREAS**, Business Associate provides certain services to health care providers and managed care organizations; and

**WHEREAS**, Business Associate has been retained by Covered Entity to perform functions or activities that may require the Business Associate to have access to or create, receive, maintain or transmit Protected Health Information in relation to the Covered Entity; and

**WHEREAS**, Pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Covered Entity and Business Associate desire to execute this Agreement to comply with the terms of the Privacy Rule, the Security Rule and the HITECH Act under the American Recovery and Reinvestment Act of 2009 (as defined below); and

**WHEREAS**, this Agreement has been drafted to incorporate the provisions required by the final regulations issued by the Department of Health and Human Services on January 25, 2013 implementing the HITECH Act; and

**WHEREAS**, Business Associate acts in the capacity of an independent contractor in relation to the services provided to Covered Entity under the Service Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

### 1. DEFINITIONS.

Terms used but not otherwise defined in the Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule.

- a. **"Breach"** shall have the meaning given to it by 45 CFR Section 164.402.
- b. **"Breach Notification Rule"** shall mean the Standards for Breach Notification for Unsecured Protected Health Information under HIPAA that is codified at 45 CFR Parts 160 and 164, subparts A and D.
- c. **"Business Associate"** shall mean Interstate Optical Co.
- d. **"Covered Entity"** shall mean \_\_\_\_\_.

- e. **"Deidentified Data"** shall have the same meaning as the term "deidentified data" in 45 CFR Section 164.514.
- f. **"Designated Record Set"** shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.
- g. **"Health Care Operations"** shall have the same meaning as the term "Health Care Operations" in 45 CFR Section 164.501.
- h. **"HITECH Act"** shall mean the provisions of Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009. Any reference to a section of the HITECH Act shall also include any HITECH Regulations related thereto.
- i. **"HITECH Regulations"** shall mean any guidance issued relating to the HITECH Act by the Department of Health and Human Services, including the Breach Notification Rule.
- j. **"Individual"** shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- k. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information that is codified at 45 CFR Parts 160 and 164, subparts A and E.
- l. **"Protected Health Information"** or **"PHI"** shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under 45 CFR Section 160.103. Protected Health Information shall be limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- m. **"Required By Law"** shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.

- n. **"Secretary"** shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- o. **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information under HIPAA that is codified at 45 CFR Parts 160 and 164, subparts A and C.
- p. **"Unsecured PHI"** shall mean Protected Health Information that is not secured through the use of a technology or methodology that renders such Protected Health Information unusable, unreadable or indecipherable to unauthorized individuals, as specified in guidance issued pursuant to Section 13402(h) of the HITECH Act, including the Breach Notification Rule.

## 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. **Permitted Uses and Disclosures.** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. Business Associate recognizes that the Protected Health Information is and shall remain the Covered Entity's property except as set forth in the Service Agreement. Business Associate agrees that it acquires no title or rights to the Protected Health Information as a result of this Agreement.

Business Associate shall not use or disclose Protected Health Information in any manner that violates the Privacy Rule or the HITECH Act.

To the extent required by the Privacy Rule, Business Associate shall only request, use and/or disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use and/or disclosure. The determination of what constitutes the minimum necessary amount of Protected Health Information shall be determined in accordance with the provisions of the Privacy Rule.

- b. **Safeguards.** Business Associate agrees to use administrative, physical and technical safeguards applicable to the services provided under the Service Agreement that reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information, in electronic or any other form, that it creates, receives, maintains or transmits under this Agreement, in accordance with the Privacy Rule and the Security Rule to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate shall fully comply with the Security Rule with regard to electronic Protected Health Information.
- c. **Reporting of Improper Use or Disclosure.** Business Associate agrees to report to the Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes

aware. Business Associate shall also report any security incident of which it becomes aware to Covered Entity.

- d. **Mitigation.** 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. **Agents and Subcontractors.** Business Associate agrees to require that any agents or subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate in relation to Covered Entity agree in writing (in the form of a business associate contract) to the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the implementation of reasonable and appropriate measures for safeguarding Protected Health Information.
- f. **Access to Individuals.** To the extent applicable, Business Associate agrees to provide access 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 Section 164.524. Further, if an Individual requests a copy of Protected Health Information in a specific electronic format, Business Associate shall comply with such request, if readily producible, in accordance with the requirements of 45 CFR Section 164.524.
- g. **Amendments to Protected Health Information.** To the extent applicable, Business Associate agrees to make any reasonable amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR Section 164.526 at the request of Covered Entity or an Individual.
- h. **Access to Internal Practices, Books and Records.** Business Associate agrees to make internal practices, books and records including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
- i. **Disclosure Documentation.** 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 Section 164.528. Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with this subsection to permit Covered Entity to

respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

- j. **Obligation Upon Breach of Unsecured PHI.** Upon Business Associate's discovery of a Breach of Unsecured PHI, Business Associate shall provide notice of the Breach to Covered Entity in accordance with the requirements of 45 CFR 164.410. The content of such written notice of the Breach shall comply with the requirements of 45 CFR Section 164.410(c). Business Associate shall cooperate with and coordinate an appropriate course of action with Covered Entity.
- k. **Delegated Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

### 3. PERMITTED USES BY BUSINESS ASSOCIATE

- a. **Service Agreement.** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- b. **Other Permitted Usage.** 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. In addition, Business Associate may use Protected Health Information to provide Data Aggregation services as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

### 4. OBLIGATIONS OF COVERED ENTITY.

- a. **Change in Privacy Practices.** Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Additionally, Covered Entity shall notify Business Associate of any limitation(s) or restriction(s) in its security practices to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. **Change in right to use Protected Health Information.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use and disclosure of Protected Health Information.

- c. **Change in Restrictions Regarding Protected Health Information.** 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 Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. Business Associate will implement a similar restriction provided such restriction is reasonable and does not impact its ability to perform services provided to the Covered Entity.
- d. **Covered Entity Representative.** Covered Entity shall notify Business Associate of those employees of Covered Entity who are authorized to receive Protected Health Information from Business Associate.

## 5. 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 Privacy Rule if done by Covered Entity.

## 6. TERM AND TERMINATION

- a. **Term.** This Agreement will begin on the Effective Date, and will continue until terminated in accordance herein.
- b. **Termination.**
  - 1) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide not less than 20 days written notice of its intent to terminate the Agreement if Business Associate does not cure such material breach no later than the end of the written notice period. If Business Associate does not cure the breach within such time, then Covered Entity may, in its sole discretion, immediately terminate this Agreement.
  - 2) **Termination without Cause and Termination of the Service Agreement.** Either party may terminate this Agreement effective upon 30 days advance written notice to the other party given with or without any reason if Business Associate no longer performs services for Covered Entity requiring the use or disclosure of Protected Health Information. This Agreement will immediately terminate if the Service Agreement terminates. The effective date of such termination will be the same as the effective date that the Service Agreement terminates.
- c. **Effect of Termination.** Except as provided in the next paragraph, upon termination of this Agreement for any reason, Business Associate shall return or, with the Covered Entity's express permission, destroy all Protected Health information received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity. If the

Protected Health Information is destroyed, Business shall provide Covered Entity with appropriate evidence of destruction. Business Associate shall retain no copies of the Protected Health Information, except in cases of actual or threatened litigation or if required by law. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Business Associate's determination that return or destruction of 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.

## 7. MISCELLANEOUS

- a. **Regulatory References.** Any reference in this Agreement to a section in the Privacy Rule, Security Rule, Breach Notification Rule or HITECH Act 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 to comply with the requirements of the Privacy Rule, Security Rule, the Breach Notification Rule or any other requirements of the HITECH Act.
- c. **Survival.** The respective rights and obligations of Business Associate under Section 6(c) shall survive the termination of this Agreement.
- d. **Interpretation; Conflict.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, the Breach Notification Rule or any other requirements of the HITECH Act. In addition, to the extent this Agreement, only as it relates to the Privacy Rule, the Security Rule, the Breach Notification Rule or any other requirements of the HITECH Act and Protected Health Information, is inconsistent with the terms of the Service Agreement, the terms of this Agreement shall govern. To the extent the Service Agreement conflicts with the terms of this Agreement unrelated to the Privacy Rule, the Security Rule, the Breach Notification Rule or any other requirements of the HITECH Act and Protected Health Information, the terms of the Service Agreement shall govern. All terms of the Service Agreement not in conflict with this Agreement remain in full force and effect.

- e. **No Third-Party Beneficiaries.** Except as set forth in this Agreement or as expressly provided for under HIPAA, this Agreement is entered into by and among the parties hereto solely for their benefit. The parties have not created or established any third-party beneficiary status or rights in any person or entity not a party hereto including, but not limited to, any individual, provider, subcontractor, or other third-party, and no such third-party will have any right to enforce any right or enjoy any benefit created or established under this Agreement.
- f. **Force Majeure.** The obligations of any party under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term "force majeure" means any cause not reasonably within the control of the party claiming suspension, including, without limitation, an act of God, industrial disturbance, war, riot, weather-related disaster, earthquake and governmental action. The party claiming suspension under this Section will take reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs.
- g. **Entire Agreement; Amendments; Facsimile.** This Agreement including any riders, attachments or amendments hereto, constitutes the entire agreement among the parties with respect to the Privacy Rule, the Security Rule, the Breach Notification Rule and any other requirements of the HITECH Act. This Agreement supersedes any prior agreement or understandings pertaining to HIPAA obligations between the parties, whether oral or written, and may be amended only by a writing executed by authorized representatives of both parties. A facsimile or other reproductive type copy of this Agreement, so long as signed by all parties, will be considered an original and will be fully enforceable against all parties.
- h. **Choice of Law.** This Agreement is made in and will be governed by, and construed in accordance with, the laws of the State of Texas without regard to principles of conflict or choice of law.
- i. **Assignment and Delegation.** No party may assign its rights or duties under this Agreement without the prior written consent of the other. This Agreement is binding upon and will inure to the benefit of the respective parties hereto and their successors and permitted assigns.
- j. **Headings.** All headings are for convenience only and may not be deemed to limit, define or restrict the meaning or contents of the Sections.
- k. **Unenforceable Provisions.** If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in effect and the illegal or unenforceable provision will be modified so as to conform to the original intent of this Agreement to the greatest extent legally permissible. Notwithstanding the



foregoing, if any such modification causes a material change in the obligations or rights of any party, upon written notice from one party to the other of the adverse effect thereof upon such notifying party, and then if the parties are not able to mutually agree as to an amendment hereto, any party may terminate this Agreement upon 30 days written notice to the other parties.

- I. **Notices.** Any notice required pursuant to this Agreement must be in writing and sent by registered or certified mail, return receipt requested, by fax with proof of delivery, or by a nationally recognized private overnight carrier with proof of delivery, to the addresses of the parties set forth below in this Agreement. The date of notice will be the date on which the recipient receives notice or refuses delivery. All notices must be addressed as follows or to such other address as a party may identify in a notice to the other party:

To Business Associate:

To Covered Entity:

Interstate Optical Co.  
c/o Essilor of America, Inc.  
13555 N. Stemmons Freeway  
Dallas, Texas 75234

\_\_\_\_\_  
\_\_\_\_\_

Attn: Peggy Hintergardt

Attn: \_\_\_\_\_

Fax: 972-241-8601


Fax: \_\_\_\_\_

- m. **Waiver.** A waiver of a breach or default under this Agreement is not a waiver of any other or subsequent breach or default. A failure or delay in enforcing compliance with any term or condition of this Agreement does not constitute a waiver of such term or condition unless it is expressly waived in writing.
- n. **Negotiated Agreement.** Each party acknowledges that this Agreement resulted from negotiations by and among all parties, and therefore any rule of construction requiring ambiguities to be construed against the drafter of an agreement will not apply to any provision of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and date first above written by their duly authorized officers for and on behalf of said entity.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INTERSTATE OPTICAL CO.**

By:   
Name: John R. Art  
Title: President  
Date: 1/1/19