

This Business Associate Addendum (“Addendum”), effective February 17, 2010, is entered into by and between CITY OF LONG BEACH (“Covered Entity”) and Medical Eye Services, Inc. / The Eye Care Network (“Business Associate”).

The parties have existing contract(s) between them as specified below. The purpose of this Addendum is to comply with the requirements of Title II, Subtitle F, Administrative Simplification of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations (45 C.F.R. Parts 160 and 164) issued by the Department of Health and Human Services (HHS), the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations issued thereunder, Cal. Civil Code § 56 *et seq.*, Cal. Civil Code § 1798.82 *et seq.* and Cal. Ins. Code § 791 *et seq.*, as each may be amended from time to time, to ensure the integrity and confidentiality of individually identifiable personal and health information that a Business Associate may create for, or receive from, Covered Entity.

Now therefore, the parties agree as follows:

**I. Definitions.**

- (a) “*Agreement*” means the current executed Claims Administration and, if applicable, the Panel Access Agreement between Business Associate and Covered Entity.
- (b) “*Breach*” shall mean the illegal or unauthorized acquisition, access, use, or disclosure of PHI which compromises the security, confidentiality, privacy, or integrity of such information pursuant to the HITECH Act § 13400, any regulations issued thereunder, and as described in the Cal. Civil Code § 1798.82(d).
- (c) “*Business Associate*” means an individual or entity who or which performs a function or activity on behalf of, or provides a service to the “covered entity”, that involves the creation, use or disclosure of Personal and Health Information.
- (d) “*Covered Entity*” means a health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA Privacy Regulations.
- (e) “*Designated Record Set*” means a group of records maintained by or for the Covered Entity comprising the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity, or 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” includes any item, collection, or grouping of information that contains PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.
- (f) “*e-PHP*” means PHI maintained or transmitted in electronic form.
- (g) “*Individual*” means the person who is the subject of the PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (h) “*Limited Data Set*” shall mean PHI that excludes direct identifiers of the individual or of relatives, employers, or household members of the individual. (*See 45 C.F.R. § 164.514(e)(2)*).

- (i) *“Privacy Official”* means the Covered Entity’s individual and such individual’s designees who are responsible for the development and implementation of Covered Entity’s policies and procedures regarding privacy and confidentiality of PHI.
- (j) *“Privacy Rule”* shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (k) *“Personal and Protected Health Information”* (PHI) means either medical or individual information in electronic or physical form which (i) relates to the past, present, or future physical or mental health 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, (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and (iii) is limited to the information created or received by Business Associate from or on behalf of Covered Entity (as defined by 45 CFR 164.501).
- (l) *Required By Law.* *“Required By Law”* shall have the same meaning as the term *“required by law”* in 45 CFR 164.501.
- (m) *Secretary.* *“Secretary”* shall mean the Secretary of the Department of Health and Human Services or his designee.
- (n) *“Security Incident”* means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system that is created, received maintained or transmitted by or on behalf of The Covered Entity. (See 45 C.F.R. §164.304).
- (o) *“Security Official”* means official who is responsible for the development and implementation of the policies and procedures required by 45 C.F.R. §164.308.
- (p) *“Unsecured PHP”* means PHI that is not secured through the use of technology or methodology in accordance with guidance issued by the U.S. Department of Health and Human Services under the HITECH Act § 13402(h) and applicable regulations issued thereunder.

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

- (a) Business Associate agrees to not use or further disclose PHI it creates or receives, maintains or transmits other than as permitted or required by the Agreement or as permitted or required by law or as otherwise permitted in writing by Covered Entity.
- (b) Business Associate shall comply with Covered Entity’s Confidentiality/Privacy Policies, including the Notice of Confidentiality and Privacy Practices.
- (c) Business Associate agrees to implement all appropriate and reasonable administrative, physical, and technical safeguards to protect the confidentiality and integrity of the PHI that it creates, receives, maintains or transmit and to prevent use or disclosure of PHI other than as provided by this Business Associate Addendum.
- (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 PHI by Business Associate in violation of the requirements of this Addendum.
- (e) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by its Agreement and of which it becomes aware.

- (f) Business Associate agrees to ensure that any agent, including a subcontractor to whom it delegates any function or activity it has undertaken to perform on behalf of Covered Entity, and to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees in writing to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.
- (g) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and upon twenty (20) days advance written notice, to PHI 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. Business Associate may charge a reasonable fee for the cost of producing, copying, and mailing.
- (h) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs pursuant to 45 CFR 164.526 at the request of Covered Entity, upon 30 days advance written notice.
- (i) 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 CFR 164.528, and as applicable, the HITECH Act § 13405(c) and any regulations issued thereunder.
- (j) Business Associate agrees to provide Covered Entity or an Individual, upon 45 days advance written notice, information collected in accordance with Paragraph (i) of this Section as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (k) Business Associate agrees to make 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 Covered Entity, or to the Secretary, with 30 days advance written notice by the Covered Entity, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (l) As required by 45 CFR Part 164, Subpart C with respect to EPHI, Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability and to prevent unauthorized disclosures of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 CFR Part 164, Subpart C (Security Rule) and the HITECH Act and applicable regulations issued thereunder..
- (m) Additionally, as required by 45 CFR Part 164, Subpart C, with respect to EPHI, Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement reasonable and appropriate safeguards to protect the EPHI.
- (n) Additionally, as required by 45 CFR Part 164, Subpart C, with respect to EPHI, Business Associate agrees to report to Covered Entity any Security Incident of which Business Associate becomes aware.

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

- (a) Except as otherwise limited in this Addendum, Business Associate may use, request or disclose only the minimum necessary PHI it creates or receives in order to perform specific functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Regulations or the HITECH Act and the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity except as provided in Section IV (a) and (b).

### **IV. Specific Use and Disclosure Provisions**

- (a) Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that:
  - (i) Disclosures are Required by Law, or
  - (ii) 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.
- (c) Specifically Business Associate may use and further disclose such PHI as it received from or obtains on behalf of Covered Entity, for all third party administrator functions as provided by the Agreement.
- (d) Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
- (f) Business Associate may de-identify any and all PHI in accordance with the requirements of applicable law as provided in 45 C.F.R. 164.514(b) and use or disclose all such de-identified information for its own managerial and administrative activities in its discretion. Business Associate agrees to maintain such documentation regarding de-identified information as required by 45 C.F.R. 164.514(b). Such de-identified information does not constitute PHI and is not subject to the terms of this Agreement.

### **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 PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.

## **VI. 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 if done by Covered Entity.

## **VII. Termination**

- (a) *PHI.* Upon termination of the Agreement, all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, shall be protected, in accordance with the termination provisions in this Addendum.
- (b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (i) Provide an opportunity for Business Associate to cure the breach or end the violation within sixty-business days from receipt of such notification by the Covered Entity to cure the breach. If Business Associate does not cure the breach or end the violation within the 60 day cure period, Covered Entity may then terminate the Agreement;
  - (ii) Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
  - (iii) If neither termination nor cure is feasible and the breach is material, only then shall Covered Entity report the violation to the Secretary.
  - (iv) This Addendum will immediately terminate when the Agreement terminates. The effective date of such termination will be the same as the effective date that the Agreement terminates.
  - (v) In the event this Addendum is terminated for any reason, the Agreement will also terminate. The effective date of such termination will be the same as the effective date that this Addendum terminates.
- (c) *Effect of Termination.*

In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notice that return or destruction of PHI is infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI, for so long as Business Associate maintains such PHI.

## VIII. Compliance With Law

Business Associate shall comply with all applicable state and federal privacy and security laws pursuant to HIPAA, HIPAA Regulations, the HITECH ACT and any regulations promulgated thereunder as well as the Cal. Civil Code §56 et seq., Cal. Civil Code § 1798.82 et seq., and Cal. Ins. Code § 791 et seq.. In addition, any amendment to the HIPAA statute or the Privacy Regulations shall be deemed included in this Addendum such that this Addendum and Agreement remain in compliance with such amendments. In the event of future material changes in HIPAA or its implementing regulations, Covered Entity shall inform Business Associate of any changes it reasonably deems necessary to comply with such changes and Business Associate shall promptly comply with such reasonable requests.

## IX. Breach Reporting

- (a.) Business Associate shall report to Covered Entity any Breaches of PHI following discovery of a breach of such information. (See HITECH ACT §13402 (b)) Business Associate shall cooperate with Covered Entity in investigating such Breach, and in meeting Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall report all Breaches to Covered Entity in writing and such reports shall, at a minimum:
- i) Identify the nature of the Breach including the date of the Breach and the date of discovery of the Breach; (See HITECH ACT §13402 (f)(1))
  - ii) Identify which elements of the PHI (e.g., full name, social security number, date of birth, etc.) were breached, or were part of the Breach;
  - iii) Identify what corrective actions Business Associate took or will take to prevent further incidents of Breach;
  - iv) Identify what Business Associate did or will do to mitigate any deleterious effect of the Breach;
- and
- v) Provide such other information, as Covered Entity may reasonably request.
- (b.) In the event that either party becomes aware of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Addendum, the party discovering such pattern of activity or practice must take reasonable steps to cause the other party to cure the breach or end the violation. If a cure is not effectuated within a reasonable time period specified by the party requesting the cure following the date of discovery, such party shall terminate the Agreement and this Addendum if feasible, or if termination not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services or its designee. (See 45 C.F.R. § 164.504(e)(1)(ii) and HITECH Act § 13404(b)).

## X. Miscellaneous

- (a) *Regulatory References.* A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (c) *Survival.* The respective rights and obligations of Business Associate under Section VII (c) "Effect of Termination" of this Addendum shall survive the termination of this Agreement.
- (d) *Interpretation.* Any ambiguity in this Addendum shall be resolved to permit Covered Entity and Business Associate to comply with the Privacy Rule. The Agreement shall remain in full force and effect except as expressly modified in this Addendum. In the event of conflict, this Addendum shall prevail.
- (e) *Choice of Law.* This Addendum is made in and will be governed by, and construed in accordance with, the laws of the State of California without regard to principles of conflict or choice of law.

IN WITNESS WHEREOF, Covered Entity and Business Associate execute this Addendum as of the date set forth below.

**Medical Eye Services, Inc.**

**("Business Associate")**

Signature: \_\_\_\_\_



Name: \_\_\_\_\_

Chuck Kupfer

Title: \_\_\_\_\_

Security Officer

Date: \_\_\_\_\_

05/13/10

**CITY OF LONG BEACH**

**("Covered Entity")**

Assistant City Manager



Patrick H. West

EXECUTED PURSUANT  
TO SECTION 304 OF  
THE CITY CHARTER.

City Manager


4.20.10

APPROVED AS TO FORM

APR 17, 20 10

ROBERT E. SHANNON, City Attorney

By \_\_\_\_\_



CHRISTINA L. CHECEL  
DEPUTY CITY ATTORNEY