HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA BUSINESS ASSOCIATE AGREEMENT (the "BAA") is entered into by and between **Opticare of Utah, Inc.** ("Covered Entity"), and _____,("Business Associate").

In connection with the services presently being, or to be, provided by Business Associate to Covered Entity ("Services"), or as otherwise required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended ("HIPAA"), Covered Entity, has advised Business Associate, that certain elements of the data that Business Associate accesses, creates and/or receives from, or on behalf of Covered Entity is Protected Health Information ("PHI") as that term is defined in HIPAA. This BAA will replace any previous BAA between the parties.

Therefore, Covered Entity and Business Associate are entering into this BAA to provide for the treatment and protection of such PHI as required by HIPAA, as amended by the Genetic Information Nondiscrimination Act of 2008, Public Law 110-233 ("GINA"), and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), and their implementing regulations.

1. **Definitions**.
   For purposes of this BAA, capitalized terms used but not otherwise defined herein shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context.

   (a) "Breach" will have the same meaning as defined by 45 CFR §164.402.
   (b) "Breach Notification Rule" will have the same meaning as "Notification in the Case of Breach of Unsecured PHI" at 45 CFR Part 164, Subpart D, as may be revised from time to time by the Secretary.
   (c) "Data Aggregation" will have the same meaning as defined by 45 CFR §164.501.
   (d) "Designated Record Set" will have the same meaning as defined by 45 CFR §164.501.
   (e) "Electronic PHI" will have the same meaning as defined by 45 CFR §160.103.
   (f) "Genetic Information" will have the same meaning as defined by Title I of GINA.
   (g) "Individual" will have the same meaning as defined by 45 CFR §160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
   (h) "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as may be revised from time to time by the Secretary.
   (i) "Protected Health Information" or "PHI" will have the same meaning as defined by 45 CFR §160.103, limited to the information accessed, created and/or received by Business Associate from or on behalf of the Covered Entity.
   (j) "Required by Law" will have the same meaning as defined by 45 CFR §164.103.
   (k) "Secretary" will mean the Secretary of the Department of Health and Human Services or his designee.

(l) "Security Incident" will mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with system operations in an information system pursuant to 45 CFR §164.304. For purposes of this BAA a Security Incident does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate.

(m) "Security Rule" will mean the Security Standards for the protection of Electronic PHI at 45 CFR, Parts 160 and 164, Subparts A and C, as may be revised from time to time by the Secretary.

(n) "Unsecured PHI" will mean PHI that is not secured through the use of a technology or methodology that renders such PHI unusable, unreadable or indecipherable to unauthorized individuals pursuant to 45 CFR §164.402.

2. **Use and Disclosure of PHI**. To fulfill its obligations under the Privacy Rule, Business Associate agrees to do the following:

(a) Business Associate may use or disclose PHI, provided that such use or disclosure of PHI would not violate the Privacy Rule, as follows: (1) as permitted or required in this BAA, including the provision of Services; (2) as Required by Law; (3) for the proper management and administration of Business Associate; (4) to fulfill any present or future legal responsibilities; (5) for Data Aggregation services to Covered Entity; or (6) any use and disclosure of PHI that has been de-identified within the meaning of 45 CFR §164.514.

(b) Use all appropriate safeguards to prevent the unauthorized use or disclosure of PHI and use reasonable efforts to mitigate any harmful effect.

(c) Report to the Covered Entity any unauthorized use or disclosure of PHI within ten (10) business days of becoming aware of such unauthorized use or disclosure. To the extent that such unauthorized use or disclosure of PHI described in this Section 2(c) also constitutes a Breach of Unsecured PHI, the provisions of this Section 2(c) shall not apply, but rather the provisions of Section 5(a) shall apply.

(d) Ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply throughout this BAA to Business Associate with respect to such PHI.

(e) Provide access, at the request of the Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to the Covered Entity, or as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524. Business Associate shall have the right to charge the Individual a reasonable cost-based fee, as permitted by 45 CFR §164.524. Business Associate assumes no obligation to coordinate the provision of PHI maintained by other agents or subcontractors of the Covered Entity or business associates of the Covered Entity's Group Health Plan.

(f) At the request of the Covered Entity, make amendments to PHI that it maintains in a Designated Record Set, as directed by the Covered Entity, and to incorporate any amendments to PHI in accordance with 45 CFR §164.526.

(g) Make its internal practices, books, and records, including without limitation its policies and procedures and PHI, relating to the Services, available to Covered Entity, or upon its request to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with Privacy Rule.

(h) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to an Individual's request for an accounting of disclosures of PHI in accordance with the Privacy Rule. Such records of disclosure shall include: (1) the date of disclosure; (2) the name of and, if known, the address of the recipient of the PHI; (3) a brief description of PHI disclosed; and (4) a brief statement that would reasonably inform Covered Entity of the purpose of the disclosure. Business Associate shall provide such information in the time and manner requested by Covered Entity.

(i) Request, use or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
(j) To not use or disclose PHI that contains Genetic Information if such use or disclosure would violate GINA.
(k) not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.
(l) not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.
(m) not make or cause to be written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.
(n) accommodate reasonable requests by Individuals for confidential communications in accordance with 42 U.S.C. § 164.522(b)

3. **Security of Electronic PHI**. To fulfill its obligations under the Security Rule, Business Associate agrees to do the following:
   (a) Establish and maintain appropriate administrative, physical and technical safeguards, as provided in 45 CFR §§ 164.308, 164.310, and 164.312, respectively, that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI.
   (b) Follow generally accepted system security principles and the requirements of the Security Rule.
   (c) Establish and maintain appropriate policies and procedures and documentation, as provided in 45 CFR §164.316.
   (d) Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such Electronic PHI.
   (e) Report any Security Incident to Covered Entity within ten (10) business days of becoming aware of such Security Incident.

4. **Obligations of Covered Entity**.
   (a) In accordance with 45 CFR §164.520, the Covered Entity will notify Business Associate of any limitation(s) in its notice of privacy practices, including, without limitation, any changes in, or revocation of, permission by an Individual to use or disclose PHI.
   (b) Covered Entity will 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. All information received by Business Associate should be regarded as PHI unless it clearly contains no PHI.
   (c) Covered Entity shall ensure that it provides to Business Associate only that PHI which is minimally necessary to perform the services provided by the Business Associate.

5. **Breach Notification Requirements**.
   (a) For purposes of this Section 5, Business Associate shall have the responsibility, following a suspected Breach by Business Associate, to determine if such Breach constitutes a Breach of Unsecured PHI in accordance with the Breach Notification Rule. Business Associate shall notify the Covered Entity, in writing, within ten (10) business days following Business Associate's discovery of a Breach of Unsecured PHI.
   (b) To the extent that Business Associate determines that a Breach of Unsecured PHI has occurred, Business Associate shall provide written notice, on behalf of the Covered Entity, within no more than sixty (60) days following the date the Breach of Unsecured PHI is discovered by Business Associate, or such later date as is authorized under 45 CFR §164.412, to:
      (1) each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed as a result of the Breach; and
      (2) the media, to the extent required under 45 CFR §164.406.

(c) Unless the individual has agreed to electronic notice as set forth in 45 CFR §164.404, Business Associate shall send notices to individuals described herein using the last known address of the individual on file with Business Associate. If the notice to any individual is returned as undeliverable, Business Associate shall take such action as is required by the Breach Notification Rule.

(d) Business Associate shall be responsible for the drafting, content, form and method of delivery of each of the notices required to be provided by Business Associate under this Section 5; provided, however that Business Associate shall comply, in all respects, with 45 CFR §164.404 and any other applicable breach notification provisions of the Breach Notification.

(e) Any notices required to be delivered by Business Associate hereunder shall be at the expense of the Business Associate.

(f) Business Associate shall conduct any risk assessment necessary to determine whether notification is required hereunder and will maintain any records related thereto in accordance with Business Associate's internal policies and procedures and the applicable provisions of the Breach Notification Rule.

6. **Application of Civil and Criminal Penalties**. Business Associate acknowledges that it is subject to 42 U.S.C. 1320d-5 and 1320d-6 in the same manner as such sections apply to a covered entity, to the extent that Business Associate violates §§ 13401(a), 13404(a), or 13404(b) of the HITECH Act.

7. **Term/Termination**.

(a) *Term.* This BAA shall be effective as of the later of: (1) the date the governing rule becomes effective; or (2) the date of execution of the BAA by both parties. This BAA shall terminate as provided in Section 7(b) below or upon ninety (90) days written notice by the Covered Entity or Business Associate.

(b) *Termination for Cause*. Upon either party's knowledge of a material breach of this BAA by the other party, the non-breaching party shall either:

(1) Provide an opportunity for the breaching party to cure the breach or end the violation and, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, terminate this BAA and any underlying service agreement; or

(2) Immediately terminate this BAA and any underlying service agreement if the breaching party has breached a material term of this BAA and cure is not possible; or

(3) If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.

(c) *Effect of Termination.*

(1) Upon termination of this BAA 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 retain no copies of the PHI.

(2) In the event that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In the event that it is determined that return or destruction of the PHI is infeasible, Business Associate will continue to extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

8. **Notices**.

All notices, requests, consents and other communications hereunder will be: (a) in writing; (b) addressed to the receiving party's address set forth below, or to such other address as a party may designate by notice hereunder; and (c) will be either: (1) delivered by hand; (2) made via facsimile transmission; (3) sent by overnight courier; or (4) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Business Associate: _____

ATTN: _____

_____

_____

_____

If to Covered Entity: Opticare of Utah, Inc.

ATTN: Compliance Officer

1901 West Parkway Blvd

Salt Lake City, UT 84109

9. **No Third Party Beneficiaries**. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies or obligations whatsoever.

10. **Modifications and Amendments**. The terms and provisions of this BAA may be modified or amended only by written agreement, executed by the parties hereto and any such amendment will comply with the applicable requirements of HIPAA.

11. **Regulatory References**. A reference to HIPAA in this BAA or with respect to a section in the Privacy Rule, the Security Rule, GINA or the HITECH Act, means the section as in effect or as amended, and for which compliance is required hereunder.

12. **Relationship of the Parties**. Business Associate shall be deemed an independent contractor in the performance of its obligations hereunder and shall not be considered an agent of the Covered Entity.

13. **Severability**. The parties intend this BAA to be enforced as written. However if any portion or provision of this BAA will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this BAA, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this BAA will be valid and enforceable to the fullest extent permitted by law.

14. **Governing Law**. This BAA will be governed by and construed in accordance with the laws of the Utah to the extent not pre-empted by HIPAA or other applicable Federal law.

15. **Counterparts**. This BAA may be signed in counterparts, which together will constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this BAA to be duly executed by their authorized representatives as of the date set forth below.

Opticare Of Utah	
Signature	Signature
Aaron Schubach Printed Name	Printed Name
CEO/President Title	Title
Date	Date