

EXHIBIT C

OLA Legal Counsel has concluded that there is a specific instance where an optical lab may need to have a Business Associate Agreement (BAA). The particular circumstances are when the lab utilizes the services of a supplier of lab processing software, and that supplier accesses the lab's PHI – either online or via backup tapes – for the purpose of software support and process control trouble shooting.

On the following pages is a model Business Associate Agreement that OLA members may use in this situation. The model agreement – with modifications – would also be applicable to other [rare] situations in which a lab might require a BAA.

It is the lab's responsibility as the "covered entity" under HIPAA to secure this BAA with a lab software supplier, or other similar business associate.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("B.A. Agreement") is entered by and between *[Optical Laboratory]* ("Covered Entity") and *[Software Support Vendor]* ("Business Associate") as of this _____ day of _____, 200__ .

DEFINITIONS

Italicized terms used in this B.A. Agreement shall have the same meaning as in the Privacy Rule at 45 CFR Parts 160 and 164, and "PHI" shall mean "protected health information" as defined in the Privacy Rule.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this B.A. Agreement or as *Required By Law*.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this B.A. Agreement.

(c) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this B.A. Agreement of which it becomes aware.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this B.A. Agreement to Business Associate with respect to such PHI.

(e) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI, available to the *Secretary*, in a time and manner designated by the *Secretary*, for determining Covered Entity's compliance with the Privacy Rule.

(f) 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. Business Associate agrees to provide to Covered Entity, in time and manner requested by Covered Entity, information collected in accordance with this paragraph, to permit Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

Except as otherwise limited in this B.A. Agreement, Business Associate may use or disclose PHI to provide software support services to, or on behalf of, Covered Entity as specified in agreements for such services between Business Associate and Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or would not violate the minimum necessary policies and procedures, as required by 45 CFR 164.502(b) and 45 CFR 164.514(d), of the Covered Entity. Any ambiguities of interpretation of this B.A. Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

TERM AND TERMINATION

This B.A. Agreement shall terminate when Business Associate no longer provides software support services to Covered Entity, or Covered Entity may terminate this B.A. Agreement if Covered Entity determines that Business Associate has violated a material term of this B.A. Agreement. Upon termination of this B.A. Agreement, Business Associate shall return or destroy all PHI, and shall not retain copies thereof. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. In the event that Business Associate and Covered Entity determine, by mutual agreement, that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this B.A. Agreement 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.

[Optical Laboratory]:

[Software Support Vendor]:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____