

Workers' Compensation Reinsurance Association Confidentiality and Non-Disclosure Agreement



Members recognize as part of their membership with the Workers' Compensation Reinsurance Association (WCRA) that the WCRA periodically performs claims- and premium-related audits at Member locations (each an "Audit Review"). Audit Reviews involve meeting with Member staff and reviewing a variety of records. The WCRA recognizes the confidential nature of some of the materials discussed and reviewed during Audit Reviews.

The WCRA and the Member agree to abide by the following terms:

1. The WCRA agrees, except as required by applicable law (statute, rule, or regulation, or court order, including a subpoena or other similar form of process) and except for disclosures to the Minnesota Department of Labor and Industry, Minnesota Department of Commerce and to the Minnesota Workers' Compensation Insurers Association, to (a) keep all Confidential Information confidential and not to disclose or reveal any Confidential Information to any person other than those employed by the WCRA or otherwise acting on the WCRA's behalf and directly participating in the performance of the Audit Review and who may need to know the Confidential Information for the purpose of performing the Audit Review or otherwise conducting WCRA business related to the Audit Review; (b) use reasonable efforts to cause WCRA representatives to observe the terms of this Agreement; and (c) not use or disclose Confidential Information for any purpose other than in connection with the Audit Review. If disclosure is required by law, the WCRA shall (other than in connection with routine supervisory examinations by professional, administrative, or regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement) provide the Member with prior prompt written notice thereof, if practicable under the circumstances, to allow the Member, at its own expense, to seek a restraining order or other appropriate relief. Notwithstanding the foregoing, if the Member is unable to obtain or does not seek such relief, and if the WCRA is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.
2. Confidential Information means nonpublic information marked "confidential" or "proprietary" or that otherwise should be understood by a reasonable person to be confidential in nature that is provided by or on its behalf of a Member to the WCRA or its representatives. Confidential Information does not include any information which (a) is rightfully known to the WCRA prior to its disclosure by a Member to WCRA; (b) is released by a Member to any other person or entity (including governmental or reporting agencies) without restriction; (c) is independently developed by the WCRA without use of or reliance on Confidential Information; or (d) is, or later becomes, publicly available, without violation of this Agreement, or may be lawfully obtained by the WCRA from a person other than the Member under Audit Review.
3. The WCRA agrees to (a) use Confidential Information of the Member only as permitted under this Agreement or as requested or directed in writing by the Member and (b) protect the Confidential Information using reasonable measures commensurate with those used by the WCRA for the protection of sensitive information of its own.
4. Nothing contained in this Agreement or in any discussions undertaken or disclosures made hereunder is intended to grant to the WCRA or any of its representatives any interest in any license, patent, copyright, or any other form of right or claim in or to any of the Member's Confidential Information disclosed hereunder.
5. IN THE EVENT OF A BREACH OF THIS AGREEMENT, MEMBER ACKNOWLEDGES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY OF THE OBLIGATIONS HEREUNDER SHALL BE REIMBURSEMENT OF ONE YEAR'S PREMIUM PAID BY THE MEMBER TO THE WCRA FOR THE POLICY YEAR IN WHICH THE BREACH OCCURRED, NOT TO EXCEED THE AMOUNT OF EXPENSE INCURRED BY THE MEMBER AS A RESULT OF SUCH BREACH.

6. This Agreement contains the entire agreement between the parties concerning the Confidential Information, and it supersedes any prior agreements between the parties concerning Confidential Information. In the event of any conflict between this Agreement and the WCRA's Plan of Operation or the Reinsurance Agreement between the WCRA and the Member, the Plan of Operation or the Reinsurance Agreement, as applicable, shall control over this Agreement.
7. No modifications of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties unless approved in writing by each of the parties.
8. The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Minnesota. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement shall survive the term of WCRA's Audit Review.
9. Either party may terminate this Agreement upon at least fifteen (15) days' prior written notice to the other party. Such termination will not affect the parties' rights and obligations with respect to Confidential Information that is disclosed to the WCRA prior to the effective date of termination of this Agreement.

The parties have caused this Agreement to be executed this _____ day of _____, 20____, by their respective representatives.

Workers' Compensation Reinsurance Association

Name of Member

Printed Name of WCRA Officer

Printed Name of Member Representative

Signature of WCRA Officer

Signature of Member Representative