

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement **Agreement** is entered into between [**or among (as appropriate)**] [**ENTER APPROPRIATE UNM PARTIES**] (together referred to in this Agreement), and [**ENTER APPROPRIATE BUSINESS ASSOCIATE NAME**] (referred to in this Agreement). The
[**INCLUDE DATE**].

I. RECITALS

- A. Under one or more agreements between the parties (**the Underlying Agreement(s)**), Business Associate is receiving from, or creating or receiving, or maintaining or transmitting

The parties agree as follows:

II. PERMITTED USES AND DISCLOSURES OF PHI

- A.** Services. Pursuant to the Underlying Agreement(s), Business Associate provides services (**Services**) for Covered Entity that involve the receipt, use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement(s). All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents, in accordance with Section III.A.7 hereof; or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.
- B.** Business Activities of the Business Associate. Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:
1. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws;
 2. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as defined within 45 C.F.R. §164.501; or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. §164.504(e)(4) and §164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
 3. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

III.

2. Not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section II.B.2 hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law;
- 3.

9. Have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Agreement or applicable law;
10. Have and apply appropriate sanctions against any workforce member, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law;
11. Within five (5) business days request of Covered Entity, make available

3. Notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, except if the Business Associate will use or disclose PHI for (and the Underlying Agreement(s) includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate, Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

IV. REPRESENTATIONS

- A. Mutual Representations of the parties.

service or with respect to any act or omission in any program operated by or

D. Automatic Termination. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Underlying Agreement(s).

VI. CONFIDENTIALITY

A.

the aggregate. Such coverage shall include but not be limited to, third party liability coverage for loss or disclosure of data, including electronic data, network security failure, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent infringement and trade secret misappropriation) unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violation of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, worm, logic bomb, or Trojan horse or negligence in connection with denial of service attacks, or negligent misrepresentation. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity. Business Associate will notify Covered Entity immediately if Business Associate coverage is reduced or terminated.

- C.** Liability. As between the parties, subject to VII.D of this Agreement, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Business Associate understands that Covered Entity is not indemnifying Business Associate for the acts or omissions to act of Covered Entity or its employees. The liability of Covered Entity will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended.
- D.** Indemnification. The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered subcontractors, agents or other members of its workforce from any costs, to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its

ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

VIII. MISCELLANEOUS

- A. Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.504(a), as the Business Associate for purposes of this Agreement.
- B. Survival. The respective rights and obligations of Business Associate and Covered Entity under this Agreement, shall survive termination of this Agreement indefinitely.
- C. Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- D. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- E. Changes in Law. The parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the parties hereto to be in violation of law(s), shall be deemed to have superseded the terms of this Agreement and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s). In order to effectuate the purposes and intent of this Agreement the parties will set forth an executed written agreement within thirty (30) days of receipt of notice from one party to the other party setting forth the proposed changes, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law(s), general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either party may provide the other at least sixty (60) days advance written notice of termination of this Agreement,

unless this Agreement would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Agreement.

- F.** Construction of Terms. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the U.S. Department of Health and Human Services of the Office for Civil Rights from time to time.
- G.** Contradictory Terms. Any provision of the Underlying Agreement(s) that is directly contradictory to one or more terms of this Agreement (**Contradictory Term**) shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

