

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as the "HSD," and the **Island Peer Review Organization, Inc., d/b/a IPRO**, hereinafter referred to as the "Contractor".

Recitals.

1. All services provided pursuant to this Agreement are subject to the New Mexico Procurement Code and 1.4.1 NMAC, unless specifically provided otherwise herein;
2. The Medicaid Managed Care program was enacted by the New Mexico Legislature which empowered HSD to "provide for a statewide, managed care system to provide cost-efficient, preventative, primary and acute care for Medicaid recipients by July 1, 1995;
3. HSD has received approvals from the Centers for Medicare and Medicaid Services ("CMS") of certain 1915(b) waivers (permissible waivers pursuant to section 1115(b) of the Social Security Act) to provide Medicaid state plan services using managed care organizations;
4. The Contractor must comply with all New Mexico Medicaid program regulations and include compliance with provisions of the New Mexico HSD Medical Assistance Division's (MAD) Managed Care Policy Manual and its subsequent revisions as published;
5. The Contractor must comply with the Request for Proposal ("RFP"), and any subsequent amendments, including the State's answers to contractor's questions, the State's written clarifications, and the Contractor's Best and Final Offer;
6. Section 1932(C)(2)(A)(i) of the Social Security Act requires contracts with Managed Care Organizations (MCO) to provide for an independent external quality review (EQR) audit to be conducted on an annual basis;
7. The Contractor shall be knowledgeable of all applicable Federal and State laws including Title XIX and Title XXI of the Social Security Act and Code of Federal Regulations (CFR), Title 42 Parts 430 to end, as revised or otherwise amended;
9. Under Federal regulations, this external review must evaluate the MCO's quality outcomes and timeliness of, and access to, the items and services for which the organization is responsible;
10. Pursuant to 42 CFR pt. 438, subpart E, to qualify as an external quality review organization (EQRO) auditor, an organization, such as the Contractor, must have knowledgeable staff and sufficient physical, financial, and technical resources independent of the State's Medicaid agency and the MCOs under review; and

11. The HSD's Chief Procurement Officer (CPO) has made a determination that this PSC is exempt from the provisions of the New Mexico Procurement Code [13-1-28 NMSA 1978, *et seq.*] as the services involved will likely reduce health care costs, improve quality of care, or improve access to care.

IT IS THEREFORE AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached hereto, and referenced herein.

2. **Compensation.**

A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to Exhibit A, Scope of Work, compensation not to exceed three million two hundred sixty nine thousand two hundred forty five dollars (\$3,269,245) including gross receipts tax if applicable. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor is responsible for notifying the HSD when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

The HSD shall pay to the Contractor in full payment for services satisfactorily performed compensation not to exceed seven hundred fifty five thousand one hundred thirty three dollars (\$755,133) including gross receipts tax, if applicable, for FY19.

The HSD shall pay to the Contractor in full payment for services satisfactorily performed compensation not to exceed seven hundred thirty nine thousand six hundred sixty two dollars (\$739,662) including gross receipts tax, if applicable, for FY20.

The HSD shall pay to the Contractor in full payment for services satisfactorily performed compensation not to exceed nine hundred ninety four thousand nine hundred fifty dollars (\$994,950) including gross receipts tax, if applicable, for FY21.

The HSD shall pay to the Contractor in full payment for services satisfactorily performed compensation not to exceed seven hundred seventy nine thousand five hundred dollars (\$779,500) including gross receipts tax, if applicable, for FY22.

B. Payment for FY19 through FY22 is subject to availability of funds pursuant to Paragraph 5 (Appropriations), set forth below and to approval by the DFA. All invoices **MUST BE** received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. **Invoices received after such date WILL NOT BE PAID.**

C. Contractor must submit a complete fixed price invoice to HSD no later than fifteen (15) business days following the acceptance of a completed reimbursable service. If the HSD finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE HSD and shall terminate 4 years from date of approval unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Grounds. The HSD may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the HSD's uncured, material breach of this Agreement. Upon thirty (30) days' notice to the Contractor or for cause provided that the Contractor shall have twenty days in which to cure the cause following HSD's written notice of termination identifying the cause and statement of what is required to cure the cause although this in no way affects HSD's right to terminate for convenience.

B. Notice; HSD Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the HSD shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (iii) if the HSD does not cure all material breaches within the thirty (30) day notice period or (iv) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this

Agreement, the HSD's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the HSD or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HSD upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the HSD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the HSD.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the HSD. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the HSD.

11. Product of Service - Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the HSD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Intellectual Property.

The Contractor hereby acknowledges and grants to the HSD and the State of New Mexico, a revocable, non-transferable, non-exclusive, royalty free license to use the Contractor's logo, trademarks and other service marks (the "OPC Marks") for purposes of this Agreement in order that the HSD may promote the services and the Contractor's role in providing the Services, in a form as approved by the Contractor. The HSD does not have any other right, title, license or interest, express or implied, in and to any object code, software, hardware, OPC Marks, service mark, trade name, trade dress, formula, OPC System, Know-How, telephone number, telephone line, domain name, URL, copyrighted image, text, script (including, without limitation, IVR or the Contractor's Website scripts) or other intellectual property right of Contractor (collectively "OPC Intellectual Property"). All such OPC Intellectual Property, and all rights and title therein (other than rights expressly granted in this Agreement) are owned exclusively by the Contractor. The HSD's license to use any OPC Marks shall terminate upon the earlier of (a) the effective date of termination or expiration of this Agreement, or (b) immediately, in the event of any breach of this section of the Agreement by Agency. The HSD shall not utilize the OPC Intellectual Property in any manner that would diminish its value or harm the reputation of the Contractor. The HSD agrees that any use of the OPC Marks will conform to reasonable standards of acceptable use specified by the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD's contracting process;

2. this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3. in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the HSD's making this Agreement;

4. this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5. in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6. in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the HSD.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of

this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

14. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. Penalties for Violation of Law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

17. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

18. Rights to Property.

All equipment and other property provided or reimbursed to the CONTRACTOR by HSD is the property of HSD and shall be turned over to HSD at the time of termination or

expiration of this Agreement, unless otherwise agreed to in writing. In addition, in regard to the performance of experimental, developmental or research done by the CONTRACTOR, HSD shall determine the rights of the Federal Government and the parties to this Agreement in any resulting investigation.

19. Erroneous Issuance Of Payment Or Benefits.

In the event of an error, which causes payment(s) to the CONTRACTOR to be issued by HSD, in the CONTRACTOR shall reimburse HSD within thirty (30) days of written notice of such error for the full amount of the payment. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the thirtieth (30th) day following the notice.

20. Excusable Delays.

A. The CONTRACTOR shall be excused from performance hereunder for any period that it is prevented from performing any services hereunder in whole or in part as a result of a war, civil disturbance, epidemic, court order, or other cause beyond its reasonable control, and such nonperformance shall not be a default hereunder or ground for termination of the Agreement.

B. The CONTRACTOR shall be excused from performance hereunder during any period for which the State of New Mexico has failed to enact a budget or appropriate monies to fund the managed care program, provided that the CONTRACTOR notifies HSD, in writing, of its intent to suspend performance and HSD is unable to resolve the budget or appropriation deficiencies within forty-five (45) calendar days.

C. In addition, the CONTRACTOR shall be excused from performance hereunder for insufficient payment by HSD, provided that the CONTRACTOR notifies HSD in writing of its intent to suspend performance and HSD is unable to remedy the monetary shortfall within forty-five (45) calendar days.

21. Publicity.

The CONTRACTOR shall not use HSD's name or refer to the External Quality Review Project directly or indirectly in any advertisement, news release, professional trade or business presentation without prior written approval from HSD. Nothing in this Article shall prevent the CONTRACTOR from using HSD as a reference.

22. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

23. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the HSD.

24. Records and Financial Audit.

A. The Contractor shall maintain detailed records that indicate the nature and price of Services rendered during this Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement.

B. Contract for an independent audit in accordance with 2 CFR 200 at the Contractor's expense, as applicable or upon HSD request, submit its most recent 2 CFR 200 audit. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by 2 CFR 200 or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be available to the HSD and any other authorized entity as required by law within (fifteen) 15 days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this Agreement if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain the Schedule of Expenditures of Federal Awards for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a review of

the schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to 2 CFR 200, specifically subpart F, and appendices where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with 2 CFR 200, specifically subpart F and appendices.

25. Indemnification.

The Contractor shall defend, indemnify and hold harmless the HSD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the HSD and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwmxico.state.nm.us/>.

27. Insurance.

A. The CONTRACTOR shall procure and maintain in full force and effect during the term of this Agreement insurance as is required pursuant to Article 22.3. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. The CONTRACTOR shall furnish HSD/MAD copies of certificates of required insurance in a form satisfactory to HSD/MAD (or copies of insurance policies if HSD/MAD calls for them) within fifteen (15) calendar days after signing this Agreement. HSD/MAD shall

immediately be notified if the insurance is canceled, materially changed or not renewed.

C. The CONTRACTOR shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than Five Hundred Thousand Dollars (\$500,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed for HSD by the CONTRACTOR, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work and contractual liability coverage shall specifically insure to hold harmless provisions of the Agreement. HSD shall be named an additional insured.

D. HSD shall not be liable to claim or subrogation by the CONTRACTOR's insurance carriers and all such insurance shall be deemed for the protection of the HSD as well as the CONTRACTOR.

28. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even when contractor itself does not meet the size requirement for reporting and therefore is not required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

29. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

30. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

31. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the HSD: Kathy Leyba, Program Manager
Human Services Department
Medical Assistance Division
2025 South Pacheco Street
Santa Fe, NM 87504
Katherine.Leyba@state.nm.us

To the Contractor: Clare Bradley, MPH, MD
Island Peer Review Organization (IPRO)
1979 Marcus Avenue
Lake Success, NY 11042

32. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

33. Debarment and Suspension.

A. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or

receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

1. The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

2. If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

34. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

2. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

35. Non-Discrimination.

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this PSC under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

36. Drug Free Workplace.

A. *Definitions.* As used in this paragraph—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);

4. Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than

five (5) days after such conviction;

5. Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7. Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

37. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof. Notwithstanding, the Contractor shall be entitled to pursue any appeal rights the Contractor has under New Mexico law or this Agreement.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

38. Performance.

In performance of this contract, the Contractor agrees to comply with and assume

responsibility for compliance by its employees and its subcontractors and/or Business Associates (BA) with the following requirements:

A. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.

B. Contractor agrees that any Personally Identifiable Information (PII) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by or disclosure to any person or entity other than an officer or employee of the Contractor is prohibited.

C. All PII will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

D. The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, including printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any PII data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of PII will be given to the HSD or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All computer systems, office equipment, and portable media receiving, processing, storing, or transmitting Protected Health Information (PHI), or PII must meet the requirements defined in HIPAA Security Rule, 45 CFR 160. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls.

G. The Contractor will provide signed acknowledgments for its staff and its subcontractors and/or BA staff, to provide certification that information security awareness and training was completed. These signed certifications will be provided to the agency contract manager upon contract start and annually thereafter.

H. All incidents affecting the compliance, operation, or security of the information and systematic functionality must be reported to the HSD and remedied at the Contractor's expense. In addition to the self-certification and evaluation requirements, the Contractor shall notify the HSD of any instances of security breach issues or non-compliance promptly upon their

discovery, but no later than a period of 24 hours. Notification shall include a description of the security/non-compliance issue and corrective action planned and/or taken.

I. The Contractor must provide the HSD with any necessary safeguards to protect further issues caused by security breaches or non-compliance discoveries. The corrective action plan approved by HSD must contain a long term solution to possible future privacy or security threat of information. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures until the issue is resolved.

J. The HSD will have the right to terminate the contract if the Contractor or its subcontractors or BAs fail to provide the safeguards described above, consistent with the termination clause herein.

39. Criminal/Civil Sanctions

A. It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

B. Contractor agrees that granting access to PII must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding PII.

40. Inspection

The HSD shall have the right to send its officers and/or employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work related PHI and/or PII under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

41. Contractor's Responsibility for Compliance With Laws and Regulations

A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions. This includes, but not limited to, 42 CFR Parts 438 and 455; 45 CFR Parts 160 and 164; and NMAC regulation series 8.308.

B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement in Exhibit A.

C. If the Contractor's performance of its obligations under the terms of this agreement makes it a business associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to the terms of the HSD HIPAA Business Associate Agreement (BAA), attached hereto as Exhibit B.

42. Contractor's Responsibility for Compliance With Laws and Regulations Relating To Information Security.

A. The Contractor and all its employees, subcontractors, consultants, or agents performing the Services under this Agreement must comply with the following insofar as they apply to Contractor's processing or storage of Procuring Agency's data:

1. The Federal Information Security Management Act of 2002 (FISMA);
2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
4. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
6. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

43. Entire Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Human Services Department.

By: [Signature]
HSD Cabinet Secretary

Date: 6/25/18

By: [Signature], Asst. G.C.
HSD Office of General Counsel

Date: 6/19/18

By: [Signature]
HSD Chief Financial Officer

Date: 6-19-18

By: Clare B Bradley
Contractor

Date: 6/18/2018

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **02-350083-00-2**

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

By: [Signature]
Taxation and Revenue Department

Date: 6/26/18

Exhibit A

Scope of Work

The Social Security Act (SSA) requires States that operate Medicaid managed care programs to provide for an external, independent review of their contracted MCOs. CMS provides States with matching Federal funds for review expenditures. The EQRO will conduct the EQR activities in accordance with the CMS EQR protocol to ensure HSD/MAD compliance with SSA mandates.

An EQR is the analysis and evaluation by an EQRO, of aggregated information on quality, timeliness, and access to the health care services that a MCO or their contractors furnish to Medicaid beneficiaries.

Pursuant to CFR 42 §438.350, each State that contracts with MCOs must ensure:

1. A qualified EQRO performs an annual EQR for each contracting MCO;
2. The EQRO has sufficient information to use in performing the review;
3. The information used to carry out the review must be obtained from the EQR-related activities described in CFR 42 §438.358;
4. For each EQR-related activity, the information gathered for use in the EQR must include the elements described in CFR 42 §438.364(a)(1)(i) through (iv); and
5. The information provided to the EQRO is obtained through methods consistent with the CMS EQR protocols established by the Secretary of Health and Human Services (HHS) and specifies:
 - a. The data to be gathered;
 - b. The sources of the data;
 - c. The activities and steps to be followed in collecting the data to promote its accuracy, validity, and reliability;
 - d. The proposed methods or methods for validity analyzing and interpreting the data once obtained; and
 - e. Instructions, guidelines, worksheets, and other documents or tools necessary for implementing the protocol.

A. Notice of Direction (NOD)

HSD/MAD will initiate each EQR review or validation activity through a notice of direction (NOD) provided to the EQRO. In response to the NOD, the EQRO will develop measurement

and scoring tools, review criteria and work plan methodology in accordance with CMS EQR protocol.

B. Deliverables

The EQRO will review and report the following EQR activities in accordance with Federal EQR regulations and standards detailed in CFR 42 § 438; New Mexico Administrative Code (NMAC) 8.308.21.14; 1115 Demonstration Waiver Special Terms and Conditions (STCs); MCO contracts; and the Managed Care Policy Manual.

1. The EQRO will design and conduct an annual Compliance Review to determine each MCO's compliance with the Federal Managed Care Regulations set forth in CFR 42 § 438, Subpart D. The EQRO will adhere to CMS EQR Protocol 1, which defines the activities and tools necessary to review program documents and conduct interviews with each MCO's personnel to efficiently collect the information necessary to analyze and determine compliance with Federal and State standards.

HSD/MAD will select the standards (i.e., access, structure and operations, or measurement and improvement) to be evaluated and provide direction to the EQRO through a NOD.

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities of the Compliance Review. The report will contain a comprehensive, aggregated summary of all MCO findings and will document components of the review and final compliance determinations for each regulatory provision. The report will also include a year-to-year comparison of MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous compliance reviews to determine if such actions reflected positively or continued corrective action is required.

2. The EQRO will design and conduct an annual Validation of Performance Measures (PMs) in accordance with CFR 42 § 438.330(b)(1). The EQRO will adhere to CMS EQR Protocol 2, which defines the activities and tools necessary to assess the accuracy of PMs reported by each MCO.

In addition, the EQRO will assess the integrity of each MCO's information system by conducting an Information Systems Capability Assessment (ISCA) in accordance with CMS EQR Protocol Appendix V.

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities of the PM validation including the assessment methodology and analysis of performance. The report will include an assessment of each MCO's Quality Management (QM)/Quality Improvement (QI) program and detail the findings of the ISCA. The report will include a MCO specific year-to-year comparison analysis, as well as a MCO-to-MCO comparison. The report will also include MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

3. The EQRO will design and conduct an annual Validation of each MCO's Performance Improvement Projects (PIPs) required in accordance with CFR 42 § 438.330(b)(1). The EQRO will adhere to CMS EQR Protocol 3, which defines the activities and tools used to determine whether a health care quality PIP was designed, conducted, and reported in a methodologically sound manner and to determine if the PIP improved the processes and outcomes of health care provided by the MCO.

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities including: the assessment methodology applied to the validation of each of the HSD/MAD directed PIPs current during the review period; assessment of each MCO's methodology for conducting the PIPs; verification of the PIP findings; and evaluation of validity and reliability of study results. The report will also include MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

4. The EQRO will design and conduct an annual Validation of each MCO's Network Adequacy during the preceding 12 months to comply with the requirements set forth in CFR 42 § 438.68 and § 438.14(b)(1). The EQRO will adhere to HSD/MAD standards and the network adequacy CMS EQR Protocol upon CMS development.

The EQRO will validate each MCO's adherence to HSD/MAD standards for time and distance by the MCO for the following provider types:

- a. Primary care, adult and pediatric;
- b. OB/GYN;
- c. Behavioral health (mental health and substance use disorder, adult and pediatric);
- d. Specialist, adult and pediatric;

- e. Hospital;
- f. Pharmacy;
- g. Pediatric dental; and
- h. Long Term Services and Support.

The EQRO will include a detailed assessment of each MCO's Network Adequacy consistent with the following elements:

- a. The anticipated Medicaid enrollment;
- b. The expected utilization of services;
- c. The characteristics and health care needs of specific Medicaid populations covered by the MCO;
- d. The number and type of network providers;
- e. The number of network providers who are not accepting new Medicaid patients;
- f. The geographic location of network provider and Medicaid enrollees, considering the State's time and distance requirements detailed in the MCO contract;
- g. The ability of network providers to communicate with limited English proficient enrollees in their preferred language;
- h. The ability of network providers to ensure physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid enrollees with physical or mental disabilities; and
- i. The availability of triage lines or screening systems, as well as the use of telemedicine, e-visits and/or other evolving and innovative technological solutions.

The EQRO will deliver to HSD/MAD a peer reviewed final written report detailing all activities of the Network Adequacy Validation project including the assessment methodology and analysis of performance. The report will include a year-to-year comparison of MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

- 5. The EQRO will design and conduct a Validation of Encounter Data reported by each MCO in accordance with CFR 42 § 438.310(c)(2) and determined by HSD/MAD. The EQRO will

adhere to CMS EQR Protocol 4, which defines the activities and tools necessary to assess completeness and accuracy of encounter data submitted to the HSD/MAD by the MCOs.

The EQRO will deliver to HSD/MAD a peer reviewed final written report detailing all activities of the Encounter Data Validation project including the assessment methodology, and analysis of each MCO's data submission process. The report will include tables that display summary statistics on accuracy and completeness of the encounter data and recommendations to each MCO and HSD/MAD.

6. The EQRO will submit to HSD/MAD an annual detailed technical report that summarizes findings on access and quality of care in accordance with CFR 42 § 438.364.

The EQRO will deliver to HSD/MAD an annual peer reviewed detailed technical report that summarizes findings on access and quality of care, including:

- a. A description of the manner in which the data from all activities conducted in accordance with §438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by each MCO;
- b. For each EQR-related activity conducted in accordance with § 438.358
 - (i) Objectives;
 - (ii) Technical methods of data collection and analysis;
 - (iii) Description of data obtained, including validated performance measurement data for each activity conducted in accordance with § 438.358(b)(1)(i) and (ii); and
 - (iv) Conclusions drawn from the data;
- c. An assessment of each MCO's strengths and weaknesses for the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries;
- d. Recommendations for improving the quality of health care services furnished by each MCO including how the State can target goals and objectives in the quality strategy, under § 438.340, to better support improvement in the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries;
- e. Methodologically appropriate, comparative information about all MCOs consistent guidance included in the EQR protocols issued in accordance with § 438.352(e); and
- f. An assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year's EQR.

The EQRO shall deliver the finalized annual technical report to HSD/MAD by 28th day of February, following the end of each calendar year to ensure compliance with the April 30th deadline for submission to CMS.

7. The EQRO will design and conduct a random monthly Nursing Facility Level of Care (NF LOC) determination audit in accordance with the 1115 Demonstration Waiver STCs to ensure that the NF LOC criteria are applied consistently and equitable across the New Mexico Medicaid program.

HSD/MAD will deliver a NOD to the EQRO defining the sampling criteria and sampling methodology to be applied during the development of the project plan NF LOC review. The EQRO project deliverables will include the following:

- a. Define and develop a project plan for conducting desk reviews of NF LOC ratings;
- b. Develop random sampling methodology to complete NF LOC determinations collected from each MCOs for the NF LOC rating determination. The audit shall consist of a random stratified sample and will include both approved and denied NF LOC determinations;
- c. Develop review tools for capturing data on accuracy, timeliness, physician review, and reasons for denial;
- d. Conduct random external monthly reviews of each MCO based on New Mexico Medicaid Nursing Facility (NF) Level of Care (LOC) Criteria and Instructions; and
- e. Report findings of NF LOC activities in quarterly, and annual reports to HSD/MAD.

C. Communications and Meetings:

The EQRO is required to designate a qualified individual to serve as the dedicated EQRO Contract Manager (CM) for HSD/MAD. The CM must hold a senior management position within the EQRO and be authorized to represent the EQRO in all matters pertaining to the EQRO contract with HSD/MAD. The EQRO CM will be responsible for the following deliverables:

1. Coordinate all EQR activities with the designated HSD/MAD EQRO CM throughout the design, development and finalization of all technical reports and other deliverables;
2. Participate in weekly meetings or as often as requested by HSD/MAD either via phone, video conference or on site at HSD/MAD. The purpose of these regular meetings is to maintain communication with the HSD/MAD designated EQRO CM to discuss progress, barriers, and any other related issues relevant to the EQR activities;
3. Designate appropriate staff to meet with HSD/MAD and MCO staff to provide clarification or direction in relation to EQR projects;

4. Facilitate meetings to include; providing an agenda, minute taking, and creation and distribution of informational materials;
5. Facilitate and prepare oral presentation of EQR findings, recommendations, corrective action plans, and technical assistance to HSD/MAD and/or MCO staff;
6. Ensure all final technical reports and other deliverables are timely, well written, accurate, and complete;
7. Assist HSD/MAD in responding to any questions from CMS or other stakeholders about any final technical reports or deliverables; and
8. Prepare and deliver monthly Contractor activity reports to HSD/MAD.

The remainder of this page intentionally left blank.

Exhibit B

HIPAA Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into between the New Mexico Human Services Department (“Department”) and Island Peer Review Organization, hereinafter referred to as “Business Associate” , in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

BUSINESS ASSOCIATE, by this PSC 19-630-8000-0013 has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in PSC 19-630-8000-0013 as “Contractor”) of Protected Health Information. This Business Associate PSC is intended to supplement the obligations of the Department and the Contractor as set forth in PSC 19-630-8000-0013, and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

1. Definition of Terms

- a. **Breach.** “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** “Business Associate”, herein being the same entity as the Contractor in the same or Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** “Department” shall mean in this agreement the State of New Mexico Human Services Department.
- d. **Individual.** “Individual” shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. **HIPAA Standards.** “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
 - 1) **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

- 2) Breach Notification Rule. "Breach Notification" shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- 3) Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
 1. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 2. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 3. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 4. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 5. Policies and Procedures and Documentation Requirements. "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
- f. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
- g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- i. Covered Entity. "Covered Entity" shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

2. Obligations and Activities of Business Associate

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC 19-630-

8000-0013; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.

- i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
 - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the "minimum necessary," as set forth in the HIPAA Standards.
 - iii. The Business Associate agrees to use or disclose only a "limited data set" of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC 19-630-8000-0013, except where a "limited data set" is not practicable in order to accomplish those activities.
 - iv. Except as otherwise limited by this BAA or PSC 19-630-8000-0013, 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.
 - v. Except as otherwise limited by this BAA or PSC 19-630-8000-0013, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or 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.
 - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
 - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC 19-630-8000-0013. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC 19-630-8000-0013, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.

- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
 - ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the

Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.

- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate's contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation

During the term of this BAA or PSC 19-630-8000-0013, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC 19-630-8000-0013, and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- a. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of "Breach", ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- b. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

- a. In addition to the above duties in this section, 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 Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- b. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

- a. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department 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.
- d. The Department 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 the Department.

5. Term and Termination

- a. Term. This BAA terminates concurrently with PSC 19-630-8000-0013, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC 19-630-8000-0013 and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
 - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC 19-630-8000-0013 and BAA without liability or penalty in accordance with Article 4, Termination, of PSC 19-630-8000-0013, if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this PSC 19-630-8000-0013 without liability or penalty if the Department determines that cure is not reasonably possible; or,
 - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC 19-630-8000-0013, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

6. Penalties and Training.

Business Associate understands and acknowledges that violations of this BAA or PSC 19-630-8000-0013 may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC 19-630-8000-0013, shall be resolved to permit the Department to comply with the HIPAA Standards.

- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC 19-630-8000-0013, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC 19-630-8000-0013 pursuant to its termination provisions.
- d. 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 the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC 19-630-8000-0013 available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC 19-630-8000-0013, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate PSC between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.