

Business Associate Agreement

This Business Associate Agreement ("BAA") is effective upon latest date of execution between The New Mexico Human Services Department Medical Assistance Division (HSD/MAD, the "Client" or the "Covered Entity") and Health Management Systems, Inc. ("HMS" or the "Business Associate") pursuant the agreement between the Business Associate and the Client for the performance of the Professional Service Contract ("Agreement") .

I. Background and Purpose.

- (a) Client is subject to and must comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and all regulations promulgated pursuant to authority granted therein;
- (b) HMS constitutes a Business Associate of Client (as such term is defined in the Regulations, *see* 45 CFR 160.103) and wishes to commence or continue its business relationship with Client;
- (c) Business Associate acknowledges that Client must comply with the regulations at CFR at Title 45, Parts 160 and 164 and that to achieve such compliance, the written agreement between Client and Business Associate must contain certain satisfactory assurances that Business Associate will appropriately safeguard certain Protected Health Information (as that term is defined in Federal regulations at 45 CFR 164.501) which it receives from, or creates or receives on behalf of Client.

II. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, which is defined as the Code of Federal Regulations ("C.F.R.") at Title 45, Parts 160 and 164.

III. Obligations and Activities of Business Associate.

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, this BAA or as required by law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement, this BAA or as required by law.
- (c) Business Associate agrees to report to Client any use or disclosure of the Protected Health Information not provided for in, or permitted by, this BAA of which it becomes aware.
- (d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Client, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- (e) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Client available to Client and/or to the Secretary of the Department of Health and Human Services, promptly upon receiving such request, or at such other time as may be designated by the Secretary, for purposes of the Secretary determining Client's compliance with the Privacy Rule.
- (f) Business Associate agrees to document such disclosures of Protected Health Information and information

related to such disclosures as would be required for Client to respond to a request by an Individual or an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

- (g) Business Associate agrees to reasonably promptly provide to Client or an Individual, upon receiving such request, information collected in accordance with Section III (f) of this BAA, to permit Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (h) Business Associate agrees to promptly provide access, at the request of client, to Protected Health Information in a Designated Record Set, to client or, as directed by client, to an individual in order to meet the requirements under 45 C.F.R. 164.524.
- (i) Business Associate agrees to promptly make any amendment(s) to Protected Health Information in a Designated Record Set that client directs or agrees to pursuant to 45 C.F.R 164.526 at the request of client or an individual.

IV. Permitted Uses and Disclosures by Business Associate.

- (a) Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Client as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Client.
- (b) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law within the meaning of the Privacy Rule, 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 Protected Health Information has been breached.
- (d) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services, if applicable, to Client as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- (f) Business Associate shall report to Client's designated Privacy Official, in writing, any Breach of Unsecured PHI or any other Use or Disclosure of the Protected Health Information that is not permitted or required by the Agreement, or this Addendum of which Business Associate becomes aware. That report shall be made within 10 days of Business Associate's discovery of such Breach or other unauthorized Use or Disclosure. Business Associate shall notify Client of any Breach of PHI that is not secured by a technology that renders the PHI unusable, unreadable, or indecipherable to unauthorized individuals, and meets federal guidelines and standards. Such notice must be provided without unreasonable delay, but in no event more than 60 days after the breach, except where law enforcement officials determine that notice would impede a criminal investigation or damage national security. Business Associate understands that, under Section 13402 of the HITECH Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.

L. 111-5)), Client may be obligated to notify not just the Secretary of DHHS, but also affected individuals of such breaches in writing and/or by broadcast media or the web. DHHS may also post the information on its website. Business Associate shall also report to Client's designated Privacy Official, in writing, any security incident, as defined in 45 C.F.R. §164.304, of which Business Associate becomes aware. If Business Associate becomes aware of a pattern of activity or practice of the Client that constitutes a material breach or violation of the Client's obligation under the law, contract or other arrangement, Business Associate must notify Client of the alleged breach so that the Client may take any reasonable steps to notify the individual and, if applicable, the Secretary and the media, mitigate damages, cure the breach and/or the violation, as applicable. If such steps were unsuccessful, Business Associate has an obligation under HIPAA to:

- i. Terminate the contract or arrangement, if feasible, or
- ii. If termination is not feasible, report the problem immediately to the Secretary of DHHS.

V. Obligations of Client.

- (a) Client shall notify Business Associate of any limitation(s) in its notice of privacy practices of Client in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Client shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Client shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Client 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 Protected Health Information.
- (d) Permissible requests by Client: Client shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Client, except that this restriction is not intended, and shall not be construed, to limit Business Associate's capacity to use or disclose Protected Health Information for the proper management and administration of the Business Associate or to provide Data Aggregation services to Client, as provided for and expressly permitted under Section IV. (b), (c), and (d) of this BAA.

VI. Term and Termination.

- (a) *Term.* The Term of this BAA shall be effective upon execution, and shall terminate when all of the Protected Health Information provided by Client to Business Associate, or created or received by Business Associate on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) *Termination for Cause.* Upon client's knowledge of a material breach by Business Associate, Client shall either:
 - (1) Provide an opportunity for Business Associate to reasonably promptly cure the breach upon receiving notice of the breach or end the violation and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Client;
 - (2) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Client shall report the violation to the Secretary.

(c) *Effect of Termination.*

- (1) Except as provided in paragraph (2) of this subsection, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Client, or created or received by Business Associate on behalf of Client. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

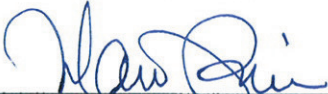
VII. Miscellaneous.

- (a) *Regulatory References.* A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
- (b) *Amendment.* Client and Business Associate agree to take such action as is necessary to amend this BAA from time to time as is necessary for Client to comply with the requirements of the Privacy Rule and HIPAA.
- (c) *Survival.* The respective rights and obligations of Business Associate under Section VI of this BAA shall survive the termination of this Agreement.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Client to comply with the Privacy Rule.


* * *

IN WITNESS WHEREOF, Client and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

FOR HEALTH MANAGEMENT SYSTEMS INC. (Business Associate)

By: 
Maria Perrin, Executive Vice President
Date: 9/1/11

FOR HSD/MAD (Covered Entity)

By: 
Julie Weinberg, Division Director, MAD
Date: 8/31/11