

**NEW MEXICO HSD CSES & MMIS
PROJECT MANAGEMENT OFFICE (PMO) RFP**

**SAMPLE
HIPAA BUSINESS ASSOCIATES AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into between the New Mexico Human Services Department (“Department”) and _____, hereinafter referred to as “Business Associate,” pursuant to the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder.

1. Definition of Terms

- a. Business Associate. "Business Associate" shall mean _____, acting in the capacity of a business associate as defined in 45 CFR § 160.103.
- b. Covered Entity. "Covered Entity" shall mean the Health Care Component of the New Mexico Human Services Department (“HSD”), which includes the Medical Assistance Division (“MAD”).
- c. 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).
- d. 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, as currently in effect or as subsequently amended.
- e. Protected Health Information. "Protected Health Information" or “PHI” shall have the same meaning as in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- g. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- c. 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.
- d. Business Associate agrees to report to the Department’s Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent to whom it provides PHI received from HSD, or created or received by Business Associate on behalf of HSD, agrees to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such information.
- f. Business Associate agrees to provide, at HSD’s request, and in a reasonable time and manner, access to PHI in a Designated Record Set to HSD or, as directed by HSD, to an Individual in order to meet the requirements under 45 CFR § 164.524.

- g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that HSD directs or agrees to, pursuant to 45 CFR § 164.526, at the request of HSD or an Individual, and in the time and manner set forth in Department regulations.
- h. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI received from HSD, or created or received by Business Associate on behalf of HSD, available to HSD or to the Secretary within seven (7) days of receiving a request from HSD or receiving notice of a request from the Secretary, for purposes of the Secretary's determining HSD's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for HSD to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Business Associate agrees to provide to HSD or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 of this Agreement, to permit HSD to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for or on behalf of HSD as set forth in the contract between the parties, Contract No. _____, of which this Agreement is an integral part, provided that such use or disclosure would not violate the Privacy Rule if done by HSD or HSD's minimum necessary policies and procedures. Business Associate may not use or disclose PHI received or created pursuant to this Agreement, except as follows:

- a. Except as otherwise limited by this Agreement, 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.
- b. Except as otherwise limited by this Agreement, Business Associate may disclose PHI where 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.
- c. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j) (1).
- d. HSD 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 HSD.

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

- a. HSD 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. HSD 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. HSD shall notify Business Associate of any restriction in the use or disclosure of PHI that HSD 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.

5. Term and Termination

- a. Term. This Agreement shall be effective concurrently with the effective date of Contract No. _____ between Business Associate and the Department. This Agreement shall also terminate concurrently with that contract, except that obligations of Business Associate under this Agreement related to final disposition of PHI shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession that was received from HSD, or created or received by Business Associate on behalf of HSD, 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 HSD notification of the conditions that make return or destruction of PHI not feasible. Business Associate shall require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Business Associate hereunder.

6. Miscellaneous

- a. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the main body of the contract of which this Agreement is an integral part, shall be resolved to permit HSD to comply with the Privacy Rule.

- b. Business Associate's Compliance with HIPAA. HSD makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA regulations 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 Agreement, HSD 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 Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than HSD, 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, sub-business associates or employees assisting Business Associate in the fulfillment of its obligations under this Agreement available to HSD, at no cost to HSD, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against HSD or its employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this Agreement, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.

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IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of Contract No. _____ of which it is an integral part.

HUMAN SERVICES DEPARTMENT

By: _____ Date: _____

Sidonie Squier
Cabinet Secretary

Approved as to form and legal sufficiency:

By: _____ Date: _____

Raymond W. Mensack
General Counsel

BUSINESS ASSOCIATE

By: _____ Date: _____

Name: _____

Title: _____