



**www.HealthXnet.com**  
Support: 505-346-0290  
Toll Free: 866-676-0290  
PO Box 92200  
Albuquerque, NM 87199-2200

## FREE 30-Day Trial

**Let's get you started!**

**Inside your HealthXnet FREE 30-Day Trial package you'll find two documents:**

1. HealthXnet Free Trial Agreement
2. Business Associate Agreement (a HIPAA Requirement)

**Please review, sign and return both documents via fax, email, or mail to:**

**HealthXnet Support**  
PO Box 92200  
Albuquerque, NM 87199-2200

[healthxnet@nmhsc.com](mailto:healthxnet@nmhsc.com)  
Support: (505) 346-0290  
Toll Free: (866) 676-0290  
Fax: (505) 346-0278

After we receive your completed agreements, a HealthXnet representative will contact you within 2 business days to get your free trial implemented. Please be sure to include *all pages* when you return your package, not just the signature pages.

- Your free trial period will begin on the day that you can first access electronic inquiries on HealthXnet.
- Free trial customers are under *no obligation* to subscribe to HealthXnet.
- Your HealthXnet representative will help you continue this service beyond your free trial.
- If for any reason you choose not to subscribe, we will simply turn off your account at the end of your free trial period.

Feel free to contact us with any questions!

# HEALTHCARE EXTRANETS SERVICE AGREEMENT

## Free Trial Agreement

Healthcare Extranets, LLC<sup>®</sup>, a limited liability company (herein called "**Company**"), and [Trial Customer Company Name]: \_\_\_\_\_, a healthcare provider (herein called "**Customer**"), hereby enter into this Healthcare Extranets Service Agreement ("**Agreement**") under the terms and conditions set forth below.

### 1. Term/Termination

1.1 The term of this Free Trial shall be thirty (30) days, beginning upon day the system is first available for trial customer's use. Trial will be limited to 10 users. Trial will be limited to 2,000 Non-Participating Payer inquiries and unlimited Participating Payer inquiries. Company may disable Non-Participating Payer inquiry capabilities if limit is reached during the Trial. Trial does not include Electronic Claims Management services. Customer understands and accepts that all services will be disabled at the end of the Trial unless a full Healthcare Extranets Service Agreement is executed.

### 2. Services/Duties of Company.

2.1 Company provides Internet and Intranet-deployed computer applications over its network system (the "**System**") to facilitate the exchange of healthcare-related information between System customers who make available relevant data ("**Data Providers**") and to System customers who are authorized to access such information ("**Data Recipients**").

2.2 Company shall take reasonable measures, in light of the requirements of regulations promulgated from time-to-time under the Health Insurance Portability and Accountability Act of 1996 and other applicable legal requirements pertaining to information security, and in light of the measures available and prevalent in the industry, to maintain security procedures, requirements and protocols with respect to the System which are sufficient to reasonably protect data, information and documents accessed or transmitted by way of the System against unauthorized access.

### 3. Duties of Customer.

3.1 Customer shall designate one or more individuals ("**Users**") who will utilize the System under Customer's account. Each User shall receive from Company a discrete UserID and password. In order to obtain a UserID and password, Customer must submit a fully-completed HealthXnet User Access Request Form.

3.2 Customer shall assure that (i) only individuals designated with the Company as Users access the System, (ii) all Users designated by Customer access, obtain or use information available over the System for only appropriate purposes directly related to the delivery of or payment for healthcare services, (iii) the confidentiality of all confidential information obtained or accessed over the System is preserved by all Users, and by all other persons who access, obtain or receive such information, (iv) Customer and all Users designated by Customer, shall comply with security and confidentiality standards and requirements imposed under all applicable laws and regulations, and with all operating procedures, requirements and protocols established by Company from time-to-time with respect to the System.

3.3 Customer shall request termination of User privileges immediately when the employment, position designation or other business relationship between Customer and a User designated by Customer is or will be terminated, or if for any other reason the User privileges of an individual designated by Customer is or will be terminated.

3.4 Customer shall comply with the following minimum computer requirements in order for Company to provide the Services under this Agreement. These requirements are subject to change due to updated browsers, functionality, etc.

- Microsoft Internet Explorer 7.0 or higher with JavaScript enabled
- Internet connection (high speed connection recommended)
- 800x600 minimum screen resolution (1024x768 or greater is recommended)
- Adobe Acrobat Reader 7.0 or higher

3.5 Customers utilizing the System's New Mexico Medicaid Eligibility functionality shall comply with and accept the following provisions of the New Mexico Human Services Department ("Department"):

3.5.1 Access to eligibility information shall be restricted to the sole purpose of verification of medical assistance eligibility where a Medicaid recipient is requesting or has requested service.

3.5.2 Verification of eligibility under the System is not an assurance of payment by the Department and the records of the Department as to a recipient's eligible status shall be the final authority.

3.5.3 Customer indemnifies and holds harmless the Department, its agents and employees, from any and all claims by such Customer or any recipient who is aggrieved by the actions of any party under this Agreement.

3.5.4 Customer must be an approved Medicaid provider or Medicaid Managed Care Organization and must include its valid Medicaid provider number to the Company.

#### 4. Indemnification/Disclaimer.

4.1 Customer shall indemnify, defend (with legal representation by attorneys acceptable to the Indemnitee) and hold harmless Company and other System customers who are Data Providers, their respective parent and affiliated entities, and their respective officers, directors, shareholders, managers, owners, employees, agents and representatives (an "**Indemnitee**"), from and against any claim, demand, liability, loss, penalty, fine, cost or expense (including but not limited to reasonable attorneys fees and expenses incurred) (collectively, a "**Claim**") to the extent resulting from (a) the failure or refusal of Customer, a User designated by Customer, or any employee, officer, agent or representative of Customer, to comply with the obligations imposed by this Agreement and any policies and procedures implemented by Company concerning the System (as same may be amended from time-to-time), and (b) any violation of applicable state or federal laws or regulations by Customer, a User designated by Customer, or any employee, officer, agent or representative of Customer. Customer acknowledges that the Indemnitees described above are intended third-party beneficiaries of the obligations of Customer set forth in this Section 4.1.

4.2 The Services are provided to Customer upon the express understanding of Company, and representation by Customer, that information to be provided or received over the System by Customer and its designated Users is provided and received solely for appropriate purposes by authorized recipients directly related to the delivery of or payment for healthcare services, and not for any other purposes. Customer agrees that the System shall not be used by Customer, or any of its designated Users, to obtain market, pricing or other information regarding competitors, or for any other reason prohibited under applicable state or federal statutes or regulations. Customer agrees and acknowledges that Company disclaims any warranty or representation regarding the performance or non-performance of the System, and that Company shall have no liability in damages or otherwise arising out of the use, availability or lack of availability of information or access through the System, or for any act or omission of other parties accessing or providing information for the System, except only to the extent expressly otherwise provided in Section 4.3 below. Customer further acknowledges that data is made available through the System for convenience and informational purposes only, without any express or implied representation or warranty by Company or any Data Provider as to the accuracy or currency of the information. Customer acknowledges that it must verify through appropriate non-System sources the accuracy and currency of information received through the System prior to relying on the information.

4.3 Company shall indemnify, defend (with legal representation by attorneys acceptable to Customer)

and hold harmless Customer, and its parent and affiliated entities, and all of their respective officers, directors, shareholders, managers, owners, employees, agents and representatives, from and against any claim, demand, liability, loss, penalty, fine, cost or expense (including but not limited to reasonable attorneys fees and expenses incurred) to the extent resulting from the failure of Company, as required under Section 2.2 above, to take reasonable measures, in light of the requirements of regulations promulgated from time-to-time under the Health Insurance Portability and Accountability Act of 1996 and other applicable legal requirements pertaining to information security, and in light of the measures available and prevalent in the industry, to maintain security procedures, requirements and protocols with respect to the System which are sufficient to reasonably protect data, information and documents accessed or transmitted by way of the System against unauthorized access. The foregoing shall not be construed as a guaranty or warranty against the possibility of any security breaches with respect to the System.

5. Independent Contractors. Company and Customer are engaged in independent businesses and are solely responsible for the conduct of their respective employees and agents in connection with the performance of their obligations under this Agreement. Nothing contained in this Agreement shall be construed to infer or indicate that either Company or Customer is an agent, partner or joint venturer of or with the other.

6. Severability. Company and Customer, in addition to such particular references thereto as are made in any other provisions of the Agreement, hereby acknowledge their understanding that this Agreement shall be implemented in accordance with applicable state and federal statutes, rules and regulations. In the event that any provision of this Agreement is rendered invalid or incapable of implementation as a result of such statutes, rules or regulations, or if any provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any provisions shall not affect any other provisions of this Agreement. Notwithstanding the foregoing, in any case where the invalidity of such a provision would frustrate the purpose of this Agreement or result in a substantial economic loss to either party hereto, such party shall have the right to terminate this Agreement, subject to applicable statutes, rules and regulations, after settlement of Customer's account according to the termination provisions in this Agreement, and shall be released from any further duties or obligations under this Agreement.

7. Governing Law/Disputes. The rights and obligations of Company and Customer shall be governed by the laws of the State of New Mexico, and this Agreement shall be deemed to be made and performable in Bernalillo County, New Mexico, which shall be the exclusive venue for any action or proceeding between the parties hereto. In the event that a party to this Agreement retains an attorney for the purpose of enforcing or interpreting the rights or obligations of the parties, the prevailing party in any legal action or other dispute resolution procedure shall be entitled to recover its reasonable attorneys' fees and expenses and costs of court (or other costs or proceedings) incurred in connection therewith.

8. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior to contemporaneous oral or written agreements or understandings between the parties, and there are no warranties, representations, and/or agreements between the parties in conjunction with the subject matter hereof except as set forth in this Agreement.

9. Notices. All notices and other communications relating to this Agreement shall be in writing and shall be deemed to have been given, made and received when actually delivered, or three days after deposit in an official United States Postal Services receptacle, postage prepaid, registered or certified mail, return receipt requested, addressed as set forth below:

If to Company: Healthcare Extranets, LLC<sup>®</sup>  
PO Box 92200  
Albuquerque, NM 87199-2200  
Attention: Deborah Gorenz, President

If to Customer: Customer Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_

10. Headings. The headings contained in this Agreement are for reference purposes only, and shall not be construed in the interpretation or construction of this Agreement.

11. Delivery. This Agreement, as well as an amendment or appendices hereto, may be signed by the parties in one or more counterparts, and delivery of a signed facsimile copy, or delivery of a signed copy by email, will have the same force and effect as delivery of a signed original.

**HEALTHCARE EXTRANETS, LLC<sup>®</sup>**  
a limited liability company

\_\_\_\_\_  
Deborah Gorenz, President

Date Signed: \_\_\_\_\_

**CUSTOMER**

\_\_\_\_\_  
Customer Name

\_\_\_\_\_  
Signature on behalf of Customer

\_\_\_\_\_  
Printed Name & Title

Date Signed: \_\_\_\_\_

**CUSTOMER IMPLEMENTATION CONTACT**

HealthXnet will coordinate trial implementation and training with the contact named below.

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
Contact Title

( ) \_\_\_\_\_  
Contact Phone

( ) \_\_\_\_\_  
Contact Fax

\_\_\_\_\_  
Contact Email

## BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (hereinafter “this BAA”) is by and between [Customer Name]: \_\_\_\_\_

(hereinafter referred to as “Covered Entity”), located at [Full Address]: \_\_\_\_\_

and **Healthcare Extranets, LLC** (hereinafter referred to as “Business Associate”), located at **7471 Pan American Freeway NE, Albuquerque, NM 87109**.

**WHEREAS**, Covered Entity and Business Associate acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”) and the statutes implementing regulations to maintain the privacy and security of Protected Health Information (hereinafter “PHI”), and the parties intend this BAA to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e); and

**WHEREAS**, Covered Entity has a contractual relationship with Business Associate to provide products and/or services under the Healthcare Extranets Service Agreement (hereinafter the “Service Agreement”), and during the course of Business Associate providing such products and/or services, Covered Entity may provide Business Associate with PHI in order for Business Associate to perform its contractual duties and responsibilities.

**NOW**, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby covenant and agree to the following:

### 1. **Definitions**

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or the American Recovery and Reinvestment Act of 2009 (the “ARRA”) or any future regulations promulgated or guidance issued by the Secretary. Certain terms used herein and not otherwise defined shall have the following meanings:

Administrative Safeguards shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of Covered Entity’s workforce in relation to the protection of PHI.

Business Associate refers to **Healthcare Extranets, LLC**, and shall have the same meaning as the term “Business Associate” as defined in 45 CFR 160.103.

Covered Entity shall mean the entity or entities described above, or as otherwise defined in accordance with 45 CFR 164.104.

Data Aggregation Services shall mean, with respect to PHI created or received by Business Associate in its capacity as Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the protected health information received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, as defined in 45 CFR § 164.501 and as such term may be amended from time to time in this cited regulation.

Designated Record Set shall mean a group of records maintained by or for a Covered Entity that consists of the following: (i) the medical records and billing records about Individuals maintained by or for a health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used in whole or in part, by or for the Covered Entity to make decisions about Individuals. For these purposes, the term “Record” means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation of regulations promulgated thereunder by the U.S. Department of Health and Human Services, the ARRA (as defined below) and any future regulations promulgated thereunder, all as may be amended from time to time.

Individual shall have the same meaning as the term “individual” as defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Physical Safeguards shall mean the physical measures, policies and procedures to protect Covered Entity’s electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.

Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.

Protected Health Information and/or PHI shall have the same meaning as the term “protected health information” as defined in 45 CFR § 164.103, and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Required By Law shall have the same meaning as the term “required by law” in 45 CFR § 164.512.

Secretary shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Security Incident shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

Security Rule shall mean the Standards for Security of Electronic Protected Health Information set forth in 45 CFR, Parts 160, 162 and 164.

Technical Safeguards shall mean the technology and the policy and procedures for its use that protect PHI and control access to it.

## **2. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Service Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA. Additionally, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate in violation of the requirements of this BAA or the Privacy Rule and to communicate in writing, such procedures to Covered Entity.
- d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI

received from, or created or received by Business Associate on behalf of Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information, including implementation of reasonable and appropriate safeguards to protect PHI. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions.

- e. Business Associate agrees to provide reasonable access to PHI to Covered Entity, at the request of Covered Entity, in a Designated Record Set in order to meet the requirements of 45 CFR § 164.524. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- f. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, and within a reasonable time and manner. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- g. To the extent the Business Associate is to carry out one or more covered entity’s obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- h. Business Associate agrees to make internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the HIPAA, the Privacy Rule, the Security Rule and the ARRA.
- i. Business Associate agrees to document disclosures of PHI and information in its possession related to such disclosures and will provide Covered Entity with such information, as would be required for Covered Entity 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 may charge a reasonable fee for its services in connection with the access, amendment, or accounting of PHI as contemplated under this BAA.

- k. In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA or the Privacy Rule of which it or its officers, employees, agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than thirty (30) business days after the discovery of such disclosure. Notwithstanding the foregoing, Covered Entity agrees that this BAA shall constitute notice and reporting by Business Associate to Covered Entity of unsuccessful Security Incidents, which are not reasonably considered by Business Associate to constitute an actual threat to the information system of Business Associate.
- l. Business Associate shall notify Covered Entity within five (5) business days after it, or any of its employees or agents, reasonably suspects that a breach of unsecured PHI as defined by 45 CFR 164.402 may have occurred. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach of unsecured PHI is required by 45 CFR 164.400 et seq., including continuously providing the Covered Entity with additional information related to the suspected breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected individuals must be notified because a breach of unsecured PHI has occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate will promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide a notification of a breach of unsecured PHI under 45 CFR 164.400 et seq. Business Associate shall indemnify and hold

Covered Entity harmless from all liability, costs, expenses, claims, or other damages that Covered Entity, its related corporations, or any of its or their directions, officers, agents, or employees, may sustain as a result of a Business Associate's breach of its obligations under this Section.

- m. If Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate must provide access to such information in an electronic format if so requested by an individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the Covered Entity in writing of such request.
- n. Business Associate shall not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Service Agreement and are made in accordance with the ARRA or any future regulations promulgated thereunder. Notwithstanding the foregoing, any payment for marketing activities should be in accordance with the ARRA or any future regulations promulgated thereunder.
- o. Business Associate shall abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:
- i. Adopt written policies and procedures to implement the same administrative, physical, and technical safeguards required of the Covered Entity; and
  - ii. Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.
- p. If Business Associate violates the Security Rule, it acknowledges that it is directly subject to civil and criminal penalties.
- q. Business Associate shall not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Service Agreement and in accordance with the ARRA and any future regulations promulgated thereunder.



### **3. Permitted Uses and Disclosures by Business Associate**

a. **General Use and Disclosure Provisions.** Except as otherwise limited in this BAA, Business Associate may use or disclose PHI (i) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, or (ii) as required by law.

b. **Specific Use and Disclosure Provisions.** Except as provided below, Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by a covered entity.

1. Business Associate may **use and disclose** PHI to perform services for Covered Entity, including all services covered by and set out in the Service Agreement.
2. Business Associate may **use** PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
3. Business Associate may **disclose** PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies Business Associate of any instances in which it is aware in which the confidentiality of the PHI has been breached.
4. Business Associate may **de-identify** any and all PHI in its possession obtained from Covered Entity and use such de-identified data in accordance with all de-identification requirements of the Privacy Rule.
5. Business Associate may **use** PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j) (1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.

6. Except as otherwise limited in this BAA, Business Associate may **use** PHI to provide Data Aggregation Services to Covered Entity.

7. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of Covered Entity and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this BAA and the Service Agreement.

### **4. Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate in writing and in a timely manner 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 permitted or required use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate in writing and in a timely manner of any restriction to the use or disclosure of PHI that Covered Entity 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. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

### **6. Term and Termination**

- a. The Term of this BAA shall be effective on the date of the Service Agreement. This BAA shall terminate upon the earlier of the termination of the Service Agreement, or when all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information in

accordance with the termination provisions in this section.

- b. Upon either party's knowledge of a material breach by the other party, such party shall either:
  - (i) Provide an opportunity for the breaching party to cure the breach, end the violation, or terminate this BAA if the breaching party does not cure the breach or end the violation within thirty (30) days;
  - (ii) Immediately terminate this BAA if the breaching party has breached a material term of this BAA and cure is not possible; or
  - (iii) If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- c. Effect of Termination.
  - (i) Except as provided in paragraph (ii) of this section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon agreement by Covered Entity that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Other than as provided for in this Section, Business Associate will continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the protected health information for as long as Business Associate retains the PHI.

## 7. Miscellaneous

- a. Regulatory References. A reference in this BAA to a section in the Privacy Rule or Security Rule

means the section as in effect or as amended and for which compliance is required.

- b. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time, and/or enter into other agreements including, without limitation, chain of trust agreements, to the extent necessary for each Party to comply with the requirements of HIPAA and its regulations. All amendments to this agreement shall be in writing and signed by both parties.
- c. Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this BAA.
- 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 Covered Entity and its respective successors or assigns any rights, remedies, obligations or liabilities whatsoever.
- e. Headings. The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this BAA.
- f. Governing Law and Venue. This BAA shall be governed by, and interpreted in accordance with, the laws of the State of New Mexico, without giving effect to its conflict of law provisions. The venue for any legal or administrative action for the enforcement of this BAA or any provision within this BAA shall be Bernalillo County, New Mexico.
- g. Binding Effect. This BAA shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- h. Effect on Service Agreement. If any portion of this BAA is inconsistent with the terms of the Service Agreement, the terms of this BAA shall prevail. Except as set forth above, the remaining provisions of the Service Agreement are ratified in their entirety.
- i. Modification. The parties acknowledge that State and Federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this BAA may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state

and federal laws relating to the security or confidentiality of PHI.

- j. In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this BAA, the parties agree to negotiate in good faith any necessary or appropriate revisions to this BAA. If the parties are unable to reach an agreement

concerning such revisions within the earlier of sixty (60) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately, either party may unilaterally amend this BAA to comply with the change in law upon written notice to other party.

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto, having been duly authorized, execute this BAA on the dates indicated:

**COVERED ENTITY:**

**HEALTHCARE EXTRANETS, LLC**

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name and Title)

Deborah Gorenz, President  
(Printed Name and Title)