



**Blue Cross and Blue Shield
of New Mexico**

Producer Agreement

This Agreement is made effective the _____ day of _____, 20____, between Blue Cross and Blue Shield of New Mexico, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, on behalf of the company and its subsidiaries and any of its successors (referred to as Company) and _____ (referred to as Producer).

In consideration of the mutual promises of the parties, this Agreement consists of the following terms and conditions:

I. APPOINTMENT OF PRODUCER

- A. **AUTHORIZATION.** Company hereby authorizes Producer, while properly licensed as an insurance agent or broker by the appropriate governmental agency or authority, to submit to Company applications for insurance or other benefit coverage. All applications submitted will conform to the underwriting regulations and other pertinent rules and regulations of Company and no coverage will be effective until applications are approved by Company. Producer has a duty to verify all information on Master Applications and notify Company of any change in information submitted on Master Applications.
- B. **LICENSE, TAXES, INDEMNIFICATION AND INSURANCE**
1. Producer certifies that he/she is duly licensed in the State of New Mexico and that such license is current and in good standing with the Insurance Division. In the event Producer's agent or broker license terminates, expires, is suspended or revoked, Producer agrees to notify Company within ten (10) days after the date of such action.
 2. Producer shall obtain any and all licenses required by the State of New Mexico or local laws or regulations and shall pay all license, income, self-employment, unemployment, and any and all other taxes and levies upon the business of Producer, and shall hold harmless Company from all liability for the same.
 3. Producer shall indemnify and hold harmless Company from any and all claims, liability, costs, damage, or expense, including attorneys' fees, for or on account of any damage or loss occurring by reason of any action of or failure to act by Producer either under this Agreement or in connection with the purchase of any benefit or insurance program by Producer's clients.
 4. Producer agrees to obtain and keep in force during the term of this Agreement an errors and omissions policy of insurance in an amount not less than five hundred thousand dollars (\$500,000.00). Each year on or before July 1, Producer shall provide Company with a copy of a certificate of coverage which coverage shall not be permitted to lapse unless at least thirty (30) days prior written notice has been given to Company. Failure in any year to provide the certificate of coverage timely will result in the termination of Company's appointment of Producer and in the termination of the Agreement without notice.
 5. Company shall file appointments of Producer. Producer shall be responsible for paying the initial license and appointment fees. Subsequent annual appointment fees for Producer may be paid by Company if Producer has in-force or sales of contracts for Company's products that meet the minimum level as may be established by Company each year.

By February 1 of each year Company shall set a minimum number of in-force contracts for a Producer for the period from the following March 1 through March 1 of the next calendar year. A determination of whether Producer met the minimum number for the prior twelve months shall be based on Producer's in-force contracts each March 1. The term "contract" shall be calculated in this provision as an enrolled employee or individual whose coverage may or may not include any covered dependents. The contract count includes any combination of group and/or individual Blue Cross and Blue Shield of New Mexico and HMO New Mexico products.

If on March 1 of any year Producer does not meet the minimum in-force contract number, Company shall not continue the appointment of Producer as agent or broker, and this Agreement shall be automatically terminated without notice.

II. CORPORATIONS AND PARTNERSHIPS

Where Producer is a partnership or corporation, the commissions described herein shall be payable to the corporation or partnership indicated on the last page of this Agreement or its successors or assigns.

III. COMPENSATION

- A. Upon submission of an application by Producer, and issuance of a contract by Company, Producer shall become entitled, subject to the other terms and conditions of this Agreement, to the applicable commissions set forth in the Commission Schedules attached hereto and made a part hereof.
- B. Commissions shall be paid to Producer with respect to contracts for individual coverage (“individuals”) or group coverage (“groups”) including a group contract issued to an association, procured through Producer so long as this Agreement and that contract are in effect, all required premiums have been received by Company, and Producer: (1) is in compliance with all terms and conditions of this Agreement and Company’s procedures (2) meets any production requirements set by Company (3) is continuously and actively engaged as a licensed agent or broker in the insurance business, and (4) is recognized by the individual or group as the agent or broker of record (referred to as Agent or Broker of Record). No commission will be paid on any individual or group contract for which premium has not been rated to include commission or compensation.

The initial Agent or Broker of Record designation must be made on the Master Application. Any change by the group or individual which results in a new Agent or Broker of Record will be recognized for purpose of commission payment the first (1st) of the month following receipt by Company of a Agent or Broker of Record letter which meet the following criteria: (1) is on letterhead or other appropriate stationery (2) is dated (3) clearly designates Producer to receive compensation and specifically rescinds all previous Producer designations (4) is signed by the insured or an appropriate representative of the group. Commissions shall be paid on premium earned after the effective date of the designation of Producer.

Producer shall cooperate with Company in effecting any change of producer requested by any individual or group contracting with Company and shall provide to the individual or group or Company copies of such records as may be necessary to effect such change, without disruption of service to the individual or group. Records, data, or information maintained by Company in connection with coverage under any contract issued by Company shall at all times remain the property of Company.

- C. From time to time, single case agreements which provide for a different commission than provided for in the applicable commission schedule may be executed by mutual consent of both Company and Producer, and such agreements shall be part of this Agreement.
- D. Commissions shall not be payable on any premium waived, which waiver shall be at the sole direction of Company, or on any interest accumulation arising from due and payable premium.
- E. Company shall have the right to terminate or to alter the coverage under any contract executed between an individual or group and Company according to the terms of said contract with the individual or group. Producer shall reimburse Company either by payment to Company or charge against Producer’s account for commissions paid to Producer with respect to business written which, for any reason, is rescinded or retroactively terminated by Company, provided Company will give Producer timely notice of such rescissions or terminations.
- F. Company shall have the right, by offset or otherwise, to recover commission payments made in error.

IV. GENERAL TERMS AND CONDITIONS

- A. **Indebtedness of Producer.** Company shall have a first lien on all commissions payable herein under for any debt due from Producer to Company. Company may at any time deduct or set off from any monies payable under this contract, or from any other source, any such debt or debts due at any time from Producer, together with the interest on all such debts at the maximum rate allowed by law. This lien shall not be extinguished by the termination of this Agreement.
- B. **Unauthorized Acts.** Producer is without authority to do or perform, and expressly agrees not to do or perform the following acts on behalf of Company:
 - 1. Incur any indebtedness or liability;
 - 2. Make, alter, or discharge contracts;
 - 3. Quote rates other than as quoted by Company;
 - 4. Waive payment or extend the time for payment of any premium;
 - 5. Bind coverage.

In addition, Producer agrees not to:

- 1. Violate any insurance law in the state in which Producer operates;
- 2. Withhold any monies or property of Company;

3. Rebate or offer to rebate all or any part of a premium on any contract of coverage issued by Company;
 4. Employ or make use of any advertisement or materials not provided by Company that include Company's name or corporate symbols or the registered marks of the Blue Cross and Blue Shield Association without the express prior written consent of Company;
 5. Make any representations with respect to Company's underwriting regulations, coverage, proposals, and contracts except as may be contained in the written material prepared and furnished to Producer by Company, nor make any oral or written alteration, modification, or waiver of any of the terms or conditions applicable to that coverage and contract without the express prior written consent of Company;
 6. Refuse to return, upon request, any printed matter, applications, sales literature, and other written material which Company may furnish to Producer which shall remain the property of Company, subject at all times to its control and returnable on demand;
 7. For the period of this Agreement and for two years after termination or non-renewal of same, divulge any information which Company considers to be proprietary and which Producer has obtained by reason of its association with Company.
- C. **Legal Actions.** Producer shall pay the Company upon demand for any costs incurred by Company to answer or defend any attachments, garnishments, or legal proceedings involving Producer, including attorneys' fees and all such funds shall be a debt hereunder.
- D. **Relationship Between the Parties.** Producer shall be an independent contractor in relation to the Company. Producer shall be responsible for all expenses incurred pursuant to the exercise of any duties hereunder, unless the reimbursement of such expenses has been first expressly authorized in writing by Company. Nothing contained in this Agreement shall be construed as creating the relationship of employer/employee between the parties nor shall it be construed that Producer is an agent of Company.
- E. **Billing.** All individuals and groups shall be billed directly by Company and not through Producer or other intermediary unless express written consent of Company is first obtained.
- F. **Settlement for the Company.** Producer has no right to receive funds for or on behalf of Company, except the initial premium on benefit coverages solicited by Producer. Money or other settlements received by Producer for or on behalf of Company shall be received by Producer as an agent of proposed Insured or Group in a fiduciary capacity and immediately paid to Company.
- G. **Waiver.** A waiver of any provision of this Agreement at any time shall not be deemed to be a continuing waiver or a waiver of any other provision of this Agreement at such time or at any other time.
- H. **Amendment and Assignment.** Company may at any time amend the terms of this Agreement, including Commission Schedules, by providing Producer with written notice sixty (60) days in advance of such amendment. Any amendments, changes, or replacements of the Commission Schedules shall bear the date that such changes, amendments, or replacements become effective, and each such new schedule shall become part of this Agreement and shall apply to all commissions paid thereafter. No modification or amendment to this contract nor assignment, transfer, or disposal of any interest that Producer may have under this Agreement shall be binding upon Company at any time unless approved in writing by Company. This Agreement shall inure to any successor(s) in interest of Company.
- I. **Termination.** This Agreement may be terminated at any time by either party by a thirty (30) day notice in writing by ordinary mail to the last known address of the other party; provided, however, this Agreement shall terminate immediately upon written notice by Company to Producer if Company has reason to believe Producer has committed fraud or misrepresentation or breached any terms of this Agreement. In addition, the Agreement shall be terminated immediately without notice if any of the following occurs death of Producer or dissolution of Producer's business; Producer commission of an unauthorized act specified in Paragraph IV. B.; failure of Producer to pay applicable appointment fees at the designated date pursuant to Paragraph I, B. 5; Producer's license is suspended, canceled, or revoked; Producer's errors and omissions insurance is permitted to lapse or is cancelled; in any year Producer fails to timely provide a copy of the certificate of coverage for Producer's errors and omissions insurance. Upon the termination of this Agreement, Producer shall immediately pay in cash all sums due hereunder and shall immediately deliver to Company all materials furnished to Producer by Company and any rate books, letters, records, and supplies connected with the business of Company.
- J. **Integration.** This Agreement supersedes any and all prior agreements, contracts, and understandings between the parties and shall govern all existing business between Producer and Company.
- K. **Headings.** The headings of this Agreement are inserted for reference purposes only and are not restrictive as to content.

L. **Severability.** Should any provision of this Agreement be declared invalid by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect regardless of such declaration.

V. **REPORTS AND AUDITS**

- A. Company shall provide to Producer a monthly commission statement.
- B. Producer shall send to Company reports on such forms as are required by Company and mutually agreed upon by the parties.
- C. Company shall have the right to audit Producer at such reasonable time and place as is agreed upon by both parties.
- D. Producer agrees to reimburse Company for the expense of any audit arising out of the fraud or intentional misrepresentation of Producer.

VI. **EFFECTIVE DATE**

This Agreement, when duly executed by Company, shall become effective on the date cited in Paragraph 1. above, and shall be construed in accordance with the laws of the State of New Mexico.

In witness whereof the parties have duly executed this Agreement the day and year written above.

**Blue Cross and Blue Shield of New Mexico,
a Division of Health Care Service Corporation,
a Mutual Legal Reserve Company**

Producer

By: _____
Officer Signature

If Producer is a corporation:

Officer Signature

Vice President
Title

If Producer is a partnership or LLC (all parties sign): **Commission Payable to:**

Signature of Partner/Member/Manager

Producer or Agency Name

Signature of Partner/Member/Manager

Mailing Address

Signature of Partner/Member/Manager

City, State, Zip Code

Signature of Partner/Member/Manager

Telephone Number

If Producer is a sole proprietor:

Fax Number

Signature of Sole Proprietor

E-mail address

Tax Identification Number and/or Social Security Number

A Division of Health Care Service Corporation, a Mutual Legal Reserve Company,
an Independent Licensee of the Blue Cross and Blue Shield Association.

AMENDMENT 2008
TO THE
BROKER AGREEMENT

The Broker Agreement (“Agreement”) between Broker and Blue Cross and Blue Shield of New Mexico, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, and HMO New Mexico, Inc. (“Companies”) is hereby amended pursuant to Agreement, IV, H “Amendment and Assignment.” The amendments are as follows:

1. All references to the Companies or Company in the Agreement or this Amendment are to Blue Cross and Blue Shield of New Mexico, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company.
2. All references to the term “Broker” in the Agreement or this Amendment are changed to “Producer.”
3. Paragraph I.B.5. is deleted in its entirety and replaced by the following:

Company shall file appointments of Producer. Producer shall be responsible for paying the initial license and appointment fees. Subsequent annual appointment fees for Producer may be paid by Company if Producer has met the following required minimum production quota for the preceding twelve month period:

Medical	10 contracts (defined as individual, group, and New Mexico Health Insurance Alliance business)
OR	
Fort Dearborn Life Insurance	\$10,000 annual premium for FDL products sold (e.g. Life, A D & D, Voluntary Dental, etc).
OR	
Dental	20 BCBSNM dental contracts

A determination of whether Producer has met the minimum production quota for the preceding twelve month period shall be based on Producer’s in-force contracts or annual premium production for FDL products sold in the preceding twelve month period as of March 1 in each year. The term “contract” shall be defined in this provision as a contract for coverage of an enrolled employee or individual whose coverage may or may not include any covered dependents. The contract count includes any combination of group and/or individual Company products.

If on March 1 of any year Producer does not meet the minimum production quota for contracts or has not met the minimum production quota of FDL products sold for the prior twelve month period, Company shall not re-appoint Producer, and this Agreement shall be automatically terminated without notice.

4. All other provisions of the Producer Agreement and prior amendments that are not amended herein shall remain in full force and effect.
5. This Amendment is effective April 1, 2008.

**BUSINESS ASSOCIATE ADDENDUM
TO THE
PRODUCER AGREEMENT**

This Business Associate Addendum amends the Producer Agreement (referred to as Agreement) between Blue Cross and Blue Shield of New Mexico, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, on behalf of the company and its subsidiaries and any of its successors (referred to as Company) and _____ (referred to as Producer).

In consideration of the mutual promises of the parties, this Addendum consists of the following terms and conditions:

I. HIPAA Business Associate (BA) Provisions

A. BA Provisions

The Producer and Company agree that the Producer is a Business Associate of the Company as that term is defined by the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations (45 CFR Parts 160 – 164) (“HIPAA” or “Privacy Rule” or “Security Rule” or “Electronic Transactions Rule”) and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the implementing regulations, that are applicable to business associates (“HITECH”). Covered Entity and Producer agree to incorporate into the Addendum any regulations issued with respect to the HITECH that relate to the obligations of business associates. Capitalized terms used in this Addendum, and not otherwise defined herein, shall have the meanings set forth in HIPAA, which definitions are hereby incorporated by reference. For purposes of this Addendum, Producer means Business Associate (BA) and Company means Covered Entity (CE). BA recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH. CE and BA agree that the terms set forth in this Amendment are specifically incorporated into the Producer Agreement.

B. Obligations and Activities of BA

1. BA agrees to use or disclose Protected Health Information (PHI) only as permitted or required by this Addendum, the Agreement, or as required by law.
2. BA agrees to use appropriate safeguards to prevent Use or Disclosure of the PHI other than as provided for in this Addendum. BA agrees to implement administrative, technical, and physical measures that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that BA creates, receives, maintains, or transmits on CE’s behalf as required by the Security Rule, 45 CFR Part 164, Subpart C, as required by HIPAA and Section 13401 of HITECH.
3. BA agrees to mitigate, to the extent practicable, any harmful effect that is known or should be known to BA of a Use or Disclosure of PHI by BA in violation of the requirements of this Addendum.
4. BA agrees to report to CE any Use or Disclosure of the PHI not provided for by this Addendum of which it becomes aware. BA will make the written report to CE not less than 3 business days after BA learns of such unauthorized Use or Disclosure. BA’s written report will at least: (i) identify the nature of the unauthorized Use or Disclosure; (ii) identify the PHI used or disclosed;

(iii) identify who made the unauthorized Use or received the unauthorized Disclosure; (iv) identify what BA has done or will do to mitigate any deleterious effect of the unauthorized Use or Disclosure; (v) identify what corrective action BA has taken or will take to prevent future similar unauthorized Use or Disclosure; and (vi) provide such other information, including a written report, as reasonably requested by CE.

BA agrees to report to CE any successful (i) unauthorized access, Use, Disclosure, modification, or destruction of Electronic PHI or (ii) interference with BA's system operations in BA's information systems of which BA becomes aware. BA will make such report to CE's Privacy Office within a reasonable time after BA learns of any successful security incidents. To avoid unnecessary burden on either party, BA will only be required to report, upon the CE's request, attempted, but unsuccessful, unauthorized access, Use, Disclosure, modification, or destruction of the CE's Electronic PHI or interference with system operations in BA's information systems that involve the CE's Electronic PHI of which BA becomes aware; provided that the CE's request shall be made no more often than is reasonable based upon the relevant facts, circumstances and industry practices.

5. BA agrees to ensure that any agent/producer, including a subcontractor, to whom it provides PHI received from, or created or received by BA on behalf of CE, agrees to the same restrictions and conditions and security measures that apply through this Addendum to BA with respect to such information.
6. BA agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by BA on behalf of CE available to the CE, or to the Secretary, in a time and manner as reasonably requested by CE or designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule.
7. BA agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for CE to respond to a request by an individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528 and HITECH.
8. BA agrees to provide to CE or an individual, in a time and manner mutually acceptable to the BA and CE, information collected in accordance with paragraph B(7) of this Addendum, to permit CE to respond to a request by an individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528 and HITECH.
9. BA agrees to provide access, at the request of CE, and in the time and manner mutually agreed to by the BA and CE, to PHI, to either CE or, as directed by CE, to an individual in order to meet the requirements under 45 CFR § 164.524 and HITECH.
10. BA agrees to make any amendment(s) to PHI that the CE directs or agrees to pursuant to 45 CFR § 164.526 at the request of CE or an individual, and in the time and manner mutually agreed by the parties.
11. BA agrees to follow CE's privacy policies and procedures as CE may deem applicable to BA. CE shall make such privacy policies and procedures available for BA.

12. BA will report to CE, following discovery and without unreasonable delay, but in no event later than thirty (30) days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by HITECH and implementing regulations. BA will cooperate with CE in investigating the Breach and in meeting CE's obligations under HITECH and any other security breach notification laws. Any report will include the identification (if known) of each individual whose Unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, or disclosed during such Breach.

C. Permitted Uses and Disclosures by BA

BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, CE as specified in paragraph C(1) of this Addendum, provided that such Use or Disclosure would not violate the Privacy Rule if done by CE or the Minimum Necessary policies and procedures of the CE and/or Limited Data Set requirements of the Privacy Rule and HITECH.

1. The following functions, activities or services by BA shall be considered to be performed for, or on behalf of CE in BA's capacity as a BA:
 - (i) Soliciting insurance on behalf of CE;
 - (ii) Transmitting an application for insurance or policy of insurance to or from CE;
 - (iii) Receiving or delivering a policy of insurance for CE; or
 - (iv) Receiving, collecting, or transmitting any initial premium of insurance as required by CE.
2. Except as otherwise limited in this Addendum, BA may disclose PHI for the proper management and administration of the BA, provided that the disclosures are Required By Law, or BA 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 BA of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in this Addendum, BA may use PHI to provide Data Aggregation services to CE as permitted by 45 CFR § 164.504(e)(2)(i)(B).
4. BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

D. Obligations of CE

1. CE shall notify BA of any limitation(s) in its notice of privacy practices of CE in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BA's Use or Disclosure of PHI.
2. CE shall notify BA of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect BA's Use or Disclosure of PHI.
3. CE shall notify BA of any restriction to the Use or Disclosure of PHI that CE has agreed to in accordance with 45 CFR § 164.522, to the extent that such

restriction may affect BA's Use or Disclosure of PHI.

E. Permissible Requests by CE

CE shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by CE, unless otherwise noted in this Addendum.

F. Termination

1. This Addendum shall terminate upon termination of the Agreement. In addition to the termination provisions contained in paragraph IV.I of the Agreement, this Addendum can also be terminated as set out below. When the Addendum terminates, all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, must be destroyed or returned to CE. If it is infeasible to return or destroy PHI, protections must be extended to such information in accordance with the termination provisions set out below.
2. *Termination for Cause.* Upon CE's knowledge of a material breach by BA, CE shall either:
 - (i) Provide an opportunity for BA to cure the breach or end the violation and terminate the Addendum if BA does not cure the breach or end the violation within the time specified by CE;
 - (ii) Immediately terminate the Addendum if BA has breached a material term of the Addendum and cure is not possible; or
 - (iii) If neither termination nor cure is feasible, CE shall report the violation to the Secretary.
3. *Effect of Termination*
 - (i) Except as provided in subparagraph (ii) below, upon termination of the Addendum, for any reason, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall also apply to PHI that is in the possession of subcontractors or agents/brokers of BA. BA shall retain no copies of the PHI.
 - (ii) In the event that BA determines that returning or destroying the PHI is infeasible, BA shall provide to CE written notification of the conditions that make return or destruction infeasible. BA shall extend the protections of this Addendum 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 BA maintains such PHI.
4. *Cure of Non-material Breach*

CE shall provide an opportunity for BA to cure a non-material breach within the time specified by CE.

G. Miscellaneous Provisions

1. *Regulatory References.* A reference in this Addendum to a section in the Privacy Rule or HITECH means the section as in effect or as amended.

2. *Amendment.* CE may at any time modify or amend one or more provisions of this Addendum. CE shall provide at least thirty (30) days prior written notice before these amendments become effective. These amendments will become effective on the date stated by CE unless BA prior to the effective date of the amendments has given notice to CE of BA's intent to terminate the Addendum. In such case the proposed modification or amendment shall not be applicable to BA during the period prior to the termination date.
3. *Survival.* The respective rights and obligations of BA and CE under paragraph F (3) and paragraph G (6) of this Addendum shall survive the termination of the Addendum.
4. *Interpretation.* Any ambiguity in this Addendum or between the Addendum and the Agreement shall be resolved to permit CE to comply with the Privacy, Security, and Electronic Transaction Rules. Any conflict between terms of this Addendum and the Agreement shall be resolved so that the terms of the Addendum supersede the relevant terms of the Agreement.
5. *Response to Subpoenas.* In the event that BA receives a subpoena or similar notice or request from any judicial, administrative or other party arising out of or in connection with the Addendum, including, but not limited to, any unauthorized Use or Disclosure of PHI or any failure in BA's security measures, BA shall immediately forward a copy of such subpoena, notice or request to CE and afford CE the opportunity to exercise any rights it may have under law.
6. *Indemnity.* In addition to the indemnity provision contained in paragraph I.B(3) of the Agreement, BA will indemnify and hold harmless CE and any CE affiliate, trustee, officer, director, employee, volunteer or Producer from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized Use or Disclosure of PHI or any failure in security measures affecting PHI or any other material breach of the terms of the Addendum by BA or any person or entity under BA's control. BA's obligation to indemnify CE will survive the termination of the Addendum. CE may, at its option, conduct the defense or settlement of any such action arising as described herein, and BA shall fully cooperate with such defense.
7. *Severability.* The provisions of the Addendum shall be severable, and if any provision of such Addendum shall be held or declared to be illegal, invalid or unenforceable, the remainder of the Addendum shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained.