



FRIDAY HEALTH PLANS OF COLORADO, INC.
PRODUCER AGREEMENT

THIS AGREEMENT is made and entered into on the _____ day of _____, 20_____, (Effective Date) by and between Friday Health Plans of Colorado, Inc. (hereinafter called "COMPANY") and _____ (hereinafter called "PRODUCER").

WHEREAS, Company is a health maintenance organization that issues, administers, and markets health care coverage products in a manner consistent with the laws of Colorado and the United States; and

WHEREAS, Producer is a duly licensed insurance agent or agency qualified to solicit, enrollment of employer groups and individuals in health care coverage products issued, administered or marketed by Company; and

WHEREAS, Company desires to engage Producer to solicit, sell and service to employer groups and individuals Company's health care coverage products and Producer desires to provide these services to Company.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, undertakings, and promises contained herein, the parties agree as follows:

I. APPOINTMENT AND AUTHORITY

A. Subject to the terms of this Agreement, Company hereby appoints Producer, on a non-exclusive basis, to solicit at Producer's own expense new applications and renewal applications for Commercial Group health insurance or Individual health insurance (the "Products") offered by Company. Producer hereby accepts the foregoing appointment and agrees to use its best efforts to solicit and retain enrollment of Groups and Individuals in these Products in accordance with this Agreement.

B. Except as otherwise approved by Company in writing, Producer is not authorized to: (1) make any promise or agreement on behalf of Company; (2) bind or commit Company in any way; (3) incur any expense, indebtedness or liability in the name of the Company; (4) modify or extend the time of any Premium payment; (5) make, waive, alter, modify or change any terms, rates, provisions, proposals, limitations or conditions of any product, coverage, application or contract issued or to be issued; (6) receive any funds for Company except the initial Premium as directed by Company; and (7) solicit applications in any area in which Company or Producer is not authorized to do business.

II. RESPONSIBILITIES OF PRODUCER

A. Producer shall: (1) promote Products in accordance with the terms of this Agreement; (2) comply with all applicable state and federal laws, as well as the rule and regulations of the appropriate regulatory agencies including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), the U.S. Patriot Act, and the Employee Retirement Income Security Act (ERISA); (3) hold and maintain in good standing any and all required licenses and registration necessary to perform the Producer's duties of this Agreement; (4) immediately notify Company in writing of the loss of any required license or registration; (5) abide by all Company rules, guidelines, policies and procedures; (6) review each application for Products to ensure that the facts set forth by each subscriber is true and correct; (7) promptly forward all applications found complete together with the full amount of initial Premium received with the applications to Company **(Producer shall not submit any information to Company that Producer knows or should reasonably**



know to be false or misleading); (8) fully inform each applicant that in no event shall the applicant have any coverage unless and until the application is reviewed and approved by Company and a policy is issued; and (9) promptly notify Company of any material complaint or inquiry that may involve Company.

B. Producer shall be responsible to Company for: (1) the fidelity and honesty of any and all producers/agents; (2) for all Premiums collected by producer/agents for Company business entrusted to Producer; (3) authorizing the Company to conduct criminal or credit background screenings of Producer and its personnel, who, either in person or via telephone may have contact with applicants; and (4) immediately provide Company with written notification of any state or federal conviction by producer/agents, whether occurring before or after the Effective Date of this Agreement, to ensure Company's compliance with the Federal Violent Crime Control and Law Enforcement Act of 1994.

III. RELATIONSHIP OF PARTIES

A. The relationship between Company and Producer is an independent contractor relationship and none of the provisions of this Agreement are intended to create nor shall be construed to create an employer/employee, agency, partnership, or joint venture relationship between the parties.

B. Neither Company nor Plan nor any of their respective officers, directors, agents, representatives or employees shall be deemed to be an officer, director, agent, representative or employee of the other party and neither this contract nor the manner of its implementation shall be deemed to create a direct or substantial relationship between the acts or omissions of any such officer, director, agent, representative or employee and the other party.

C. In connection with the obligations imposed by this Agreement, Company and Producer shall each indemnify and hold harmless the other, including its officers, directors, agents, and employees, from and against any and all loss, damage, liability, or expense (including without limitation, reasonable attorney's fees), of any kind arising by reason of the acts or omissions of the respective party's officers, directors, agents, employees, contractors, agents and shareholders acting alone or in collusion with others. Producer and Company shall promptly notify the other party hereto of any claims or demands which arise and for which indemnification is sought. The terms of this Section shall survive the termination of this Agreement.

D. Nothing in this Agreement is intended to be construed or be deemed to create any rights or remedies in any third party, except as otherwise provided herein.

IV. INSURANCE

A. Producer agrees to maintain, in good standing, errors and omissions insurance coverage with minimum amounts of \$1,000,000 per occurrence and \$1,000,000 in aggregate during the entire term of the Agreement with an insurance company with an A.M. Best rating of B+ or higher, and to furnish Company certificates evidencing such coverage. Producer must immediately notify Company if the errors and omissions coverage is terminated, canceled or lapsed.

V. RECORDS AND CONFIDENTIALITY OF RECORDS

A. Producer shall maintain thorough and accurate books and records for all transactions covered under this Agreement for a period of not less than seven (7) years or as required by law; and to make those books and records open and shall make such records open to inspection by Company's authorized representative during normal business hours throughout the term of this Agreement and within seven (7) years after termination thereof.



B. Company and Producer shall conform to the requirements of Title 45 of the Code of Federal Regulations, Part 160 et seq., as amended and to Article 16, Title 10, Section 423, Colorado Revised Statutes 1973, as amended, regarding confidentiality of health information about any enrollee or applicant for enrollment in the Benefit Plans.

C. Company and Producer shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d, and its implementing regulations, including The Standards for Privacy of Individually Identifiable Health Information, 42 CFR Parts 160 and 164, and the Security Standards, 42 CFR Part 162, as may be amended from time to time. In addition Producer agrees to comply with the Business Associate Addendum attached hereto and incorporated herein as Exhibit B.

VI. COMMISSION

A. Company shall pay Producer Commission in accordance with the terms of the Commission Schedule attached hereto as Exhibit A. Such commissions shall constitute payment in full for services performed under this Agreement.

B. Company reserves the right to change the Commission Schedule at any time upon thirty (30) days prior written notice to Producer. All new and renewal Commission shall be paid in accordance with the Commission Schedule in effect at the time the Commission is due.

C. Commissions due hereunder shall be earned and payable monthly to licensed Producer for a Contract issued and for which the Premium has been paid and reconciled for each subscriber, as applicable, of the Contract as long as this Agreement is in effect and Producer is recognized by Group/Individual as "Producer of Record." No Commission shall be payable to a non-appointed Producer.

D. Company reserves the rights to determine which Premiums and Contracts paid by the Group or Individual are subject to payment of Commission.

E. If any Premium should be refunded by Company for any reason or cause either before or after termination of this Agreement, Producer shall repay to Company, on demand, all Commission previously allowed and paid on the refunded Premium or associated paid Contracts. At Company's discretion, such repayment may take the form of credit or offset, but is not limited to a direct payment or an adjustment to future Commission payments.

F. Any indebtedness of Producer to Company arising from this Agreement, any prior Agreement or any transactions between Producer and Company, shall be a First Lien on any compensation (including Commission) due or to become due the Producer under this Agreement and may be applied as a set-off against any monies due or which become due by Company to Producer.

G. This Agreement shall not be construed to allow Commission for any Premiums or paid Contracts where Producer's services were performed on a consultant basis and the Producer agrees to accept compensation from the Group for such services.

H. If Producer becomes liable to Company at any time, Company shall have the right to withhold any and all sums from any payment as a withhold of sums that may be due or become due including any Commission.



I. Producer shall disclose to each policyholder and each subscriber group the amount and method of calculating all compensation received from Company in connection with the sale of Products sold to such policyholder or subscriber group. Producer shall take other actions and make other disclosures as required to comply with any and all statutory and regulatory requirements applicable to Producer. Producer shall provide Company with documentary evidence of its compliance with said disclosure.

VIII. TERM AND TERMINATION

A. The term of this Agreement shall be effective for an initial term of one (1) year from the Effective Date, and thereafter shall be automatically renewed for successive one-year periods unless and until terminated in accordance with the terms and conditions of this Agreement herein.

B. Either party may terminate this Agreement at any time, without cause, by giving sixty (60) days written notice to the other party of such termination.

C. This Agreement may be terminated by Company for cause without giving prior notice to Producer for any of the following occurrences with respect to Producer and/or its producer/agents: (1) commission of fraudulent acts or failure to comply with applicable law; (2) failure to maintain current errors and omissions coverage as required; (3) wrongful use, withholding or commingling of any funds belonging to an applicant, Subscriber, Group or Company; (4) upon the death of the Producer if an individual, (no Commission shall be payable to heirs, successors or assignees of the decedent); (5) termination, expiration or suspension of Producer's or Producing agent's health license as required by law; (6) commission of any knowing or intentional act that interferes with the business relationship between Company and any of its customers, accounts and/or employees, except where Producer is acting in accordance with good business practices and in the interest of Producer's client; (7) commission of any knowing or intentional act that interferes with the business relationship between Company and Producer; (8) refusal to participate in and/or conduct training as requested by Company; (9) failure to follow reasonable instructions of Company including, but not limited to, collection and/or payment of Premium; (10) knowing and intentional violation of any provision or the intended purpose or essence of this Agreement; or (11) conviction of a felony, or misdemeanor directly related to insurance, including but not limited to fraud, theft, embezzlement or any other offense related to misuse of misappropriation of funds.

D. In the event of termination of this Agreement, with or without cause, Producer shall, unless otherwise directed by Company; (1) immediately account for and remit to Company any amounts received by Producer on Company's behalf; (2) within ten (10) days after termination return all Company property in Producer's possession; (3) immediately cease all marketing activities provided hereunder, including soliciting applications for Products; and (4) immediately cease to be recognized by Company as a Producer of Record on all accounts and Contracts

E. Except as otherwise provided herein, all Commission payments to Producers under this Agreement shall cease upon termination of this Agreement.

F. Termination shall not be the exclusive remedy for any breach of this Agreement but shall be cumulative with all other remedies available by law.

IX. DISPUTE RESOLUTION

A. Producer shall cooperate fully with Company in any investigation, proceeding of any regulatory or governmental body, or court of competent jurisdiction, if it is determined by Company that an investigation or proceedings affects matters covered by, or relating to or arising out of this Agreement.



B. It is agreed between Producer and Company that any dispute that arises with respect to any rights and obligations of this Agreement that cannot be resolved to the mutual satisfaction of both parties, shall be submitted to binding arbitration upon written request of either party. The panel of arbitrators shall be selected as follows: one Arbitrator shall be designated by Company; one Arbitrator shall be designated by Producer; and the third Arbitrator shall be selected by the Arbitrators designated by Producer and Company. The arbitration shall proceed in accordance with the rules and regulations of the American Arbitration Association then in effect. Each party shall pay its own costs of arbitration. Such arbitration shall be conducted in Denver, CO. The Arbitrators shall have the power to grant all legal and equitable relief and award compensatory damages provided by Colorado law, except that punitive damages shall not be awarded. The Arbitrators shall prepare a written decision that contains findings of fact and conclusion of law.

X. GENERAL PROVISIONS

A. Acceptance of Applications – Producer acknowledges and agrees that Company reserves the right, in accordance with applicable law, to reject any and all applications submitted by Producer.

B. Proprietary Information - Producer agrees that all marketing and promotional material concerning the Company’s rate, benefit schedules, contracts, records, client lists, manuals, forms and other information furnished by Company to Producer is and shall remain proprietary to Company. Producer shall not alter, modify or amend any promotional materials, applications, policy forms or rates provided by Company. Producer further agrees to keep such information confidential and shall utilize its best efforts to prevent and protect such information from unauthorized disclosure by its agents and employees; and that during and after termination of this Agreement, Producer or Company shall not use or allow its agents and employees to use any such information to the competitive disadvantage or in any way which is detrimental to Producer or Company. Nor shall Producer use any such information for its own benefit or the benefit of a third party. Upon termination of this Agreement, Producer shall immediately return any documents containing proprietary information to the Company.

C. Trade and Service Marks. Producer shall not use the trademarks, service marks, name or symbols of Company without prior written permission of Company. It is understood and agreed that no right or license or approval has been granted to Producer, expressly or by implication, by this Agreement or otherwise to use any such name or mark.

D. Assignment. No assignment of the rights, duties, obligations, or authority of this Agreement, including Commissions, hereunder is transferable or assignable by Producer without the prior written consent of Company. Company may assign this Agreement to any affiliate, subsidiary, or successor in interest without the consent of Producer.

E. Binding on Successors in Interest. The provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and assigns.

F. Notices. Any notice required to be given pursuant to the terms of this Agreement shall be in writing and shall be either hand delivered or sent postage prepaid, by certified mail, return receipt requested, to Company or Producer at the addresses set forth below. The notice shall be effective on the date of delivery, either by hand or as indicated on the return receipt.

To Company:
Friday Health Plans of Colorado, Inc.
700 Main St, Ste 100
Alamosa, CO 81101
Attention: CEO

To Producer:

Attn:



G. Severability. The invalidity or unenforceability of any term or provision hereof shall not affect the enforceability of any other term(s) or the validity of any other provision(s).

H. Waiver of Breach. The waiver of any breach of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or any other provision of this Agreement.

I. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

J. Entire Agreement. This Agreement (together with all Exhibits hereto) contains the entire understanding between the parties relating to the rights granted and the obligations assumed by this Agreement. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.

K. Amendments. Except as otherwise specified in this Agreement, Company may modify or amend this Agreement by providing written notice to Producer. The written notice shall specify the effective date of the amendment, revision or supplement to this Agreement.

L. Certification of Authority to Execute this Agreement – Both parties certify that the individual(s) signing herein has authority to execute this Amendment on behalf of his or her respective party, and may legally bind his or her respective party to the term and conditions of this Amendment, and any attachments hereto.

[SIGNATURE PAGE FOLLOWS]



Execution of this Agreement by Producer and acceptance thereof by Company shall complete the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Producer

Company

By: _____

Signature

By: _____

Sal Gentile
Chief Executive Officer

Print Name/Title

Corporate Name (if applicable)

Date

Date

Tax ID

EXHIBITS

Exhibit A: Commission Schedule (also located on the broker portal via password)

Exhibit B: Business Associate Agreement



2019 Broker Commission Schedule

Exhibit A

Effective January 1, 2019

Individual Health Plans	Commission
New and Renewal PMPM	\$20

Group Health Plans	Commission
New and Renewal PEPM	\$25

The terms and conditions of this commission schedule are subject to change at the sole discretion of Friday Health Plans and/or its designated representatives upon notice to the broker.

Final interpretation of any or all provisions in this commission schedule, or resolution of any disputes arising from this compensation plan, rests solely with Friday Health Plans and/or its designated representatives.

This provision is applicable to all insurance producers and insurance agencies over whom the Colorado Division of Insurance has authority.

Commissions will be paid only if agent/agency is licensed and in good standing with the State of Colorado. Appointment with Friday Health Plans must be current.

See Friday Health Plans producer agreement for all for all terms and conditions pertaining to commission schedule.

For questions, appointments and service:
Friday Broker Service: 800-475-8466
brokers@fridayhealthplans.com



EXHIBIT B

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) is incorporated into the attached Producer Agreement. This Addendum supplements, amends and is made a part of any and all HIPAA related agreement in effect as of the date of full execution of the Agreement between the Company and Producer (herein, “Business Associate”) under which Business Associate has created or received and/or may create or receive Protected Health Information (as defined herein) from or on behalf of Company.

This Addendum was prepared solely to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160 and 164), well as other confidentiality and data security concerns of Company and unless so provided in such law does not affect or change the legal relationship between Company and Business Associate.

IN CONSIDERATION OF THE FOREGOING, and the mutual promises and covenants contained herein, the parties agree as follows:

I. Privacy of Protected Health Information.

A. Permitted and Required Uses and Disclosures. Business Associate is permitted or required to use or disclose Protected Health Information (PHI) it creates or receives for or from Company only as follows:

1. Functions and Activities On Company’s Behalf. Business Associate is permitted to request, and to the minimum necessary, use and disclose PHI it creates or receives for or from Company to perform the following functions:

a. Quoting. (1) Gather census, financial, benefit and medical information needed to provide a quote or renewal; (2) Obtain competitive quotes; (3) Present proposal to customer; (4) Submit quotes in various formats over the telephone, by facsimile, or via electronic mail; and (5) Run quotes on electronic quote systems;

b. Enrollment. (1) Conduct or assist with presentation of enrollment meetings, which may be followed by question and answer sessions or individual member consultations; (2) Review and submit applications to Company; (3) Provide service on enrollment issues; (4) Submit new business cases, which may include employer and employee applications; (5) When applications on file with Company are incomplete, such as with missing medical or non-medical information, research and respond to list of questions presented by Company to obtain missing items; (6) Submit benefit changes to Company; (7) Verify enrollment information; (8) Assemble, review and submit information to Company necessary to process requests for riders; (9) Forward enrollment applications, change applications and termination requests; (10) Address or investigate enrollment or billing issues; and (11) Validate enrollment and/or enrollment information.

c. Customer Service. (1) Provide service on billing and claims issues; (2) Review financial information on an ongoing basis to provide recommendations and assistance to customer; (3) Verify "paid to" date; (4) Call various company departments with questions customer may have; (5) Assess prior carrier deductible credit; (6) Contact Company to correct a member's address, date of birth, or other personal member information; (7) Verify eligibility of



dependents, spouse and new hires; (8) Support factual investigation on issues pertaining to eligibility; (9) Request materials and supplies from Company and deliver to customer; (10) Receive from customer such materials as applications, change forms, and Premium payments, and deliver to Company; (11) Correct spelling of names; (12) Investigate and verify any other insurance information, such as may be needed to evaluate coordination of benefits issues; (13) Verify Medicare information; and (14) Verify over age dependent information.

d. Renewal and Related Functions. (1) Support general renewal activity, including present renewal to individual health plan member or to employer group; (2) Receive and review member information contained in commission payment statements distributed by Company; and (3) Submit requests for policy terminations.

2. Business Associate Operations. Business Associate is permitted to use and disclose the minimum necessary PHI it creates or receives for or from Company as follows:

a. Use of PHI. Business Associate may use PHI it creates or receives for or from Company as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities.

b. Disclosure of PHI. Business Associate may disclose such minimum necessary PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if: (1) The disclosure is required by law; or (2) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI, and that the person or organization shall:

(a) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization, or as required by law; and

(b) Promptly notify Business Associate (who shall in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

3. Data Aggregation Services. If specifically authorized by the Company, the Business Associate may provide data aggregation services relating to the health care operations of the Company.

4. Disclosure to Group Health Plan. Business Associate may disclose PHI to the Group Health Plan only if:

a. The Business Associate is also a Business Associate of the Group Health Plan, or

b. The Business Associate has the Authorization of the individual.

5. Disclosure to Plan Sponsor. When acting on Company's behalf, Business Associate may not disclose PHI to the Plan Sponsor unless the Business Associate has the authorization of the Individual.

6. Minimum Necessary Information. In any instance when Business Associate uses, requests or



discloses PHI under this Addendum or in accordance with other agreements that exist between Company and Business Associate, Business Associate may use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose.

7. Use by Workforce. Business Associate shall advise members of its workforce of their obligations to protect and safeguard PHI. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this Addendum.

B. Subcontractors and Agents. Business Associate shall require any of its subcontractors and agents, to provide reasonable assurance, evidenced by written contract, that subcontractor or agent shall comply with the same privacy and security obligations as Business Associate with respect to such PHI.

C. Information Safeguards. Business Associate shall develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability and to prevent non-permitted or violating use or disclosure of PHI that Business Associate creates, receives, maintains, or transmits on Company's behalf in compliance with Social Security Act §1173(d) (42 U.S.C. § 1320d-2(d)), 45 C.F.R. Part 164.530(c), and as required by the Security Rule, 45 C.F.R. Part 164, Subpart C. Business Associate shall document and keep these safeguards current.

Business Associate shall provide Company with such information concerning such safeguards as Company may from time to time request, and shall, upon reasonable request, give Company access to Business Associate's facilities used for the maintenance or processing of PHI, for inspection and copying, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Addendum.

D. Security Policies. Business Associate shall maintain security policies that comply with all applicable laws and regulations. Company has the right to request a copy of Business Associate's security policies.

II. Compliance with Standard Transactions.

A. Standard Transactions. If Business Associate conducts in whole or part Standard Transactions on behalf of Company, Business Associate shall comply, and shall require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate further agrees to comply with any guidelines or requirements adopted by Company consistent with the requirements of HIPAA and any regulations promulgated there under, governing the exchange of information between Business Associate and the Company.

III. PHI Access, Addendum and Disclosure Accounting.

A. Access to PHI. Business Associate shall promptly, upon Company's request, make available to Company any PHI about the Individual which Business Associate created or received for or from Company and that is in Business Associate's custody or control, so that Company may meet its access obligations pursuant to and required by applicable law, including but not limited to 45 C.F.R. 164.524.

B. Addendum to PHI. Business Associate shall, upon receipt of notice from Company, promptly amend or permit Company access to amend any portion of the PHI which Business Associate created or received for or from Company, pursuant to and required by applicable law, including but not limited to 45 C.F.R. Part 164.526.



C. Accounting of Disclosures. Upon Company's written request, Business Associate shall provide to Company an accounting of each Disclosure of PHI made by Business Associate in Accordance with § 164.528. For each Disclosure that could require an accounting under this Section 2.8, Business Associate shall track the information specified in (a) through (d) below, and shall securely maintain the information for six (6) years from the date of the Disclosure. Any accounting provided by Business Associate under this Section shall include:

1. Date of the Disclosure;
2. Name, and address if known, of the entity or person who received PHI;
3. Brief description of PHI disclosed; and
4. Brief statement of the purpose of the Disclosure.

D. Individual Disclosure. Business Associate shall not respond directly to an Individual's request for the following held in the Business Associate's Designated Record Set:

1. To access their PHI;
2. For an amendment to their PHI; or
3. For an accounting of Disclosures.

Business Associate shall refer the Individual to Company so that Company can coordinate and prepare a timely response to the Individual. Notwithstanding, Business Associate shall promptly, upon receipt of notice from Company, send an Individual's communications to the identified alternate address.

E. Disclosure to Governmental Agencies. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Company (or created or received by Business Associate on behalf of Company) available to the Secretary of the United States Department of Health and Human Services, for purposes of determining Company's compliance with 45 C.F.R. Parts 160 and 164. Unless the Secretary directs otherwise, Business Associate shall promptly notify Company of Business Associate's receipt of such request, so that Company can assist in compliance with that request.

IV. Breach of Privacy Obligations.

A. Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Friday Colorado any Use or Disclosure of PHI in its possession of which it becomes aware that is not permitted by the terms of this Agreement, contractual arrangement or as may be required by law. Additionally, Business Associate shall report to Company any attempted or successful (a) unauthorized access, use, disclosure, modification, or destruction of Company's Electronic PHI; or (b) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware.

B. Breach. Without limiting the rights of the parties elsewhere set forth in the Addendum or available under applicable law, if Business Associate materially breaches its obligations under this Addendum, Company may, at its options:

1. Exercise any of its rights of access and audit under Section I, Paragraph C and Section VI, Paragraph C of this Addendum;



2. Require Business Associate to submit to a plan of monitoring and reporting, as Company may determine appropriate to maintain compliance with this Addendum. Company shall retain the right to report to the Secretary of the United States Department of Health and Human Services any failure by Business Associate to comply with such monitoring and reporting; or

3. Immediately and unilaterally terminate the Addendum, without penalty to Company or recourse to Business Associate, and with or without an opportunity to cure the breach. Company's remedies under this Section and set forth elsewhere in this Addendum shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

V. Obligations upon Termination.

A. Return or Destruction. Upon termination or expiration of this Agreement, Business Associate shall either return to Company or destroy, in compliance with regulations mandated in the Gramm-Leach- Bliley Act, all PHI, in whatever form or medium that Business Associate created or received for or from Company, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Business Associate shall complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the underlying Business Associate Addendum.

Business Associate shall identify any PHI that cannot feasibly be returned to Company or destroyed, and shall limit its further use or disclosure of that PHI to those purposes that make return or destruction of that PHI infeasible. Within such 30 days, Business Associate shall certify in writing to Company that such return or destruction has been completed, shall deliver to Company the identification of any PHI for which return or destruction is infeasible and, for that PHI, shall certify that it shall only use or disclose such PHI for those purposes that make return or destruction infeasible.

B. Continuing Privacy and Security Obligation. Business Associate's obligation to protect the privacy and safeguard the security of the PHI it created or received for or from Company shall be continuous and survive termination, cancellation, expiration or other conclusion of this Addendum.

VI. General Provisions.

A. Definitions. Unless otherwise defined in this Addendum, capitalized terms have the same meaning as set forth in the HIPAA Privacy Rule, the HIPAA Security Rule, or the Agreement.

B. Amendment. Except as otherwise specified in this Agreement, Company may modify or amend this Agreement by providing written notice to Producer. The written notice shall specify the effective date of the amendment, revision or supplement to this Agreement.

C. Conflicts. The terms and conditions of this Addendum shall override and control any conflicting term or condition of any other existing agreement between the parties. All non-conflicting terms and conditions of the other agreement remain in full force and effect. This Addendum is not intended to confer any rights upon Business Associate in addition to those set forth in the Agreement.

D. Property Rights. Company is the exclusive owner of PHI generated or used under the terms of the Addendum.



E. Subpoenas. Business Associate agrees to relinquish to Company control over subpoenas Business Associate receives with regard to PHI belonging to Company.

F. Disclosure of De-identified Data. The process of converting PHI to De-identified Data (DID) is set forth in 45 C.F.R. Part 164.514. In the event that Company provides Business Associate with DID, Business Associate shall not be given access to, nor shall Business Associate attempt to develop on its own, any keys or codes that can be used to re-identify the data.

G. Creation of De-identified Data. In the event Business Associate wishes to convert PHI to DID, it must first subject its proposed plan for accomplishing the conversion to Company for Company's approval, which shall not be unreasonably withheld, provided such conversion meets the requirements of 45 C.F.R. Part 164.514.

H. Subcontracts. Company retains the right to review and approve any proposed subcontracting or assignment of Business Associate's duties and responsibilities arising under the Addendum, as it relates to the use or creation of PHI or DID, as applicable.

I. Audit. Company shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the requirements relating to the creation or use of PHI and DID, as applicable, as it relates to the privacy and security sections of this Addendum.

J. Third-Party Beneficiaries. The parties agree that there are no intended third party beneficiaries under this Addendum.

K. Indemnity. Company and Business Associate shall each indemnify and hold harmless the other, including its officers, directors, agents, and employees, from and against any and all loss, damage, liability, or expense (including without limitation, reasonable attorney's fees), of any kind arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.