

**STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE**



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter “MOU”) memorializes the agreement between the New Mexico Office of Superintendent of Insurance, (hereinafter “OSI”), and [Company Name], (hereinafter Independent Review Organization or “IRO”) for the provision of external review services pursuant to the grievance procedures provided in 13.10.17 NMAC. The parties hereto agree that all external review services performed pursuant to this MOU shall be performed in strict compliance with the applicable provisions of 13.10.17 NMAC, including but not limited to the processes, procedures, timelines, and other requirements contained therein.

1. Entire Agreement

This MOU comprises the entire agreement between the OSI and the IRO on the matters specifically addressed herein. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the MOU shall be valid unless reduced to writing and signed by all parties.

2. Duration of MOU

This MOU shall commence on the last date signed and shall continue indefinitely, until terminated pursuant to Section 13 of the MOU.

3. Price Schedule, Payment Terms, and Billing

No compensation is exchanged between the OSI and the IRO under this MOU. Payment terms under this MOU are between the IRO and the health care insurer and are set forth in Exhibit A. Payment for all services shall be due within thirty (30) days after the IRO issues the invoice for services provided. Invoices must include detailed information about the services performed. Compensation authorized under this MOU shall be accepted as payment in full for services provided or expenses incurred under this MOU. No IRO or health care insurer shall balance bill any person or entity, including but not limited to, the grievant, the OSI, or the State of New Mexico, for further compensation under this MOU.

4. Laws and Regulations

The IRO, its employees, and its representatives shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, and orders of governmental authorities, including those having jurisdiction over its registration and licensing to perform services

hereunder. All references in this MOU to any statute, public act, regulation, code or executive order shall mean such statute, public law, regulation, code, or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this MOU that relates to such statute, public law, regulation, code, or executive order, and notwithstanding a lack of a formal amendment to this MOU, this MOU shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public law, regulation, code or executive order as if their most current language had been used in and their requirements incorporated into this MOU at the time of its execution. If there is a conflict between the most current and applicable wording and requirements of a statute, public law, regulation, code or executive order and the wording and requirements in this MOU, the more current language shall apply.

5. Forum and Choice of Law

Both parties agree that it is fair and reasonable for the validity and construction of this MOU to be, and that it shall be, governed by the laws and court decisions of the State of New Mexico.

6. Independence of IRO

- (a) The Parties to this MOU agree that this MOU does not create any actual or apparent partnership, franchise, or relationship of employer and employee between the parties. The IRO is not authorized to enter into or commit the OSI or the State of New Mexico to any agreements, and the IRO shall not represent itself as the agent or legal representative of the OSI or the State of New Mexico.
- (b) The IRO is not entitled to participate in any State of New Mexico benefit program, including, without limitation, any health or retirement plans. The IRO is not entitled to any remuneration, benefits, or expenses other than as specifically set forth in this MOU.
- (c) Neither the OSI nor the State of New Mexico is liable for taxes, Workers' Compensation, unemployment insurance, employers' liability, employers' FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the IRO or any other person consulted or employed by the IRO in performing the services set forth in this MOU. All such costs are the IRO's responsibility.

7. Qualifications of IRO

The IRO represents and affirms that it:

- (a) is accredited by a nationally recognized private accrediting entity;
- (b) meets the requirements of 13.10.17 NMAC; and
- (c) has quality assurance mechanisms that ensure that clinical reviewers assigned

to conduct the external review are qualified and impartial physicians or other appropriate health care providers who:

- (i) have expertise in the treatment of the medical condition that is the subject of the IRO review;
 - (ii) hold a non-restricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the area or areas appropriate to the subject of the IRO review;
 - (iii) have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question regarding the clinical reviewer's physical, mental or professional competence or moral character.
- (d) has written policies and procedures that ensure:
- (i) that all reviews are conducted within the timeframes specified by 13.10.17 NMAC and that all required notices are provided in a timely manner;
 - (ii) the selection of qualified and impartial physicians or other appropriate health care professionals to act as clinical reviewers based on the requirements of specific cases and that the IRO employs or contracts with an adequate number of clinical reviewers to meet this objective;
 - (iii) the confidentiality of medical and treatment records and clinical review criteria; and
 - (iv) that any person employed by or under contract with the IRO adheres to the requirements of 13.10.17 NMAC.
- (e) maintains a toll-free telephone service to receive information on a 24 hours a day, seven days per week basis and that is capable of accepting, recording or providing appropriate instruction to incoming telephone callers during hours other than normal business hours.

8. No Conflict of Interest

Neither an IRO appointed to conduct the independent review nor any clinical reviewer assigned by an IRO to conduct a review may have a material, professional, familial, or financial conflict of interest with:

- (a) the health care insurer that is the subject of the IRO review;
- (b) an officer, director, manager, or management employee of the health care insurer that is the subject of the IRO review;

- (c) the health benefits plan;
- (d) the plan administrator, plan fiduciaries, or plan employees;
- (e) the grievant or the grievant's representative;
- (f) the grievant's health care provider(s) or the provider's medical group, who is recommending the service or treatment that is the subject of the review;
- (g) the health care provider's medical group or independent practice association;
- (h) a health care facility where the service would be provided; or
- (i) the developer or manufacturer of the service that would be provided.

9. IRO Reports to OSI

The IRO shall keep and maintain written records of all IRO reviews it has conducted under this MOU and make available to OSI every calendar year on January 15 a report that is organized by health care insurer and that includes:

- (a) the total number of reviews conducted;
- (b) the number of reviews resolved; and of those resolved, the number resolved upholding the adverse determination or final adverse determination of the health care insurer;
- (c) the total number resolved reversing the adverse determination or final adverse determination of the health care insurer;
- (d) the average length of time for the review;
- (e) a summary of the types of coverages or cases for which the review was sought, as provided in the format required by the OSI;
- (f) the number of reviews that were terminated as a result of a reconsideration by the health care insurer of its adverse determination after the receipt of additional information from the grievant; and
- (g) any other information the OSI may request or require.

10. Inspection and Record Keeping

- (a) The OSI may inspect and examine all of the IRO's plants and places of business involved in the performance of this MOU.
- (b) The IRO shall maintain accurate and complete records and shall make all of its records related to an IRO review or otherwise related to business conducted under this MOU available for audit and inspection by the OSI.

- (c) The IRO shall keep and preserve or cause to be kept and preserved all records received or reviewed during an IRO review for a period of six (6) years following the review. The OSI may request an audit or inspection at any time during this period. If any claim or audit is started before the expiration of this period, the IRO shall retain or cause to be retained all records until all claims or audit findings have been resolved.

11. Indemnification

- (a) The IRO shall indemnify, defend, and hold harmless the State of New Mexico, the OSI, and its collective officers, representatives, agents, servants, employees, successors, and assigns from and against any and all: (1) actions, suits, claims, demands, investigations and proceedings of any kind, whether open, pending, threatened, mature, unmatured, contingent, known or unknown, at law or in equity, in any forum (hereinafter collectively “Claims”), arising directly or indirectly in connection with the MOU, including the acts of commission or omission (hereinafter collectively “Acts”) of the IRO or IRO’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees, or any one of them or any other person or entity with whom the IRO is in privity of oral or written contract and the IRO intends for such other person or entity to perform under the MOU in any capacity; and (2) liabilities, damages, losses, costs and expenses, including, but not limited to, attorneys’ and other professionals’ fees arising directly or indirectly in connection with Claims or Acts.
- (b) This section shall survive the termination of the MOU and shall not be limited by reason of any insurance coverage.

12. Insurance

Before commencing performance of any work under this MOU, the IRO shall obtain and maintain, at its own cost and expense, for the duration of the MOU, the following insurance as described below. The IRO shall assume any and all deductibles in the described insurance policies. At the request of the OSI, the IRO shall name the OSI as an additional insured on the policy and shall provide a copy of the policy to the OSI prior to the effective date of the MOU. The IRO’s insurers shall have no right of recovery or subrogation against the OSI and the described IRO’s insurance shall be primary coverage. The OSI shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the OSI is contributorily negligent. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the OSI.

- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Coverage shall include Premises and Operations, Independent IROs, Products and Completed Operations, Contractual Liability, and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be

twice the occurrence limit.

- (b) Professional Liability: \$1,000,000 limit of liability.

13. Termination of MOU

- (a) Notwithstanding any provisions in this MOU, the OSI may terminate the MOU whenever the OSI makes a written determination that such termination is in the best interests of the OSI. The OSI shall notify the IRO in writing of termination pursuant to this section, which notice shall specify the effective date of termination and the extent to which the IRO must complete its performance under the MOU prior to such date.
- (b) Upon receipt of a written notice of termination from the OSI, the IRO shall cease operations as the OSI directs in the notice, and shall take all actions that are necessary or appropriate or that the OSI may reasonably direct, for the protection, and preservation of all records, data, and any other property related to business conducted under the MOU. Except for any work which the OSI directs the IRO to perform in the notice prior to the effective date of termination, and except as otherwise provided in the notice, the IRO shall terminate or conclude all existing subcontracts and purchase orders related to this MOU, and shall not enter into any further subcontracts, purchase orders or commitments related to this MOU.
- (c) Upon termination of this MOU, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to those sections which, by their very nature, survive termination. All representations, warranties, agreements, and rights of the parties under the MOU shall survive such termination to the extent not otherwise limited in the MOU and without each one of them having to be specifically mentioned in the MOU.
- (d) If during the term of this MOU the IRO shall file for bankruptcy or be adjudicated bankrupt, or have any judgment of bankruptcy or insolvency entered against it, the OSI may terminate this MOU without notice.

UNDERSTOOD AND AGREED:

[Company Name]

By: _____ Date: _____

Printed Name: _____

Title: _____

**STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE**

By: _____ Date: _____
John G. Franchini, Superintendent
Office of Superintendent of Insurance

Reviewed as to Form and Legal Sufficiency:

By: _____ Date: _____
_____, General Counsel
Office of Superintendent of Insurance

**EXHIBIT A
COMPENSATION**

The health care insurer that issued the determination that is the subject of the external review request or the expedited external review request shall pay the independent review organization for the cost of conducting the review.

Compensation for services provided by an IRO in accordance with the MOU shall be as follows:

<u>Type of Review</u>	<u>Cost</u>
Standard Review	\$600
Expedited Standard Review	\$900
Experimental, Investigational or Not Medically Necessary Review	\$1200
Expedited Experimental, Investigational or Not Medically Necessary Review	\$1500
Any Other Review Requiring Three-Person Clinical Panel	\$1200
Expedited Review Requiring Three-Person Clinical Panel	\$1500
Request to review withdrawn after IRO receives file, but prior to completion of its review	One-Half of Cost Associated with Type of Review