**THIS CONFIDENTIALITY AGREEMENT** is made and entered as of [Insert Today’s Date or Date on Which SHARE Password Was First Given], by and between the [Insert Name of State Agency for Whom Recipient is Preparing Fiscal Year Audit] and [Insert Business Name of Auditor], a[Insert Type of Business Entity], with a business address of [Insert Business Address] (Recipient).

**WHEREAS**, Recipient has been retained by [Insert Name of State Agency for Whom Recipient is Preparing Fiscal Year Audit] to conduct its fiscal year [Insert Fiscal Year]annual audit, which agency is referred to throughout the remainder of this Agreement as “Client Agency”; and

**WHEREAS**, in conjunction with such audit, Recipient desires access to the Statewide Human Resource, Accounting, and Management Reporting System (SHARE) and certain data concerning the Client Agency contained therein; and

**WHEREAS**, as a condition of granting such access through a special password, the Client Agency and the Department of Finance and Administration (DFA) requires Recipient to agree to keep information and data in SHARE confidential, in accordance with this Agreement.

**NOW, THEREFORE,** in consideration of Recipient being given access to Confidential Information, as later defined, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

1. Confidential Information Defined. “Confidential Information” means all information or data contained in SHARE that is available to Recipient through use of the SHARE password given to Recipient pursuant to this Agreement.

2. Use and Disclosure of Confidential Information. Unless otherwise approved by DFA or the Client Agency in writing, in advance, Recipient shall use Confidential Information solely in conjunction with the fiscal year [Insert Fiscal Year] annual audit it is preparing on behalf of the Client Agency. Recipient shall not disclose Confidential Information to any person or entity other than the Client Agency and its representatives without DFA’s or the Client Agency’s prior written approval; provided, however, Recipient may disclose Confidential Information (i) to its employees who are assisting with the preparation of the Client Agency’s fiscal year [Insert Fiscal Year] audit; (ii) in the Client Agency’s fiscal year [Insert Fiscal Year] audit, in accordance with and to the extent required or permitted by Generally Accepted Auditing Standards or law; or (iii) if required to do so by law or pursuant to a court order or other legal process or lawful demand.

DFA will only approve the use or disclosure of Confidential Information if: (i) the Confidential Information is contained in a public record subject to disclosure under the Inspection of Public Records Act, Sections 14-2-1, et seq. NMSA 1978, or comparable statute; (ii) the Recipient properly possessed the Confidential Information prior to receiving its SHARE password; (iii) the Recipient rightfully received the Confidential Information from a third party not owing a duty of confidentiality to DFA, the Client Agency, or the State; or (iv) the Confidential Information was made a matter of public record by DFA or the Client Agency.

3. Procedures for Requesting DFA’s Permission for Use or Disclosure of Confidential Information; Notice of Lawful Demand for Disclosure. Recipient shall request DFA’s written approval to use or disclose Confidential Information as far in advance as possible, but in no event shall DFA receive the request less than five (5) business days before the date on which Recipient desires to use or disclose the Confidential Information. Recipient shall immediately forward to DFA all court orders, other legal process, or other lawful demands that call for the disclosure of Confidential Information. Until DFA indicates that it does not object to the disclosure, Recipient shall take all reasonable and lawful steps to avoid disclosure of the Confidential Information, to allow DFA time to intervene in the proceedings or take other appropriate steps to legally prevent the disclosure, such as seek a protective order.

4. Use and Disclosure of SHARE Password. Pursuant to this Agreement, the Client Agency shall give Recipient a special SHARE password. Recipient agrees to use the password solely for purposes of the Client Agency’s fiscal year [Insert Fiscal Year] audit and for no other purpose. Recipient also agrees not to disclose the password to anyone other than its employees who are assisting with the preparation of the Client Agency’s fiscal year [Insert Fiscal Year] audit.

5. Safekeeping and Return of Confidential Information. Recipient shall take reasonable steps to safeguard the Confidential Information. Upon conclusion of the Client Agency’s fiscal year [Insert Fiscal Year] audit, Recipient shall destroy or return to the Client Agency all Confidential Information; provided, however, that Recipient may retain Confidential Information if required to do so by Generally Accepted Auditing Standards or law.

6. Remedies. Recipient acknowledges that the remedy at law for any breach of the terms of this Agreement shall be inadequate and the damages resulting from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by Recipient of the Terms of this Agreement, DFA and the Client Agency shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or future breach, including the recovery of damages from Recipient. Such injunctive relief shall be in addition to any other remedies to which DFA or the Client Agency may be entitled.

7. DFA Representative with Authority. Mark Melhoff, Director/State Controller, is hereby designated as the DFA representative with authority to authorize the use or disclosure of Confidential Information. Recipient shall send all requests to use or disclose Confidential Information and all court orders, other legal process, or other lawful demands calling for the disclosure of Confidential Information to Mr. Melhoff by certified mail, return receipt requested, at the following address:

Department of Finance and Administration

ATTN: Director/State Controller

Bataan Memorial Building, Room 166

Santa Fe, NM 87501

The communication shall be deemed to have been given/received upon the date of Mr. Melhoff’s actual receipt, as reflected on the return receipt, or five (5) business days after Recipient deposits the communication in a postage prepaid envelope in an official U.S. Postal Service mailbox or other official receptacle, whichever is earlier.

8. Cumulative Confidentiality Obligations. Recipient’s obligations under this Agreement are in addition to all other contractual, ethical, or legal obligations it has concerning the confidentiality of the Client Agency’s information, none of which are affected by this Agreement.

9. Disclosure of this Agreement to Recipient’s Employees. Prior to disclosing Confidential Information or the special SHARE password to its employees as allowed by this Agreement, Recipient shall provide its employees with a copy of this Agreement and obtain their agreement to be bound by its terms; provided, however, that Recipient’s failure to obtain such agreement shall not affect the enforceability of this Agreement against such employees.

**WHEREFORE**, the parties have duly executed this Agreement.

**Recipient (IPA):**

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

By (Print Name): [Insert Name]

Its (Print Title): [Insert Title]

Date: [Insert Current Date]