

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

**Meeting of
May 15, 2007**

AGENDA TITLE: Amendment 2 to Department of Health Services MAA Contract No. 04-35086

DEPARTMENT: Human Services (CS)

DEPT SIGNOFF:

CAO USE ONLY: 4/26

CONTACT: John Litwinovich

John Litwinovich

C Laura Schunzler

DATE: 4/24/2007

PHONE: 6163

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

Human Services, Community Services Division, recommends the Board authorize the Chairman to sign Amendment 2 to Contract 04-35086 with the California Department of Health Services (DHS) for claiming federal revenues for allowable Medi-Cal Administrative Activities (MAA), extending the term of the Contract for two years to cover the term 7/1/04 through 6/30/09 and allocating up to \$1,500,000 for FY 2007/08 and up to \$1,500,000 for FY 2008/09 for a total maximum contract amount of \$7,100,000, and further authorize Department Director John Litwinovich to continue to execute further documents relating to this Standard Agreement, including amendments thereto, contingent upon approval of County Counsel and Risk Management, that do not alter the dollar amount or the term.

CAO RECOMMENDATIONS: *Recommend approval Laura A Giel 4/27/07*

Financial impact? () Yes (X) No

Funding Source: () Gen Fund (X) Other

BUDGET SUMMARY:

Other: federal MAA revenues

Total Est. Cost	\$7,100,000.00
Funding	
Budgeted	\$7,100,000.00
New Funding	_____
Savings*	_____
Other	\$7,100,000.00
Total Funding	\$7,100,000.00
Change in Net County Cost	\$0.00

CAO Office Use Only:

4/5's Vote Required () Yes (X) No
 Change in Policy () Yes (X) No
 New Personnel () Yes (X) No

CONCURRENCES:

Risk Management ✓
 County Counsel ✓
 Other _____

***Explain** Funds budgeted for FY 04/05, 05/06, 06/07, and \$1,500,000 each year for FY 07/08 and 08/09.

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

Rev. 5/04 ISKW001 Agenda

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____



EL DORADO COUNTY
DEPARTMENT OF HUMAN SERVICES
John Litwinovich
Director

April 24, 2007

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, California 95667

Members of the Board:

Title: Amendment 2 to Department of Health Services MAA Contract No. 04-35086

Recommendations:

Human Services, Community Services Division, recommends the Board authorize the Chairman to sign Amendment 2 to Contract 04-35086 with the California Department of Health Services (DHS) for claiming federal revenues for allowable Medi-Cal Administrative Activities (MAA), extending the term of the Contract for two years to cover the term 7/1/04 through 6/30/09 and allocating up to \$1,500,000 for FY 2007/08 and up to \$1,500,000 for FY 2008/09 for a total maximum contract amount of \$7,100,000, and further authorize Department Director John Litwinovich to continue to execute further documents relating to this Standard Agreement, including amendments thereto, contingent upon approval of County Counsel and Risk Management, that do not alter the dollar amount or the term.

Reasons for Recommendations:

The California Department of Health Services is responsible for administering the California Medi-Cal Administrative Activities Program. The State is required to enter into cooperative arrangements with local government agencies (LGA's) to ensure the appropriate utilization of such services, and the LGA (El Dorado County) may claim federal Medicaid matching funds for assisting the State in the proper and efficient administration of the Medi-Cal Program. Programs administered by certain County departments perform eligible Medi-Cal Administrative Activities. Additionally, local non-profit agencies such as New Morning Youth & Family Services and First 5, because of their unique position in the community, assist the County in performance of MAA activities, and revenues may be claimed for these activities. The Human Services Department acts as El Dorado County liaison for receipt of all MAA revenues. The State Department of Health Services compensates El Dorado County based on reported and documented activities. Contract 04-35086 was executed by the Board on 9/21/04 and first amended on October 18, 2005 to increase the maximum payable to \$4,100,000 and extend the term through June 30, 2007. Amendment 2 increases the maximum payable by \$3,000,000 to \$7,100,000, extends the term through June 30, 2009 and incorporates HIPAA language. County Counsel and Risk Management have approved the Amendment. A copy of the document is on file with the Board Clerk.

Fiscal Impact: Total Cost (or Savings) Amendment 2 to Contract 04-35086 allows El Dorado County to claim up to \$1,500,000 for eligible activities documented during FY 2007/08 and up to \$1,500,000 during FY 2008/09. Revenues are included in the FY 2007/08 County Budget Request and will be included for FY 2008/09.

Net County Cost: There are no new Net County Costs associated with this Contract Amendment.

Action to be Taken Following Approval:

Board Clerk to provide Human Services, Community Services Division, with ten (10) copies of Amendment 2 to Contract 04-35086 signed by the Chairman.

Sincerely,

John Litwinovich
Director of Human Services

ASSIGNMENT

DATE 3-14-07

ATTORNEY E.L.K.

Contract #. 04-350-1

DEPT./INDEX NO. 53.1000

BY: Km

CONTRACT ROUTING SHEET

PROCESSING DEPARTMENT:

Department: Human Resources
Dept. Contact: [Signature]
Phone #: [Signature]
Department Head [Signature]
Signature: [Signature]

CONTRACTOR:

Name: Cheyne [Signature]
Address: [Signature]
Phone: [Signature]

CONTRACTING DEPARTMENT: Human Resources

Compliance with Human Resources requirements? Yes: No: (A. [Signature] + [Signature])
Compliance verified by: n/a

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 3-26-07 By: [Signature]
Approved: Disapproved: Date: By:

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 3/26/07 By: [Signature]
Approved: Disapproved: Date: By:

MAR 26 PM 12:55

OTHER APPROVAL (Specify department(s) participating or directly affected by this contract). Department(s):

Approved: Disapproved: Date: By:
Approved: Disapproved: Date: By:

STANDARD AGREEMENT AMENDMENT

STD 213 A (DHS Rev 5/06)

03 VIEWING COPY

 CHECK HERE IF ADDITIONAL PAGES ARE ADDED 1 PAGES



AGREEMENT NUMBER 04-35086	AMENDMENT NUMBER A02
REGISTRATION NUMBER:	

1. This Agreement is entered into between the State Agency and Contractor named below:
- | | |
|---|---|
| STATE AGENCY'S NAME
California Department of Health Services | (Also referred to as CDHS, DHS, or the State) |
| CONTRACTOR'S NAME
El Dorado County Human Services | (Also referred to as Contractor) |
2. The term of this Agreement is July 1, 2004 through June 30, 2009
3. The maximum amount of this Agreement is: **\$ 7,100,000.00**
Seven Million One Hundred Thousand Dollars
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
- I. Amendment effective date: June 29, 2007
 - II. Purpose of amendment: This amendment extends the contract term for two years and increases the total budget to compensate the Contractor for performing services in Year 4 and Year 5. CDHS is obtaining a continuation of services identified in the original agreement. In addition, this amendment incorporates a HIPAA Business Associate Addendum exhibit and incorporates by reference an unattached section of CDHS's Health Administrative Manual into the agreement to implement HIPAA requirements.
 - III. Certain changes made in this amendment are shown as: Text additions are displayed in **bold and underline**. Text deletions are displayed as strike through text (i.e., ~~Strike~~)
 - IV. Paragraph 2 (term) on the face of the original STD 213 is amended to read July 1, 2004 through ~~June 30, 2007~~ **June 30, 2009**. All references to the former contract term of July 1, 2004 through June 30, 2007 in any exhibit incorporated into this agreement is hereinafter deemed to read July 1, 2004 through June 20, 2009.
 - V. Paragraph 3 (maximum amount payable) on the face of the original STD 213 is increased by \$3,000,000.00 and is amended to read: ~~\$4,100,000.00 (Four Million One Hundred Thousand Dollars)~~ **\$7,100,000.00 (Seven Million One Hundred Thousand Dollars)**.

(Continued on next page)

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) El Dorado County Human Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Helen Baumann, Chairperson of the Board		
ADDRESS 937 Spring Street Placerville, CA 95667		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Health Services		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Allan Chinn, Chief, Contracts and Purchasing Services Section		
ADDRESS 1501 Capitol Avenue, Room 71.2101, MS 1403, P.O. Box 997413 Sacramento, CA 95899-7413		

VI. Paragraph 4 (incorporated exhibits) on the face of the original STD 213 is amended to add the following exhibit:

Exhibit G – HIPAA Business Associate Addendum 7 pages

VII. Provision 4 (Amounts Payable), Paragraph A, of Exhibit B - Budget Detail and Payment Provisions is amended to read:

4. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

- 1) \$1,300,000.00 for the budget period of 07/01/04 through 06/30/05
- 2) \$1,300,000.00 for the budget period of 07/01/05 through 06/30/06
- 3) \$1,500,000.00 for the budget period of 07/01/06 through 06/30/07
- 4) \$1,500,000.00 for the budget period of 07/01/07 through 06/30/08**
- 5) \$1,500,000.00 for the budget period of 07/01/08 through 06/30/09**

VIII. Exhibit E entitled "Additional Provisions" is hereby amended to add Article VII-Additional Incorporated Exhibits as follows:

Article VII – Additional Incorporated Exhibits

A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by DHS, as required by program directives. DHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. DHS will maintain on file, all documents referenced herein and any subsequent updates.

1) DHS Health Administrative Manual Section 6-1000

IX. All other terms and conditions shall remain the same.

Exhibit G
HIPAA Business Associate Addendum

Recitals – STANDARD RISK

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations:”).
- B. The California Department of Health Services (“CDHS”) wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
- C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate’s organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

Permitted Uses and Disclosures of PHI by Business Associate

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDHS.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities

Exhibit G
HIPAA Business Associate Addendum

of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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 Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDHS.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDHS at the end of the contract period. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
 - 2) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDHS.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

Exhibit G
HIPAA Business Associate Addendum

- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDHS and Individuals.** To provide access as CDHS may require, and in the time and manner designated by CDHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDHS (or, as directed by CDHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDHS health plans; or those records used to make decisions about individuals on behalf of CDHS. Business Associate shall use the forms and processes developed by CDHS for this purpose and shall respond to requests for access to records transmitted by CDHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDHS, or created or received by Business Associate on behalf of CDHS, available to CDHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDHS or by the Secretary, for purposes of determining CDHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDHS or (at the direction of CDHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDHS *immediately by telephone call plus email or fax* upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or *within 24 hours by email or fax* of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDHS contract manager, the CDHS Privacy Officer and the CDHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDHS ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

Exhibit G
HIPAA Business Associate Addendum

- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDHS contract manager(s), the CDHS Privacy Officer, and the CDHS Information Security Officer of:
- i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDHS Contact Information.** To direct communications to the above referenced CDHS staff, the Contractor shall initiate contact as indicated herein. CDHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

CDHS Contract Manager	CDHS Privacy Officer	CDHS Information Security Officer
See Provision 4 of Exhibit A for Contract Manager information	Privacy Officer c/o Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhs.ca.gov Telephone: (916) 445-4646	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

Exhibit G
HIPAA Business Associate Addendum

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

3. Obligations of CDHS

CDHS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:
<http://www.dhs.ca.gov/privacyoffice>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDHS.

4. Audits, Inspection and Enforcement

From time to time, CDHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDHS Privacy Officer in writing. The fact that CDHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDHS's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:

Exhibit G
HIPAA Business Associate Addendum

- 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDHS;
- 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
- 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. *Judicial or Administrative Proceedings.*** Business Associate will notify CDHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDHS (or created or received by Business Associate on behalf of CDHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. *Disclaimer.*** CDHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDHS's request, Business Associate agrees to promptly enter into negotiations with CDHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDHS may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

Exhibit G
HIPAA Business Associate Addendum

- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDHS at no cost to CDHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.