

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

776



FROM: Department of Public Health (DOPH)

SUBMITTAL DATE:
August 15, 2012

SUBJECT: Approve the Agreement with California Department of Health Services (CDHS) for Contracted County Medi-Cal Targeted Case Management (TCM) Allowable for Federal Financial Participation (FFP), Contract #33-0713A2.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the Agreement for fiscal years July 1, 2007 through June 30, 2013, with the CDHS as it pertains to Medi-Cal Targeted Case Management (TCM) allowable for FFP; and
- 2) That the Chairman of the Board of Supervisors sign four (4) originals of the Agreement.

FORM APPROVED COUNTY COUNSEL
BY: [Signature] DATE: 8/15/12

BACKGROUND: (Continued on Page 2)

YS

Susan D. Harrington
Susan Harrington, Director
Department of Public Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 1,400,000	In Current Year Budget:	YES
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	NO
	Annual Net County Cost:	\$ 0	For Fiscal Year:	12/13

SOURCE OF FUNDS: 100% Federal Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Debra Courmoyer*
Debra Courmoyer

County Executive Office Signature

Consent Policy
Consent Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley
Nays: None
Absent: Stone
Date: August 28, 2012
xc: Public Health

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: 3.22 of 06/28/11; 3.7 of 5/15/07; 3.3 of 6/15/04
District: All/All
ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD
Agenda Number:

3.76

Dept Recomm.:
Per Exec. Ofc.:

Subject: Approve the Agreement with California Department of Health Services (CDHS) for Contracted County Medi-Cal Targeted Case Management (TCM) Allowable for Federal Financial Participation (FFP), Contract #33-0713A2.

BACKGROUND:

On July 21, 1992, the State's Board authorized the Director of the Health Services Agency to coordinate SB-910 implementation activities for the County of Riverside, of which Medi-Cal Targeted Case Management is a part. In order to continue participation in the Medi-Cal TCM program, a new agreement with the CDHS must be signed.

This agreement will continue to allow the County of Riverside to receive Federal Financial Participation for TCM, via the State's administrative plan for eligible clients. The Department of Public Health is acting as the single County agency through which claims will be made under this Agreement.

The agency is anticipating annual funding of \$1,400,000 from this contract. No budget adjustment is required as it is already in the agency budget.

Additionally, annual TCM funds of \$700,000 are distributed to Public Guardian, Office on Aging and Riverside County Regional Medical Center (RCRMC), also participating in the program.

**MEDI-CAL TARGETED CASE MANAGEMENT
PROVIDER PARTICIPATION AGREEMENT**

Name of Provider: County of Riverside

Provider # 33-0713A2

ARTICLE I – STATEMENT OF INTENT

The purpose of this Agreement is to set out responsibilities of the qualified local governmental agency, hereinafter referred to as Provider, and Department of Health Care Services (DHCS), hereinafter referred to as the State or DHCS, relative to the provision of Targeted Case Management (TCM) services to eligible Medi-Cal beneficiaries. The mutual objectives of the Provider and the State are defined in 42 U.S.C., Section 1396n (g) (2).

ARTICLE II – TERM OF AGREEMENT

- A. The term of this Agreement is from July 1, 2007 through June 30, 2013.
- B. Either party may terminate this Agreement, without cause, by delivering written notice of termination to the other party at least (30) days prior to the effective date of termination.

ARTICLE III – TCM PROVIDER RESPONSIBILITIES

By entering into this Agreement, the Provider agrees to:

- A. Comply with 42 U.S.C., Section 1396 et seq., 42 Code of Federal Regulations (CFR) Part 400 et seq., and 45 CFR Part 95, the California Medicaid State Plan, California Welfare and Institutions (W&I) Code, Division 9, Part 3, Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14200), and Title 22 California Code of Regulations (CCR), Division 3 (commencing with Section 50000), all as periodically amended; 42 CFR Sections 413.20, 413.24, 433.32, 433.51, all as periodically amended, State issued policy directives, including Policy and Procedure Letters, as periodically amended, and by Federal Office of Management and Budget (OMB) Circular A-87, as periodically amended.
- B. Ensure all applicable State and federal requirements, as identified in A, are met in rendering services under this Agreement. It is understood and agreed that failure by the Provider to ensure all applicable State and federal requirements are met in

AUG 28 2012 3,76

rendering TCM services under this Agreement shall be sufficient cause for the State to deny or recoup payments to the Provider and/or to terminate this Agreement.

C. Expense Allowability / Fiscal Documentation:

- 1) Invoices, received from a Provider and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- 2) Provider shall maintain for review and audit and supply to the State, upon request, auditable documentation of all amounts claimed (encounters, expenses, revenues, etc.) pursuant to this Agreement to permit a determination of expense allowability.
- 3) If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records or backup documentation is nonexistent or inadequate, according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

D. By November 1 of each year:

- 1) Submit an annual DHCS Cost Report for the prior fiscal year ending June 30, to:

Regular U.S. Postal Service Mail:

Department of Health Care Services
Audits & Investigations
Audit Review & Analysis Section
1500 Capitol Avenue, MS 2109
PO Box 997417
Sacramento, CA 95899-7417

Overnight or Express Mail:

Department of Health Care Services
Audits & Investigations
Audit Review & Analysis Section
1500 Capitol Avenue, MS 2109
Sacramento, CA 95814

- 2) Email the prescribed electronic copies of the above annual DHCS Cost Report (DHCS Cost Report and Time Survey templates) to:

dhsaitcm@dhs.ca.gov

- E. Accept as payment in full, reimbursements received for TCM services pursuant to this Agreement.
- F. Comply with confidentiality requirements as specified in 42 U.S.C., Section 1396a (a) (7), 42 CFR, Section 431.300, W&I Code Section 14100.2 and 14132.47, and Title 22, CCR, Section 51009.
- G. Submit TCM service claims in accordance with 42 CFR 433.51, Title 22, CCR, Sections 51185, 51271, 51272, 51351, 51351.1, 51365, 51535.7, and 51492.

- H. Retain all necessary records for a minimum of three (3) years after the end of the quarter in which the expenditures were incurred for the TCM service. If an audit is in progress, all records relevant to the audit shall be retained until the completion of the audit or the final resolution of all audit exceptions, deferrals and/or disallowances. Records must fully disclose the name and Medi-Cal number or beneficiary identification code (BIC) of the person receiving the TCM service, the name of the provider agency and person providing the service, the date and place of service delivery, and the nature and extent of the TCM service provided. The Provider shall furnish said records and any other information regarding expenditures and revenues for providing TCM services, upon request, to the State and to the federal government.
- I. Be responsible for the acts or omissions of its employees and/or subcontractors.
- J. The conviction of an employee or subcontractor of the Provider, or of an employee of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal beneficiary or abuse of the Medi-Cal program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a convicted individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
- K. Exclusion after conviction shall result regardless of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
- L. Suspension or exclusion of an employee or a subcontractor, or of an employee of a subcontractor, from participation in the Medi-Cal Program, the Medicaid program or the Medicare Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a suspended or excluded individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
- M. Revocation, suspension, or restriction of the license, certificate, or registration of any employee, subcontractor, or employee of a subcontractor, shall result in exclusion from the Medi-Cal TCM Program, when such license, certificate, or registration is required for the provision of Medi-Cal TCM services. Failure to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted from the provision of Medi-Cal TCM services may constitute a breach of this Agreement.
- N. Negotiate in good faith and execute a Memorandum of Understanding (MOU), when applicable, with Medi-Cal Managed Care Health Plan(s) serving beneficiaries in the same county as the TCM provider. This MOU must define the respective responsibilities of TCM and Medi-Cal Managed Care Health Plans in order to prevent duplication of services when beneficiaries are served by both TCM and Medi-Cal Managed Care Health Plan providers.

To the extent the Provider does not execute this MOU within four (4) months after the effective date of this Agreement; the Provider shall submit documentation substantiating its good faith efforts to enter into this MOU. Until such time as this MOU is executed, Provider shall submit monthly reports to DHCS documenting its continuing good faith efforts to execute this MOU and the justifications why this MOU has not been executed.

Incorporated Exhibits

The following exhibits are hereby incorporated herein and made a part of this Agreement by this reference.

Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement – 5 pages).

General Term and Conditions (GTC 306) – (Not attached - view this exhibit at <http://www.ols.dgs.ca.gov/Standard+Language>).

HIPAA Business Associate Addendum – (Attached hereto as part of this agreement - 7 pages).

ARTICLE IV – STATE RESPONSIBILITIES

By entering into this Agreement, the State agrees to:

- A. Provide timely review of the TCM Cost Report and TCM invoices. The approved invoices shall then be scheduled for payment.
- B. Make available to the Provider training and technical support to enable the Provider to identify costs related to these activities, proper claim documentation and billing procedures. The State will provide oversight to ensure compliance with the W&I Code Section 14132.44 and all other governing federal and State laws and regulations.

Project Representatives

A. The project representatives during the term of this agreement will be:

<p>Department of Health Care Services Daniel Dias, Chief Targeted Case Management Unit Telephone: (916) 552-9056 Fax: (916) 324-0738 Email: Daniel.Dias@dhcs.ca.gov</p>	<p>Provider Name: Telephone: Fax: Email:</p>
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B. Direct all inquiries to:

<p>Department of Health Care Services Administrative Claiming Local & Schools Section Targeted Case Management Unit Attention: Denise Boyd Suite 71.4001, MS 4603 P.O. Box 997436 Sacramento, CA, 95899-7417 Telephone: (916) 552-9274 Fax: (916) 324-0738 Email: Denise.Boyd@dhcs.ca.gov</p>	<p>Provider Telephone: Fax: Email:</p>
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

ARTICLE V – GENERAL PROVISIONS

- A. This document constitutes the entire agreement between the parties. Any condition, provision, agreement or understanding not stated in this Agreement shall not affect any rights, duties or privileges in connection with this Agreement.
- B. The term “days” as used in this Agreement shall mean calendar days unless specified otherwise.

- C. The State shall have the right to access, examine, monitor and audit all records, documents, conditions and activities of the Provider and its subcontractor related to the TCM services provided pursuant to this Agreement.
- D. No covenant, condition, duty, obligation, or undertaking made a part of this Agreement shall be waived except by amendment of the Agreement by the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, duties, obligations, or undertakings is complete, the other party shall have the right to invoke any remedy available under this Agreement, or under law, notwithstanding such forbearance or indulgence.
- E. None of the provisions of this Agreement are or shall be construed as for the benefit of, or enforceable by, any person not a party to this Agreement.

Department Reorganization

- A. The parties to this agreement acknowledge that the California Public Health Act of 2006 (Act; Senate Bill 162, Chapter 241, Statutes 2006), effective July 1, 2007, establishes the California Department of Public Health (CDPH) and renames the California Department of Health Services (DHCS) as the California Department of Health Care Services (DHCS).
- B. Agreements approved before July 1, 2007 shall continue in full force and effect, with the renamed DHCS and the newly formed CDPH assuming all of the rights, obligations, liabilities, and duties of the former DHCS and any of its predecessors as relates to the duties, powers, purposes, responsibilities, and jurisdiction vested by the Act in each of the resulting departments.
- C. Agreements approved on or after July 1, 2007 that refer to DHCS shall be interpreted to refer to the renamed DHCS or the newly formed CDPH, as appropriate under the terms of the agreement. DHCS or CDPH, as appropriate under the terms of the agreement, shall assume all of the rights, obligations, liabilities, and duties of the former DHCS and any of its predecessors as relates to the duties, powers, purposes, responsibilities, and jurisdiction vested by the Act in each of the resulting departments. The assumption by each department shall not in any way affect the rights of the parties to the agreement.
- D. As a result of the departmental reorganization discussed above, various DHCS programs may experience a physical relocation, change in personnel, change in procedures, or other effect. If this agreement is impacted by SB 162, DHCS reserves the right, without initiation of a formal amendment, to issue one or more written notices

to the Contractor supplying alternate information and/or instructions regarding invoicing, document addressing, personnel changes, and/or other procedural changes.

Amendment Process

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through a process that is mutually agreeable to both the State and the Provider. No amendment will be considered binding on either party until it is approved by the State.

Avoidance of Conflicts of Interest by the Provider

- A. The State intends to avoid any real or apparent conflict of interest on the part of the Provider, subcontractors, or employees, officers and directors of the Provider or subcontractors. Thus, the State reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Provider to submit additional information or a plan for resolving the conflict, subject to the State's review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - 1) An instance where the Provider or any of its subcontractors, or any employee, officer, or director of the Provider or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
 - 2) An instance where the Provider's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If the State is or becomes aware of a known or suspected conflict of interest, the Provider will be given an opportunity to submit additional information or to resolve the conflict. A Provider with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by the State to provide complete information

regarding the suspected conflict. If a conflict of interest is determined to exist by the State and cannot be resolved to the satisfaction of the State, the conflict will be grounds for terminating the contract. The State may, at its discretion upon receipt of a written request from the Provider, authorize an extension of the timeline indicated herein.

ARTICLE VI – FISCAL PROVISIONS

Reimbursement under this Agreement shall be made in the following manner:

- A. Upon the Provider's compliance with all provisions pursuant to W&I Code Section 14132.44, Title 22 CCR, Division 3 (commencing with Section 50000), and this agreement, and upon the submission of a Summary Invoice, based on valid and substantiated information, the State agrees to process the Summary Invoice for reimbursement.
- B. Transfer of funds is contingent upon the availability of federal financial participation (FFP).
- C. Provider shall certify the certified public expenditure (CPE) from the Provider's General Fund, or from any other funds allowed under federal law and regulation, for Title XIX funds claimed for TCM performed pursuant to W&I Code Section 14132.44. The State shall deny payment of any invoice submitted under this agreement, if it determines that the certification is not adequately supported for purposes of FFP. Expenditures certified for TCM costs shall not duplicate, in whole or in part, claims made for the costs of direct patient services. The following certification statement shall be made on each Summary Invoice submitted to the State for payment for the performance of TCM:

"I certify under penalty of perjury that the information provided on this invoice is true correct, based on actual Targeted Case Management encounters for the period claimed, and that the funds/contributions expended, as necessary for Federal Matching funds pursuant to the requirement of 42 CFR 433.51, are for allowable Targeted Case Management activities and that these claimed encounters have not previously been nor shall not subsequently be claimed in this or any other program. I have notice that this information is to be used for filing of a claim with Federal Government for Federal funds and that knowing misrepresentation constitutes violation of the Federal False Claims Act."

Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Provider or to furnish any other

considerations under this Agreement and Provider shall not be obligated to perform any provisions of this Agreement.

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement, with no liability occurring to the State, or offer an agreement amendment to Provider to reflect the reduced amount.

ARTICLE VII – LIMITATION OF STATE LIABILITY

- A. Notwithstanding any other provision of this Agreement, the State shall be held harmless from any federal audit disallowance and interest resulting from payments made by the federal Medicaid program as reimbursement for claims providing TCM services pursuant to W&I Code Section 14132.44, for the disallowed claim, less the amounts already remitted to the State pursuant to W & I Code Section 14132.44 (m).
- B. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services, the State shall recoup from the Provider, upon written notice, amounts equal to the amount of the disallowance and interest in that fiscal year for the disallowed claim. All subsequent claims submitted to the State applicable to any previously disallowed claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved, less the amounts already remitted to the State pursuant to W & I Code Section 14132.44 (m).
- C. Notwithstanding paragraphs A and B above, to the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services provided by a nongovernmental entity under contract with, and on behalf of, the Provider, the State shall be held harmless by the Provider for one-hundred percent (100%) of the amount of any such federal audit disallowance and interest, for the disallowed claim, less the amounts already remitted to the State pursuant to W & I Code Section 14132.44 (m).

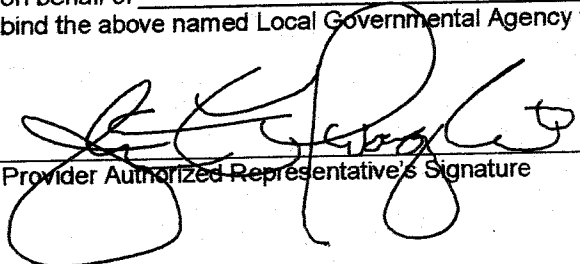
Recovery of Overpayments

- A. Provider agrees that when it is established upon audit that an overpayment has been made, the Department shall recover such overpayment in accordance with Title 22, CCR, Section 51047.
- B. The State reserves the right to select the method to be employed for the recovery of an overpayment.

C. Overpayments may be assessed interest charges, and may be assessed penalties, in accordance with W&I Code, Sections 14171(h) and 14171.5, respectively.

ARTICLE VIII - AGREEMENT EXECUTION

The undersigned hereby warrants that s/he has the requisite authority to enter into this Agreement on behalf of _____ (Local Government Agency) and thereby bind the above named Local Governmental Agency to the terms and conditions of the same.



Provider Authorized Representative's Signature

John F. Tavaglione

Print Name

Chairman, Board of Supervisors

Title

4065 County Circle Drive, Riverside, CA 92503

Address

AUG 28 2012

Date

California Department of Health Care Services
Authorized Representative's Signature

Geri Baucom

Print Name

Chief, Administrative Claiming Local and Schools Section

Title

California Department of Health Services

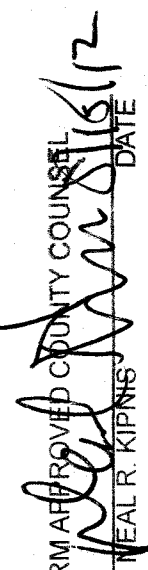
Name of Department

1501 Capitol Avenue, MS4603
Sacramento, CA 95899-7413

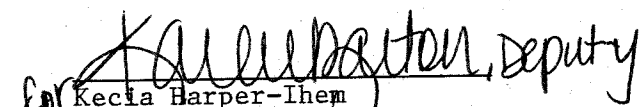
Address

Date

FISCAL YEARS:
2007/2008
2008/2009
2009/2010
2010/2011
2011/2012
2012/2013

FORM APPROVED COUNTY COUNSEL
BY:  DATE: 8/16/12

ATTEST:



Kecia Harper-Them
Clerk of the Board

Date: AUG 28 2012

Special Terms and Conditions

(Only applicable to federally funded Medi-Cal Targeted Case Management Provider Participation Agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract" has the same meaning as "agreement" and the term "Contractor" has the same meaning as "Provider".

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements
2. Subcontract Requirements
3. Audit and Record Retention
4. Site Inspection
5. Air or Water Pollution Requirements
6. Confidentiality of Information
7. Dispute Resolution Process
8. Debarment and Suspension Certification
9. Officials Not to Benefit
10. HIPAA Business Associate Addendum

Federal Equal Opportunity Requirements

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

1. Subcontract Requirements

- a. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for, inspection, or audit.
- b. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- c. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- d. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement and this exhibit.
- e. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, his/her records (1) for a period of three years after termination of (Agreement Number) and final payment from CDHS to Contractor, and (2) for such longer period, if any, as is required by applicable statute, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."*
- f. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

2. Audit and Record Retention

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in

any subcontract related to performance of this agreement. (GC 8546.7,

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.

(1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

- e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

3. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

5. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

6. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or

person.

- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

7. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.
- f. Grievances regarding processing or payment of claims for services rendered shall be processed in accordance with W&I Code section 14104.5.

8 Debarment and Suspension Certification

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

9. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

10. 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:

I. Permitted Uses and Disclosures of PHI by Business Associate

(1) **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.

(2) **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:

A. **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 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.

B. **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.

II. Responsibilities of Business Associate

Business Associate agrees:

- (1) **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- (2) **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.
- (3) **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:
 - A. Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
 - B. 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.
- (4) **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.
- (5) **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.
- (6) **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.
- (7) **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.

- (8) **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.
- (9) **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.
- (10) **Notification of Breach.** During the term of this Agreement:
- A. **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.
- B. **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.
- C. **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.
- D. **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.

- E. **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 the Agreement 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

- (11) **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:

- A. 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.
- B. 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.
- C. Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

III. Obligations of CDHS

CDHS agrees to:

- (1) **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>.
- (2) **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.
- (3) **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.
- (4) **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.

IV. 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:

- (1) Failure to detect or
- (2) 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.

V. Termination

- (1) **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:
 - A. 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;
 - B. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - C. If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (2) **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.
- (3) **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.

VI. Miscellaneous Provisions

- (1) **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.
- (2) **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:

- A. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
 - B. 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.
- (3) **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.
- (4) **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.
- (5) **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.
- (6) **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.
- (7) **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.
- (8) **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.

