Attachment G

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

BUSINESS ASSOCIATE AGREEMENT

Health Insurance Portability and Accountability Act (HIPAA) Compliance

This HIPAA Business Agreement ("Agreement") by and between Pennsylvania Department of Community and Economic Development ("DCED") as a Covered Entity (CE") and the Business Associate ("Associate") of the CE and is effective as of the date indicated herein.

RECITALS

A. WHEREAS, CE wishes to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").
B. WHEREAS, CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and the regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
C. WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations as the same may be amended from time to time.

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

1. **Definitions**
   a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including but not limited to, 45 CFR§ 160.103.
   b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Privacy regulations, including but not limited to, 45 CFR§ 160.103.
   c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of any individual, and (ii) 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, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations.
   d. "Individual" means the person who is the subject of the CE's PHI and shall include the individual's personal representative.

2. **Obligations of Associate**
   a. **Permitted Uses and Disclosures**. Associate may use and/or disclose PHI received by Associate pursuant to this Agreement ("CE's PHI") solely in accordance with the specification set forth in Exhibit A, which is incorporated herein by reference. In the event of any conflict between this Agreement and Exhibit A, this HIPAA Policies and Procedures 90 Agreement shall control.
   The parties acknowledge that the uses and disclosures of the Associate involve treatment; payment or health care operations and that such uses and disclosures are exempt from accounting rules.
   b. **Nondisclosure**. Associate shall not use or further disclose CE's PHI other than as permitted or required by this Agreement or as required by law.

c. **Safeguards**. Associate shall use appropriate safeguards to prevent use or disclosure of CE's PHI otherwise than as provided for by this Agreement. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.
d. **Reporting of Disclosures**. Associate shall report to CE any use or disclosure of CE's PHI other than as provided for by this Agreement of which Associate becomes aware.
e. **Associates Agents**. Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) CE, agree to the same restrictions and conditions that apply to Associate with respect to such PHI.
f. **Availability of Information to CE**. Associate shall make available to CE or an Individual such information as CE may require fulfilling CE's obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations.
g. **Amendment of PHI**. Associate shall make CE's PHI available to CE or to an Individual as CE may require fulfilling CE's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, and Associate shall, as directed by CE, incorporate any amendments to CE's PHI into copies of such PHI maintained by Associate.
h. **Internal Practices**. Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from CE (or created or received by Associate on behalf of CE) available to the Secretary of the U.S. Department of Health and Human Services, upon reasonable notice, for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations.
i. **Duty to Mitigate**. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of PHI by Associate in violation of the requirements of this Agreement.
j. **Notification of Breach**. During the term of this Agreement, Associate shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use of disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

3. **Obligations to CE**
a. Compliance with HIPAA Regulations. CE shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to associate pursuant to this Agreement, in accordance with the standards and requirements of HIPAA Regulations, until such PHI is received by associate. Any specifications defining the point of receipt of CE's PHI by Associate shall be set forth in Exhibit A.
b. **Information Provided**. CE shall provide Associate with its Notice of Privacy Practices and make available its privacy policies and practices CE has developed for purposes of HIPAA compliance. CE shall provide Associate with any changes in, or revocation of, permission by the Individual to use or disclose PHI, including those restrictions on disclosures that CE has agreed to, of such changes affect Associate's permitted or required uses or disclosures.

c. **Permissible Requests**. CE shall not request Associate to use or disclose PHI in any manner that would be impermissible under HIPAA if done by CE. An included exception would be if the Associate would use or disclose PHI for data aggregation, or management and administration activities of the Associate.

4. **Audits, Inspections and Enforcement**.
From time to time, upon reasonable notice, upon a reasonable determination by CE that Associate has breached this Agreement, CE may inspect the facilities, systems, books and records of Associate to monitor compliance with this Agreement. Associate shall promptly remedy any violation of any term of this Agreement and shall certify the same to CE in writing. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems and procedures does not relieve Associate of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or waiver of CE's enforcement rights under this Agreement.

5. **Term and Termination.**
   a. **Term**. The Term of this Addendum shall be effective as of **January 1, 2006**, and shall terminate when all of the Protected Health Information provided by the CE to Associate, or created or received by Associate on behalf of CE, is destroyed or returned to CE, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in the Section.
   b. **Material Breach**. A breach by Associate of any provision of this Agreement, as determined by CE, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by CE.
   c. **Reasonable Steps to Cure Breach**. If CE knows of a pattern of activity or obligations under the provisions of this Agreement or another arrangement and does not terminate this Agreement pursuant to the Section 5(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall HIPAA Policies and Procedures 92 either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services.
   d. **Judicial or Administrative Proceedings**. Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party 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 party has been joined.
   e. **Effect of Termination**. (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Associate shall return or destroy all Protected Health Information received from CE, or created or received by Associate on behalf of CE. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Associate. Associate shall retain no copies of the Protected Health Information. (2) In the event that Associate determines that returning or destroying the Protected Health Information is infeasible, Associate shall provide to CE notification of the conditions that make return or destruction infeasible. Upon written acknowledgement by CE that return or destruction of Protected Health information is infeasible, Associate shall extend the protections of this Agreement to such

Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Associate maintains such Protected Health Information.

6. **Indemnification**.
Each party will indemnify, hold harmless and defend the other party to this Agreement from and against any and all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with (i) any misrepresentation, breach or warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.

7. **Disclaimer**. CE makes no warranty or representation that compliance by Associate with this Agreement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes or that any information in Associate's possession or control, or transmitted or received by Associate, is or will be secure from unauthorized use of disclosure. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

8. **Certification**. To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, protocols, and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPPA Regulations or this Agreement.

9. **Amendment**.
   a. **Amendment to Comply with Law**. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement 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 confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon CE's request, Associate agrees to promptly enter into negotiations with CE concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. CE may terminate this Agreement upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by CE pursuant to this Section or (ii) Associate does not enter into amendment to this Agreement providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPPA Regulations.

   b. **Amendment of Exhibit A**. Exhibit A may be modified or amended by mutual agreement of the parties at any time without amendment of this Agreement.

10. **Assistance in Litigation or Administrative Proceedings**. Associate shall make itself, and any subcontractors, employees or agents, assisting Associate in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

11. **No Third Party Beneficiaries**. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

12. **Effect on Agreement**. Except as specifically required to implement the purposes of this Agreement, or to the extended inconsistent with this Agreement, all other terms to the Agreement shall remain in force and effect.

13. **Survival**. The respective rights and obligations of Associate under Section 5(e) of this Agreement shall survive termination of this Agreement.

14. **Interpretation**. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HIPAA Regulations and applicable state laws.

    The parties agree that any ambiguity in this Agreement shall be resolved in favor of means that complies and is consistent with HIPAA and the HIPAA Regulations.

Exhibit A

PERMITTED USES AND DISCLOSURES OF THE COUNTY'S PHI

1. Purpose of Disclosure of PHI by DCED to Business Associate.
2. Information to be Disclosed by DCED to Business Associate.
3. Use to Effectuate Purpose of Agreement: Business Associate may use and disclose PHI to the extent contemplated by the Agreement or as required by law.
4. Use for Management and Administration: Business Associate may use PHI received by Business Associate in its capacity as a Business Associate of DCED for the proper management and administration of Business Associate, if such disclosure is necessary (i) for the proper management and administration of Business Associate or (ii) to carry out the legal responsibilities of Business Associate.
5. Disclosure for Management and Administration: Business Associate may disclose PHI received by Business Associate in its capacity as a Business Associate of DCED for the proper management and administration of Business Associate if (i) the disclosure is required by law or (ii) Business Associate (a) obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.
6. Other Permitted Uses and Disclosures of DCED's PHI by Business Associate (Must Comply with HIPAA).
7. Uses or Disclosures Requiring Prior Authorization: Business Associate agrees and understands that, except as expressly provided in this Exhibit A, it may not use or disclose PHI to any other person or entity without first having received a HIPAA compliant authorization in the form attached hereto. Business Associate agrees to retain a copy of each authorization, and the information provided in response to the authorization, for six years and to provide the County with copies of said documents upon request.
8. Subcontractors that the Business Associate may use to perform any of its obligations under the Agreement:
9. Data Aggregation Services: For purposes of this Section, "Data Aggregation" means, with respect to DCED's PHI, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities.

Business Associate will provide the following Data Aggregation Services to DCED: **Not Applicable**

10. Use of Standard Transactions and Code Sets: Business Associate understands and agrees that it is required to comply with the HIPAA Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162 (the "HIPAA law"). The HIPAA law currently requires covered entities, such as DCED, and all of its business associates to conduct transactions covered by the HIPAA law as "standard transactions" (as that quoted term is defined and understood under the HIPAA law) using defined medical data code sets. There may be additional transactions added from time to time and/or the code sets mandated in those transactions may change. Business Associate agrees that, regardless of whether this Exhibit A is amended to include

specific transactions or code sets, it will comply with the HIPAA law, as it may be amended from time to time. Business Associate also agrees that it will contractually require any agent or subcontractor that it uses to meet the requirements of this Agreement to comply with the HIPAA law.

Business Associate agrees that it will not:

a. Change the definition, data condition or use of a data element or segment in a standard.
b. Add any data elements or segments to the maximum defined data set.
c. Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specifications.
d. Change the meaning or intent of the standard's implementation specification(s).

11. Additional Terms and/or Restrictions on the Use of DCED's PHI: [For example, if the Business Associate is also a Business Associate of another specific covered entity and DCED determines it is important to have safeguards specifically related to that Covered Entity; or particular instructions for Business Associates that use intermediaries, etc.]