SECTION 9
ATTACHMENT J
BUSINESS ASSOCIATE AGREEMENT

Arizona Department of Economic Security
Health Insurance Portability & Accountability Act of 1996 - HIPAA
Business Associate Agreement

The Arizona Department of Economic Security (DES) or on behalf of a DES Division or Program ("DES Covered Component"), and undersigned Business Associate hereby enter into this Business Associate Agreement ("BAA" or "Agreement").

This BAA has the same effective date as the contract, Intergovernmental Agreement, Memorandum of Understanding or Interagency Service Agreement to which it is appended ("Related Contract" or "Contract"). If there is no Related Contract, the effective date of this BAA is the date of the last signature to this Agreement. This Agreement supplements any Contract between a DES Covered Component and Business Associate which involves the disclosure of Protected Health Information ("PHI") as defined in HIPAA. In the event of conflicting terms or conditions, this Agreement's terms shall supersede the provisions of the Related Contract to which it is appended.

The DES Covered Component and Business Associate agree to comply with applicable Privacy and Security Standards of HIPAA, and with other applicable federal and state laws, in order to protect the privacy of PHI in any form and to safeguard the confidentiality, integrity, and availability of any Electronic PHI ("ePHI') related to this Agreement.

1.0. <u>DEFINITIONS.</u> Capitalized terms not otherwise defined in this Agreement shall have the same meanings as those terms in the Privacy Rule.

1.1 Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g). P

1.2 Privacy Rule. "Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.

1.3 Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R §160.103, limited to the information created or received by Business Associate from or on behalf of the DES Covered Component.

1.4 Required By Law. "Required By Law" shall have the same meaning as the term 'required by law" in 45 C.F.R. §164.103.

1.5 Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

2.0 <u>PERMITTED USES AND DISCLOSURES OF PHI.</u> Business Associate will use and disclose PHI only for those purposes necessary to perform functions, activities, or services for, or on behalf of, the DES Covered Component as specified in the underlying Contract, this BAA , or as Required By Law. Any use or disclosure by Business Associate shall not violate applicable Privacy Rule provisions, the terms of this BAA, or DES Covered Component's policies and procedures for using or disclosing only the Minimum Necessary PHI.

2.1 **Business Activities of Business Associate.** Business Associate may use PHI for the necessary management and administration of Business Associate, or to carry out the legal responsibilities of the Business Associate if:

1. The disclosure is Required By Law; or
2. Business Associate obtains reasonable assurances from the person receiving the PHI that the person will:
   i. Maintain the confidentiality of the PHI;
   ii. Use or disclose the PHI only as Required By Law or for the purpose for which the PHI was disclosed to the person;
   iii. Notify the Business Associate when the person becomes aware that PHI confidentiality has been breached.

2.2. **Aggregation of PHI.** Business associate shall provide data aggregation services with regard to PHI created or received from or on behalf of the DES Covered Component, if requested to do so by the DES Covered Component. [45 C.F.R. §164.504(e)(2)(i)(B)]

2.3 **De-Identification of PHI.** Under 45 C.F.R. §164.502(d) (2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement. Business Associate may de-identify any and all PHI, provided

1. The de-identification conforms to the requirements of 45 C.F.R. §164.514(b)
2. Business Associate maintains the documentation required by 45 C.F.R. §164.514(b), and
3. Business Associate gives written assurance to DES Covered Component that Business Associate appropriately maintains the documentation required by 45 C.F.R. §164.514(b).

3.0. <u>OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.</u>

3.1. **Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use of disclosure of PHI other than as provided for in this BAA and any Contract to which it is appended, or as Required By Law.

3.2 **Reporting Impermissible Use or Disclosure and Security Incidents.** Business Associate agrees to promptly report to DES Covered Component any impermissible use or disclosure of PHI not provided for by this Agreement or the Related Contract of which it becomes aware.

3.3. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effects that are known to Business Associate of a use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this Agreement.

3.4 **Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, received from, or created or received by Business Associate on behalf of DES Covered Component, agrees to the same restrictions and conditions that apply to Business Associate through this

Agreement. Business Associate shall maintain an accounting of all disclosures of PHI to agents or subcontractors as provided in this Agreement.

3.5 **Personnel.** Business Associate shall appropriately inform all of its employees, agents, representatives, and members of its workforce ("Personnel"), whose services may be used to satisfy Business Associates obligations under this Agreement and the Related Contract, of the terms of this Agreement. Business Associate represents and warrants that the Personnel are under sufficient legal obligations to Business Associate for Business Associate to fully comply with the provisions of this Agreement.

3.6. **Access to PHI.** Business Associate agrees to provide access, at the request of the DES Covered Component and in the manner specified in writing, to PHI held by Business Associate in a Designated Record Set, to the DES Covered Component or as directed by the DES Covered Component to an Individual in order to meet the requirements under 45 C.F.R. §164.524 (Access of Individuals to PHI). If the requested PHI is stored off site, Business Associate shall make the PHI available to DES Covered Component within ten (10) business days of the DES written request, to allow DES Covered Component time to respond to a request for access by an Individual within sixty (60) calendar days.

3.6.1 If an Individual requests access to PHI directly from Business Associate which is in the possession of Business Associate because of a contractual relationship with DES, Business Associate shall first consult with the DES Covered Component's HIPAA Privacy Officer or the DES Privacy Officer. It may provide or deny access consistent with DES authorization and according to 45 C.F.R. §164.524, unless otherwise directed by the DES Covered Component or Required By Law. Business Associate shall notify the DES Covered Component of the actions it has taken and shall do so in writing within five (5) business days after the action.

3.7. **Amendment of PHI.** Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set within five (5) business days after Business Associate receives from the DES Covered Component instructions to amend PHI. Such instructions generally follow an Individual's request to the DES Covered Component to amend the Individual's PHI held by the DES Covered Component or its Business Associates in a Designated Record Set. If the DES Covered Component declines an Individual's request to amend that Individual's PHI, the DES Covered Component shall provide to its Business Associate, who shall promptly incorporate into the Individual's Designated Record Set, any statements of disagreement and/or rebuttals supplied by the Individual, as required by 45 C.F.R. § 164.526.

3.8. **Documentation of Disclosure.** Business Associate agrees to document all disclosures of PHI made by Business Associate and information related to such disclosures as would be required by DES Covered Component to respond to a request by an Individual for an accounting of disclosures of PHI according to 45 C.F.R. §164.528. At a minimum, the documentation related to Business Associate's disclosure of PHI shall include:

1.The date of disclosure;

2. The name of the PHI recipient and, if known, the address of the PHI recipient;
3. A brief description of the PHI disclosed; and
4. A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or instead of such statement, a copy of the written request for disclosure by the Secretary or under 45 C.F.R. §164.512.

3.9. **Accounting of Disclosures.** Within ten (10) business days after receipt of notice from the DES Covered Component to Business Associate that DES Covered Component has received a request for an accounting of disclosures of an Individual's PHI, Business Associate agrees to provide DES Covered Component with the disclosure information requested by the Individual and as required in paragraph C.8 above. If an individual requests an accounting of disclosures directly from Business Associate, Business Associate shall, within sixty (60) business days, provide or deny an accounting according to 45 C.F.R §164.528, unless otherwise directed by DES Covered Component Business Associate shall notify DES Covered Component of the action it has taken and shall do so in writing within five (5) business days after the action. The accounting of Disclosure shall include all PHI disclosures for the time period the Individual requested, but not for a date earlier that April 14, 2003. If Business Associate is unable to provide the accounting of Disclosure within the allowed time frame, Business Associate shall provide DES Covered Component with a written statement of the reason for delay and the date Business Associate will provide the accounting.

3.10. **Government Access to Records.** For the purpose of determining DES Covered Component compliance with the Privacy Rule, as well as Business Associate's compliance with this BAA, Business Associate agrees to make available to the DES Covered Component or its authorized agent, or to the Secretary, in the time and manner designated:

1. Business Associate's internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of DES Covered Component; and
2. All PHI received by Business Associate from DES Covered Component or created or received by Business Associate on behalf of DES Covered Component.

3.11. **Transaction Standards Regulation.** If Business Associate conducts in whole or part Standard Transactions for or on behalf of DES Covered Entity, Business Associate agrees to comply with the Electronic Data Transaction Standards and Code Sets, 45 C.F.R. Part 162 (I – R). Business Associate agrees to require any subcontractor or agent involved in conducting Standard Transactions for or on behalf of DES Covered Component, to comply with the Transaction Standards and Code Sets. Business Associate and its subcontractors or agents shall not engage in any practice or enter into any agreement related to conducting in whole or in part Standard Transactions for or on behalf of DES Covered Entity that:

1. Changes the definition, Data Condition, or use of a Data Element or Segment in a Standard Transaction;
2. Adds a-Data Element or Segments to the maximum defined Data Set;

3. Uses any code or Data Element that is marked "not used" in the Standard Transaction's implementation specification or that is not in the Standard Transaction's implementation specification; or
4. Changes the meaning or intent of the Standard transaction implementation specification.

3.12. **Retention of Records.** All records containing PHI created or received by Business Associate from or on behalf of the DES Covered Component will be retained for six years from the date of creation (e.g., PHI) or the date when it last was in effect (e.g., a policy or form), whichever is later.

3.13. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j) (1).

4.0 OBLIGATIONS OF DES COVERED ENTITY

4.1. **Notice of Privacy Practices** DES Covered Component shall notify Business Associate of any changes or limitation(s) in DES Covered Component's Notice of Privacy Practices according to 45 C.F.R. §164.520, to the extent that such changes or limitation(s) may effect Business Associate's use or disclosure of PHI.

4.2 **Changes in Permission by Individual.** DES Covered Component shall notify Business Associate of any changes in, or revocation of, an Individual's permission to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3 **Restriction on PHI.** DES Covered Entity shall notify Business Associate of any restriction on PHI uses and disclosures that DES Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's PHI use or disclosure.

4.4 **Permissible requests by DES Covered Component.** DES Covered Component shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the DES Covered Component.

5.0 TERM AND TERMINATION

5.1 **Term.** The term of this Agreement is specified on page one (1) of this BAA and shall terminate when all PHI provided by the DES Covered Component to Business Associate, or created or received by Business Associate on behalf of DES Covered Component, is destroyed or returned to DES Covered Component. If it is not feasible for Business Associate to return to the DES Covered Component or destroy all PHI when this Agreement terminates under the Contract or is terminated early, protections agreed to by Business Associate are extended to such information, whether PHI is held or controlled by Business Associate or its agents or subcontractors.

5.2 **Effect of Termination.**

1. Except as provided in subparagraph (c) of this paragraph, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DES Covered Component, or created or received by Business Associate on behalf of DES Covered Component.
2. This provision shall apply to PHI in the possession or under the control of subcontractors or agents of Business Associate. Business Associate and its subcontractors and agents shall retain no copies or data repositories of any type of returned or destroyed PHI unless ordered to do so by a court of law.
3. If Business Associate determines that returning or destroying PHI is not feasible, Business Associate shall provide to DES Covered Component notification of the conditions making the return or destruction not feasible. Business Associate shall extend the protections of this Agreement to the PHI and shall limit further uses and disclosures of the PHI to the purpose that make the return or destruction not feasible, for so long as Business Associate maintains the PHI. If it is not feasible for Business Associate to recover from a subcontractor or agent any PHI, Business Associate shall provide a written explanation to DES Covered Entity. Business Associate shall require the subcontractor or agent to agree:
   i. To extend the protections of this Agreement to the PHI in the possession of the subcontractor or agent; and
   ii. To limit further uses or disclosures of the PHI to the purpose that makes the return or destruction not feasible, for so long as the subcontractor or agent maintains the PHI.

5.3 **Termination for Cause.** Upon DES Covered Component's knowledge of a material breach by Business Associate of the terms of this Agreement, DES Covered Component shall take one or more of the following actions:

1. Provide an opportunity for Business Associate to cure the breach within a specified timeframe;
2. Terminate this Agreement and the underlying contract if Business Associate does not cure the breach or end the violation within the time specified by DES Covered Component, or if a cure of the breach is not possible;
3. Immediately terminate this Agreement and the underlying contract; or
4. Report the violation to the Secretary, if neither termination nor cure is feasible.

6.0 MISCELLANEOUS

6.1 **HIPAA Reference**. A reference in this Agreement to HIPAA or the Privacy Rule means the regulation as in effect on the effective date or as subsequently amended, and for which compliance is required.

6.2. **Amendment**. The parties agree to take the action necessary to amend this Agreement from time to time so that DES Covered Component may comply with the requirements of HIPAA, court decisions and any regulatory changes.

6.3. **Effect on Service Agreement(s)**. Except as specifically required to implement the purposes of this Agreement, or to the extent not consistent with this Agreement, all provisions of the underlying Service Agreement(s) shall remain in force and effect.

6.4 **Interpretation**. Any ambiguity in this Agreement shall be resolved to permit DES Covered Component to comply with the Privacy Rule.

Contractor hereby acknowledges receipt and acceptance of this HIPAA Business Associate Agreement and that a signed copy must be filed with the DES Procurement Office. _____ Signature Date _____ Printed Name _____ Title _____ Name of Contractor	The above referenced HIPAA Business Associate Agreement is hereby executed this _____ day of _____ 200_ by the Department of Economic Security. _____ Procurement Officer