Appendix to Contract ######## (the "Contract")

BUSINESS ASSOCIATE AGREEMENT

Between

ARKANSAS DEPARTMENT OF HUMAN SERVICES

AND

DELOITTE CONSULTING LLP

_____
(Business Taxpayer Identification Number)

This Business Associate Agreement ("Agreement") is made effective on XX/XX/XXXX, ("Effective Date") by and between the Arkansas Department of Human Services ("Covered Entity") and Deloitte Consulting LLP ("Business Associate"), collectively known as the Parties.

Background

a) Covered Entity has been designated as a hybrid entity for the purposes of the HIPPA Privacy Rule, and it has designated several of its component agencies as health care components.

b) In accordance with the laws of Arkansas, Business Associate provides services for Covered Entity unrelated to treatment, payment, or healthcare operations as described in the Contract (as referenced herein) between the Parties executed on and therefore the Parties believe an Agreement is required. This Agreement is incorporated into the contract as Appendix [xx] thereto. The provision of such services may involve the disclosure of individually identifiable protected health information (PHI) from Covered Entity to Business Associate.

c) The relationship between Covered Entity and Business Associate is such that the Parties believe the Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule.

d) The Parties enter into the Agreement with the intention of complying with the HIPAA Privacy and Security Rule provisions and the Health Information Technology for Economic and Clinical Health (HITECH) Act, that a covered entity may disclose PHI to a business associate, and may allow a business associate to create or receive PHI on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

Definitions

Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, PHI, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information (UPHI), and Use.

Specific definitions:

(a) "Breach" shall have the meaning set out in its definition at 45 C.F.R. 164.402, as such provision is currently drafted or as it is subsequently updated, amended, or revised.

(b) "Business Associate" shall generally have the same meaning as the term "business associate" At 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean Deloitte Consulting, LLP.

(c) "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean Arkansas Department of Human Services.

(d) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D, and E. The HIPAA Privacy Rule is specifically set out in 45 C.F.R. Part 160 and Part 164, Subparts A and E. The HIPAA Security Rule is specifically set out in 45 C.F.R. Part 160 and Part 164, Subparts A and C.

(e) "Protected Health Information" or "PHI" 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 the Business Associate from or on behalf of the Covered Entity in the performance of the Business Associate's contractual obligations.

(f) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.103.

(g) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

(h) "Unsecured Protected Health Information" or "UPHI" shall have the meaning set out in 45 C.F.R. 164.402 and means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under §13402(h)(2) of Pub. L. 111-5; as such provision is currently drafted or as is subsequently updated, amended, or revised.

Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate administrative, physical, and technical safeguards, and comply with 45 C.F.R. 164, Subpart C, with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement, to ensure the confidentiality, integrity, and availability of all electronic PHI that the Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity;

(c) Report to covered entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of UPHI as required at 45 C.F.R. 164.410, and any security incident affecting electronic PHI of which it becomes aware;

(d) Report to Covered Entity any unauthorized acquisition, access, use, or disclosure of UPHI the Business Associate holds on behalf of the Covered Entity, including, to the extent known, the identity of each individual who is the subject of the UPHI of which it becomes aware, no later than ten (10) calendar days after the discovery of the breach;

(e) Ensure, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable,

that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to the PHI;

(f) Make available PHI maintained by the Business Associate or subcontractor of the Business Associate in a designated record set to the Covered Entity as necessary to satisfy the obligations of the Covered Entity to respond to a request by an Individual under 45 C.F.R. 164.524;

(g) Make any amendment(s) to PHI maintained by the Business Associate or subcontractor of the Business Associate in a designated record set as directed or agreed to in writing by the Covered Entity pursuant to 45 C.F.R. 164.526, or take other reasonable measures as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. 164.526;

(h) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. 164.528;

(i) To the extent the Business Associate carries out one (1) or more of the Covered Entity's obligation(s) under 45 C.F.R. 164, Subpart E, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(j) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

The Business Associate may:

(a) Only use or disclose PHI to perform functions, activities, or services for, or on behalf of the Covered Entity as specified in Contract ########, executed on XX/XX/XXXX ("Contract") between the parties, provided that such use or disclosure does not violate the policies and procedures of all HIPAA rules;

(b) Use or disclose PHI as required by law;

(c) Not use or disclose PHI in a manner that would violate 45 C.F.R. 164, Subpart E, if done by a covered entity, except for the specific uses and disclosures set forth below;

(d) Use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. The Business Associate will notify the Covered Entity within ten (10) calendar days of its discovery of any such disclosure;

(e) Provide data aggregation services related to the health care operations of the Covered Entity if required under the Contract.

Discovery and Notification of Breach or Incident

(a) Business Associate shall implement reasonable systems, policies, and procedures for discovery of possible HIPAA Rules violations and breaches, and shall ensure that its workplace members and other agents are adequately trained and aware of the importance of timely reporting of possible breaches.

(b) Upon the discovery of any acquisition, access, use, or disclosure of PHI by the Business Associate, in violation of the HIPAA Rules, by the Business Associate or any member of its workforce (including without limitation employees, subcontractors, and agents), with respect

to PHI, the Business Associate shall promptly perform a risk assessment to determine whether the breach of PHI or UPHI has occurred and whether or not the breach has resulted in any harm to the owner of the PHI as required by HITECH.

(c) Business Associate shall take immediate steps to mitigate, to the extent practicable, any acquisition, access, use, or disclosure of PHI by the Business Associate in violation of the HIPAA Rules with respect to the Covered Entity's PHI that is discovered and shall provide the Covered Entity with written documentation of such steps.

(d) If the Business Associate determines that a breach of PHI or UPHI or a security incident may have occurred, the Business Associate shall notify the Covered Entity of such breach or incident affecting PHI within ten (10) calendar days. The Business Associate will specifically notify the Arkansas Department of Human Services Privacy Officer in writing via posted mail as well as email and will confirm receipt of the email immediately by phone. Notice shall include:

(1) A brief description of the occurrence, including the date of the breach or security incident, and the date of discovery, if known;

(2) To the extent possible, the identity of each individual whose PHI or UPHI has been, or is reasonably believed to have been, breached;

(3) A description of the types of PHI or UPHI involved;

(4) A brief description of what the owners of the PHI or UPHI can do to protect themselves;

(5) A brief description of what the Business Associate is doing to investigate the breach, mitigate harm to affected individuals, and protect against further breaches; and,

(6) Any other information that the Covered Entity reasonably believes necessary to enable it to comply with its obligations under the HIPAA Rules.

(e) Business Associate shall continue to provide the Covered Entity with any additional information related to the required disclosures that becomes available following initial notice of the breach. The Business Associate will fully cooperate with the Covered Entity's investigation.

1) For a breach involving UPHI of more than five hundred (500) individuals of a state or jurisdiction, the Business Associate shall promptly provide notice of such breach to the Covered Entity. The Covered Entity shall then provide notice to the Secretary and any other federal authorities as required by the HIPAA Rules.

2) The Business Associate agrees to maintain documentation of all breaches of UPHI for a minimum of six (6) years after the creation of the documentation and shall make such documentation available to the Secretary upon request.

3) In addition to and not in limitation of Covered Entity's other rights and remedies for Business Associate's breach of this Agreement, the Business Associate hereby agrees to (a) indemnify and hold the Covered Entity harmless from and against liability and costs, including attorney's fees, that arise from third party claims brought against Covered Entity arising from any breach of PHI or UPHI resulting from the acts of the Business Associate or any member of its workforce in violation of HIPAA or this Agreement, and (b) upon any breach of PHI or UPHI resulting from the acts of Business Associate or any member of its workforce in violation of HIPAA or this Agreement, reimburse the Covered Entity for (i) any fines or sanctions imposed on DHS by a governmental entity for such breach, and (ii) all reasonable and direct out-of-pocket expenses for its notification of affected Individuals who are Required By Law to receive such notification and for credit monitoring for no more than twelve (12) months, if credit monitoring is an appropriate remedy given the circumstances of the Breach of UPHI and the nature of the PHI compromised.

Permissible Requests by Covered Entity

In addition to any other contractual obligation contained in the Contract or Agreement, the Covered Entity agrees that it shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules, including 45 C.F.R. 164, Subpart E, HITECH, or any applicable federal or State law if done by the Covered Entity.

Term and Termination

(a) Term. This Agreement shall be effective as of the effective date shown above and shall terminate:

(1) When all of the PHI provided by Covered Entity to Business Associate or created or received by the Business Associate on behalf of Covered Entity, is destroyed or returned to the Covered Entity. If it is infeasible to return or destroy the PHI, the Business Associate shall ensure that protections are extended to such PHI in compliance with the termination provisions below;
(2) On the date the Covered Entity terminates for cause, as authorized in paragraph (b) of this Section; or
(3) On the date the Contract has expired or been terminated, whichever occurs first.

(b) Termination for Cause. The Business associate authorizes termination of this Agreement by the Covered Entity, if Covered Entity determines that the Business Associate has violated a material term of the Agreement for which the Covered Entity has provided the Business Associate with written notice and the Business Associate as not cured the breach or ended the violation within the time specified by the Covered Entity, but in no event less than thirty (30) days unless mutually agreed to by the Parties.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, the Business Associate shall:

(1) Return to the Covered Entity, or if agreed to by Covered Entity, destroy all PHI received from the Covered Entity or created, maintained, or received by the Business Associate on behalf of the Covered Entity when it is no longer needed by the Business Associate for proper management and administration or to carry out its legal responsibilities;
(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the Parties' agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(d) Survival. The obligations of the Business Associate under this Section shall survive the termination of the Agreement.

Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as subsequently amended.
(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
(d) Nothing contained in the agreement is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies of any kind or character whatsoever, whether

in contract, statute, tort or otherwise and no person shall be deemed a third-party beneficiary under or by reason of this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed in its name and on its behalf effective as of the Effective Date at the top of this document.

Business Associate: Deloitte Consulting LLP

Signed: _____

Title: _____

Date: _____

Covered Entity: Arkansas Department of Human Services

Signed: _____

Title: _____

Date: _____