

Contract Review Sheet

HE-5437-23

Contract for Services #: HE-5437-23 Amendment #: _____

Contact: Sarah Ortiz Department: Health and Human Services

Phone #: (503) 584-4898 Date Sent: Thursday, June 1, 2023

Title: Mental Health Assessments and Care for ABH Clients

Contractor's Name: Nathaniel Kravitz

Term - Date From: July 1, 2023 Expires: June 30, 2025

Original Contract Amount: \$400,000.00 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$400,000.00 Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0160 Health Provider Contracts

Description of Services or Grant Award

Contractor shall provide skilled medical assessment and supervision for individuals who use therapeutic medications as part of a treatment plan for up to twenty-one (21) hours per week.

Desired BOC Session Date: 6/28/2023 BOC Planning Date: 6/15/2023

Files submitted in CMS: 6/7/2023 Printed packet & copies due in Finance: 6/13/2023

BOC Session Presenter(s) Natalie Stone and Ryan Matthews

FOR FINANCE USE

Date Finance Received: 6/5/2023 Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

DocuSigned by:
Jeff D White
D1FCCAACCDB14CB...
6/5/2023
Date
Finance - Contracts

DocuSigned by:
Sarah Ortiz
7C381AF588334A0...
6/8/2023
Date
Contract Specialist

DocuSigned by:
Jane E Vetto
D0CF5B04B9F483...
6/7/2023
Date
Legal Counsel

DocuSigned by:
Jan Fritz
DC18351248DE4EC...
6/7/2023
Date
Chief Administrative Officer



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 28, 2023

Department: Health & Human Services Agenda Planning Date: 6/15/2023 Time required: 10

Audio/Visual aids

Contact: Sarah Ortiz Phone: 503-584-4898

Department Head Signature: Ryan Matthews

Table with 2 columns: Label (TITLE, Issue, Description & Background, Financial Impacts, Impacts to Department & External Agencies, Options for Consideration, Recommendation, List of attachments, Presenter) and Content (Mental Health Assessments and Care for ABH Clients (HE-5437-23), Contractor shall provide skilled medical assessment and supervision for individuals who use therapeutic medications as part of a treatment plan for up to twenty-one (21) hours per week, Nathaniel Kravitz (HE-5437-23 total not to exceed \$400,000), Health & Human Services does not anticipate any impacts to other departments, 1. Approval of HE-5437-23, 2. Deny Approval of HE-5437-23, 3. Take no action at this time, Health & Human Services recommends approval of HE-5437-23, HE-5437-23 Mental Health Assessments and Care for ABH Clients, Natalie Stone and Ryan Matthews)

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Sarah Ortiz; sortiz@co.marion.or.us

- D. Notwithstanding section 13C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

14. PAYMENT ON EARLY TERMINATION

Upon termination pursuant to section 13, payment shall be made as follows:

- A. If terminated under 13A or 13B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.
- B. If terminated under 13C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- C. If terminated under 13C or 13D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

15. INDEPENDENT CONTRACTOR

- A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor’s activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an “independent contractor” and is not an employee of County and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an “independent contractor”, Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.
- B. SUBCONTRACTING/NONASSIGNMENT. No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

16. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

17. OWNERSHIP AND USE OF DOCUMENTS

All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon’s Public Records Laws.

18. NO THIRD-PARTY BENEFICIARIES

- A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
- B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

19. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

20. MERGER CLAUSE

This Contract and the attached exhibits constitute the entire agreement between the parties.

- A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- C. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

21. WAIVER

The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

22. REMEDIES

In the event of breach of this Contract, the Parties shall have the following remedies:

- A. If terminated under 13C by County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.
- B. In addition to the remedies in sections 13 and 14 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.
- C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

23. INSURANCE

- A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the

following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

- i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.
- ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

\$1,000,000 Per occurrence limit for any single claimant; and

\$2,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Risk Manager

- iii. **CYBER LIABILITY.** Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

Required by County **Not required by County.**

\$2,000,000 Per occurrence limit for any single claimant; and

\$5,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Information Technology Director and Risk Manager

- iv. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Minimum Limits:

\$1,000,000 Per occurrence limit for any single claimant; and

\$2,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Risk Manager

\$500,000 Per occurrence limit for any single claimant

\$1,000,000 Per occurrence limit for multiple claimant

- v. **AUTOMOBILE LIABILITY INSURANCE.** Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance

(with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Minimum Limits:

Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).

\$500,000 Per occurrence limit for any single claimant; and

\$1,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Risk Manager

B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

24. NOTICE

Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

Nathaniel Kravitz
2734 Weatherford Ct NW
Salem, OR, 97304

To County

Procurement & Contracts Manager
555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309



Attachment C - Confidentiality Statement

For purposes of this document: “staff” means any person doing work for Marion County Health & Human Services, whether paid or unpaid; “individual” means a person who receives services or benefits from Marion County Health & Human Services; “confidentiality” means that property, data or information of an individual is not made available or disclosed to any person or other entity that should not have the information; “PHI” means protected health information.

Confidentiality is the preservation, in confidence, of an individual’s information or potential individual’s information, which may be received, created, used, maintained or disclosed in an individual-staff relationship. Marion County Health & Human Services is subject to state and federal laws regarding the confidentiality of an individual’s information; Marion County Health & Human Services follows these laws and rules by policy.

All individual’s treatment information records are confidential, including medical and mental health information, which is maintained on paper, or electronically through computerized data systems. This also includes but is not limited to information transmitted via a FAX machine, by telephone, or during any verbal conversations. Confidentiality can be violated by:

- Leaving an individual’s files open on desks, on electronic storage media, or on a computer screen unattended or in view of visitors or other unauthorized persons;
- Sending or attaching confidential information using e-mail without indicating PHIMC in the subject line;
- Discussing confidential information in public places, such as: elevators; public hallways; restaurants; restrooms; on the bus; or at home;
- Casually discussing confidential information with unauthorized persons such as family members or friends;
- Tossing paperwork containing confidential information in a wastebasket or regular recycle bin without shredding;
- Using telephones in the community where others may easily overhear a conversation regarding an individual’s information;
- Using or disclosing confidential information for personal gain, commercial gain or for malicious purposes;
- Sharing computer usernames and passwords with co-workers, volunteers, student interns, etc.;
- Disclosing an individual’s information without confirming that a valid authorization to disclose is on file or that policy or law allows the disclosure.

Confidential information may be used and disclosed under certain circumstances, for example: Marion County Health & Human Services uses and discloses confidential information for treatment, payment and health care operations; for reporting abuse and/or neglect; for a medical emergency; if there is a clear danger or threat to health and safety to you or others; a court order release of the information. **Note: If you receive a subpoena for records or receive a telephone call from an attorney, consult with a supervisor.**

As staff of Marion County Health & Human Services, you are required to be knowledgeable of the privacy policies and procedures pertinent to state and federal laws and rules for the Service Area(s) in which you work. You are also responsible to be knowledgeable of changes and/or new privacy policies and procedures.

Under Oregon law, Marion County may be legally liable for your actions, which are within the course and scope of your duties as staff. However, it could be determined that improper use or disclosure of confidential information is outside the course and scope of your duties. As a result, the County could refuse to defend you in any legal action. In addition, any improper disclosure of confidential information may be cause for disciplinary action (subject to County policy), up to and including, termination of employment or separation of service.

My signature below certifies that I have read and fully understand the statements above. I further understand and agree that as staff of Marion County, I have a duty, and will abide by policies, procedures and laws governing the preservation of confidential information. I understand that it is my responsibility to ask a supervisor for clarification of the applicable policies, procedures and laws. When in doubt, I will not disclose any protected health information/confidential information without first consulting with a supervisor.

Staff Name (please print above)

Staff Signature

Date

Department Designee

Date

Rev.: 04/19



Attachment D - Workforce Separation of Service Client Health Information Statement

Client health information is confidential and protected by Oregon and federal laws. Marion County Health & Human Services, as a health care provider, is required to follow Oregon and federal laws regarding the protected health information of clients. Client health information that Marion County Health & Human Services has created, used, disclosed or maintained in its official health care provider capacity is the property of Marion County Health & Human Services.

Therefore, in addition to signing *Marion County Health & Human Services Confidentiality Statement*, the workforce staff agrees to the following Statement:

“I will return all client health information to Marion County Health & Human Services upon separation of service with Marion County Health & Human Services, on or before the day of separation of service. I know that client health information to be returned includes the following, but is not limited to the following: all paper and electronic original and copied documents; client names; client addresses, client phone numbers; client schedules; client photographs; client correspondence and notes; health care provider notes; health care provider chart and medical records.

I understand and agree that under Oregon and federal law, I am required to keep client health information confidential following my separation from employment or service with Marion County.”

My signature below certifies that I have read and fully understand the statement above.

_____ **Staff Name (please print)**

_____ **Staff Signature**

_____ **Date**

Rev.: 04/19

Area: Personnel Health	<h1>Marion County</h1> <h2>Health Department</h2>	No. 2.43 500.16 Page: 1 of 2 10-12-04 Revised: March 9, 2011
Subject: Behavioral Health Documentation Policy	Prepared by: Scott Richards	Approved by/Date Roderick Calkins <i>Roderick P. Calkins</i>

PURPOSE: The purpose of documenting behavioral health services is to provide a written summary of the treatment modalities and interventions as described in the client's individual services and supports plan; to document a client's progress towards treatment and service goals and to provide written verification of services billed to third-party payers on behalf of a client.

POLICY: It is the policy of Marion County Health Department that Behavioral Health services will be documented by a qualified service provider for each service provided for or on behalf of a client. Documentation will also be provided any time a significant change occurs in a client's condition or any time significant client information is received that may impact treatment. Services that will be billed and/or reported as encounter data will reflect the Medicaid Rehabilitative Procedure Code or the Prevention, Education, & Outreach (PEO) Code definitions.

DOCUMENTATION STANDARDS:

1. Documentation for all clinical services/activities provided in a work week will be completed within five calendar days from the date of service.
2. Documentation will be accurate, complete and reflective of the Medicaid Rehabilitative Procedure Codes and PEO definitions applicable to each service area.
3. Style and composition of documentation will meet the requirements of current Oregon Administrative Rules, payor requirements and best practices relating to each service area.
4. Services will be provided and documented by direct services staff who meet the credentialing criteria specified by each Medicaid Rehabilitative definition.
5. Documentation will be legible and appropriate to applicable professional standards.
6. Documentation review will be included as part of each service area's utilization review process.
7. Each Behavioral Health service area will provide documentation training to direct service staff covering the policy, procedures, standards, acceptable practices, and service definitions.

Training will be the responsibility of the service area Clinical Supervisor. Training will be offered:

- a. Individually to a new staff person within 2 weeks of his/her hire date.
- b. To all service area staff whenever revisions or additions are made by the Office of Addictions and Mental Health, the Health Department, or the Mid-Valley Behavioral Care Network.

- c. After regularly scheduled utilization reviews for staff identified with deficiencies in documentation practices.

CHARTING PROCEDURE:

1. All formats used to document services will include the following information:
 - a. Staff ID - The ID number of the staff providing the service.
 - b. Subprogram - The subprogram (a 3-4 letter code) for the staff providing the service
 - c. Program - The program MHS is used for all Behavioral Health programs.
 - d. Client ID # - The unique client identification number assigned to the client upon enrollment.
 - e. Client Name - The client's first and last name as it appears in the electronic client information system.
 - f. Date - The date the service was delivered to the client.
 - g. Time - The time of day, using military time, that the service occurred.
 - h. Activity Code – The Health Department code used to identify the mental health rehabilitative or PEO service delivered.
 - i. Setting - The location where the service took place.
 - j. Duration - The amount of time, in minutes, it took to deliver the service.
2. The progress note section of service documentation will include:
 - a. The specific service provided.
 - b. The duration of the service provided.
 - c. The date on which the service was provided
 - d. The location of the service.
 - e. The signature and credentials of the person who provided the service.
 - f. Periodic reviews of progress toward intended outcomes, consistent with goals and timelines in the individual service/treatment plan.
 - g. Any significant events or changes in the individual's life circumstances, including mental status, treatment response and recovery status.
 - h. Any decisions to conclude or transfer service.
 - i. Unplanned services that deviate from the service plan shall be noted as such in the service note.
3. A Medication Administration Report (MAR) may be used by Behavioral Health Staff for documenting dispense of specified medications to clients. MARs documentation will be consistent with professional and community standards of care. Information will be added to a client's MAR at each medication dispense. MARs will be maintained in the clinical record or a Medication Book, consistent with applicable administrative rules, for residential programs.
4. Prescribers (LMPs and MDs) will submit dictation for each rehabilitative service or information needing to be added to the clinical record. The dictation will be transcribed using a medically approved format. The information contained in each Prescriber progress note will conform to standard medical practices.
5. An information-only progress note may be used to document information concerning a client that is important information to document but not a billable service. Information-only notes are not processed through Data Entry and are not entered into the electronic client information system. The notes will not generate billing or encounter data nor be included in data reports. Information-only progress notes are submitted directly for filing into the client's clinical record.

ATTACHMENT F

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
BUSINESS ASSOCIATE CONTRACT PROVISIONS**

INTRODUCTION

This Addendum to the contract between Marion County, a political subdivision of the State of Oregon, hereinafter called the County, and Nathaniel Kravitz LLC, PMHNP hereinafter called Contractor is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), as amended.

WHEREAS, County will make available or transfer to Contractor certain information in conjunction with goods or services that are being provided by Contractor to County, that is confidential and must be afforded special treatment and protection.

WHEREAS, Contractor will have access to or receive from County certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Department of Health and Human Services Security Rule and Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164.

NOW THEREFORE, the parties agree as follows:

1. Definitions.
 - a. Business Associate shall mean Nathaniel Kravitz LLC, PMHNP.
 - b. BREACH means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under subpart E of the HIPAA Privacy Regulations; I found at 45 CFR 164.402 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification, and Enforcement Rule, 78 *Federal Register* 5565), which compromises the security or privacy of the protected health information. In the event of any inconsistency between the definition of “Breach” in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
 - c. Covered Entity shall mean Marion County.
 - d. HITECH Act shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act Public. Law No. 111-5.
 - e. INDIVIDUAL shall mean the person who is the subject of the information and has the same meaning as the term “individual” defined in 45 CFR 164.501 and includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502 (g).
 - f. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
 - g. PROTECTED HEALTH INFORMATION shall have the same meaning as the term in 45 CFR 164.501 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification, and Enforcement Rule, 78 *Federal Register* 5565), limited to information created or received by Business Associate from or on behalf of Covered Entity.
 - h. REQUIRED BY LAW shall have the same meaning as the term in 45 CFR 164.103.
 - i. SECRETARY shall mean the Secretary of the federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.

- j. SECURITY RULE shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, and 164, Subparts A and C.
- k. UNSECURED PROTECTED HEALTH INFORMATION shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered usable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in this Agreement shall have the meaning given the terms in the Health Insurance Portability and Accountability Act (HIPAA) Regulations at 45 CFR 160-164.

2. Term.

The term of the HIPAA obligations under this addendum shall commence as of the effective date of this contract and shall expire when all of the information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy protected health information, protections are extended to the information in accordance with the termination provisions in this contract.

3. Limits on Use and Disclosure.

Business Associate shall not use or disclose protected health information provided or made available by Covered Entity for any purpose other than as expressly permitted or required by this contract or as Required by Law.

4. Permitted Uses and Disclosures by Business Associate.

a. Statutory Duties.

- (1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
 - (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and
 - (B) effective February 17, 2010, comply with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.
- (2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.
- (3) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

b. General Use and Disclosure Provision.

Except as otherwise limited in this contract, Business Associate may use or disclose protected health information to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the contract between the parties, provided that such use or disclosure would not violate the Security and Privacy Rules if done by the Covered Entity, or the minimum necessary policies of Covered Entity.

c. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

5. Additional Purposes for Uses and Disclosures by Business Associate.

(a) Except as otherwise limited in this Contract, Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Contract, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that:

(i) The disclosure is Required by Law;

(ii) Reasonable assurances are obtained from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, that the person will use appropriate safeguards to prevent use or disclosure of the information, and that the person immediately notifies Business Associate of any instances of which the confidentiality of the information has been breached per section 6.d of this Contract;

(iii) Except as otherwise limited in this Contract, Business Associate may use protected health information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

(iv) Business Associate may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(v) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

6. Business Associate Obligations:

a. Limits on Use and Further Disclosure Established by Contract and Law. Business Associate agrees that information provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Contract or as Required by Law.

b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information other than as provided for by this Contract.

c. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of the use or disclosure of protected health information by Business Associate in violation of the requirements of this Contract.

- d. **Reports of Breach.** Per the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) Public. Law 111-5, Business Associate agrees to report to Covered Entity as soon as possible any use or disclosure of the protected health information not provided for by this Contract of which it becomes aware. If a breach of unsecured protected health information occurs at or by a Business Associate, the Business Associate must notify the Covered Entity no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide the Covered Entity with the identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals.
- e. **Subcontractors and Agents.** Business Associate agrees to ensure that any agent, including any subcontractor, to whom it provides protected health information received from, or created by Business Associate on behalf of Covered Entity agrees in writing to the same terms, conditions and restrictions on the use and disclosure of protected health information as contained in this Contract. Business Associate is required to have Business Associate Agreements with its subcontractors that use protected health information on their behalf. Business Associate is required to obtain satisfactory assurances from its subcontractors that the subcontractor will safeguard protected health information.
- f. **Right of Access to Information.** Business Associate agrees to provide access, at the request of Covered Entity, to protected health information in a Designated Record Set, either to the Covered Entity, or as directed by Covered Entity to an Individual. This right of access shall conform with and meet the requirements of 45 CFR 164.524, including substitution of the words “Covered Entity” with Business Associates where appropriate.
- g. **Amendment and Incorporation of Amendments.** Business Associate agrees to make and incorporate any amendments to protected health information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. **Provide Accounting.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, the Secretary, or the Secretary’s designee for the purposes of determining compliance with the Security and Privacy Rules.
- i. **Documentation of Disclosures.** Business Associate agrees to document disclosures of protected health information and information related to these disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- j. **Access to Documentation of Disclosures.** Business Associate agrees to provide Covered Entity information collected in accordance with Section 6(i) of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- k. **False Claims, Fraud, Waste and Abuse.** Business Associate shall cooperate with and participate in activities to implement and enforce the Covered Entity’s policies and procedures to prevent, detect and investigate false claims, fraud, waste and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. Business Associate shall cooperate with authorized State of Oregon entities and Centers for Medicare and Medicaid (CMS) in activities for the prevention, detection and investigation of false claims, fraud, waste and abuse. Business Associate shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required to investigate the incident of false claims, fraud, waste or abuse. Business Associate is required to verify that their staff and contractors are not excluded from providing services under this contract funded by Medicare and Medicaid before services are provided. Business Associate is required to check the following databases for excluded individuals and entities:

Excluded Parties List System (EPLS) www.sam.gov

7. Obligations of Covered Entity.

- a. Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 CFR 164.520, to the extent that the limitation may affect Business Associate'S use or disclosure of protected health information.
- b. Changes in Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose protected health information, to the extent that the changes may affect Business Associate'S use or disclosure of protected health information.
- c. Restrictions on Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information, that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that the restriction may affect Business Associate'S use or disclosure of protected health information.

8. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Security and Privacy Rules if done by Covered Entity, except if the Business Associate will use or disclose protected health information for, and the Contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

9. Security Assurances, the Business Associate will.

- a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the County as required by the Health Insurance Portability and Accountability Act of 1996 and the requirements of Health Insurance Reform, the Security Standards (45CFR Parts 160, 162 & 164); and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in this Agreement.
- b. Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- c. Report to the County any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, interference with system operations in an information system, or any security incident of which it becomes aware;
- d. Authorize termination of the contract by the County, if the County determines that the Business Associate has violated a material term of the contract.

10. Termination of Contract.

- a. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Contract, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) Immediately terminate this Contract, if Business Associate has breached a material term of this Contract and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- b. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Contract, for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate, its subcontractors or agents, shall retain no copies of the protected health information.
 - (2) In the event that Business Associate determines that returning or destroying protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon written notice to Covered Entity that return or destruction of protected health information is infeasible, Business Associate shall extend the protections of this Contract to the protected health information and limit further uses and disclosures of protected health information to those purpose that make the return or destruction infeasible, for so long as Business Associate, its subcontractors or agents maintains protected health information.

11. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the Security and Privacy Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take any action as is necessary to amend this Contract from time to time needed for Covered Entity to comply with the requirements of the Security and Privacy Rules and the Health Insurance Portability and Accountability Act of 1996.
- c. Survival. The respective rights and obligations of Business Associate under Section 10 (b) of this Contract, Effect of Termination, shall survive the termination of this Contract.
- d. Interpretation. Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the Security and Privacy Rules.
- e. Entire Agreement. This Contract consists of this Addendum and the Contract, together which constitutes the entire agreement between the Parties. Any alterations, variations, modifications or waivers of any provisions shall be valid only when they have been submitted in writing and approved by the Parties.

12. Qualified Service Organization Contract Provisions.

- a. Contractor is required to follow the Federal Drug and Alcohol law 42 C.F.R. Part 2, Subchapter A, as amended.

- b. County will make available or transfer to Contractor certain information in conjunction with goods or services that are being provided by Contractor to County, that is confidential and must be afforded special treatment and protection.
- c. Contractor will have access to or receive from County certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Federal Drug and Alcohol law 42 C.F.R. Part 2, Subchapter A.
- d. Contractor Shall:
 - (1) Acknowledge that in receiving, storing, processing, or otherwise dealing with any information from the Program about the patients in the Program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and
 - (2) Undertake to resist in judicial proceedings any effort to obtain access to information pertaining to patients otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2.