

# Contract Review Sheet

**HE-4744-22 (1)**

 Intergovernmental Agreement #: HE-4744-22 Amendment #: 1

 Contact: Sarah Ortiz Department: Health and Human Services

 Phone #: (503) 584-4898 Date Sent: Friday, June 9, 2023

 Title: Polk County Modernization Funding

 Contractor's Name: Polk County, OR

 Term - Date From: October 1, 2021 Expires: December 31, 2023

 Original Contract Amount: \$128,676.00 Previous Amendments Amount: \_\_\_\_\_

 Current Amendment: \$50,000.00 New Contract Total: \$178,676.00 Amd% 39%
 Incoming Funds   
  Federal Funds   
  Reinstatement   
  Retroactive   
  Amendment greater than 25%

 Source Selection Method: 50-0010 General Exemptions (IGAs and QRFs)

### Description of Services or Grant Award

The purpose of this agreement is to establish terms and conditions under which Polk and Marion will work together to focus on the control of communicable disease and further public health modernization efforts. Amendment 1 adds an additional \$50k to the contract and extends the term through 12/31/2023.

 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) Ryan Matthews and Wendy Zieker
**FOR FINANCE USE**

 Date Finance Received: 6/9/2023 Date Legal Received: \_\_\_\_\_

 Comments: Y
**REQUIRED APPROVALS**

DocuSigned by:  <small>C5B2F3DF257F444...</small> Finance - Contracts	<u>6/10/2023</u> Date	DocuSigned by:  <small>7C361AF588334A0...</small> Contract Specialist	<u>6/20/2023</u> Date
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DocuSigned by:  <small>D0CFC5B04B9F483...</small> Legal Counsel	<u>6/13/2023</u> Date	DocuSigned by:  <small>DC16351248DE4EC...</small> Chief Administrative Officer	<u>6/20/2023</u> Date
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MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 28th, 2023

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

Audio/Visual aids

Contact: Sarah Ortiz Phone: 503-584-4898

Department Head Signature: Ryan Matthews

TITLE Polk County Modernization Funding

Issue, Description & Background The purpose of this agreement is to establish terms and conditions under which Polk and Marion will work together to focus on the control of communicable disease and further public health modernization efforts. Amendment 1 adds an additional \$50k to the contract and extends the term through 12/31/2023.

Financial Impacts: Contract not to exceed \$178,676.00

Impacts to Department & External Agencies Health & Human Services does not anticipate any impacts to other departments

Options for Consideration: 1. Approve - HE-4744-22 Amendment 1, Polk County, Polk County Modernization Funding 2. Deny Approval - HE-4744-22 Amendment 1, Polk County, Polk County Modernization Funding 3. Take no action at this time

Recommendation: Health & Human Services recommends approval of HE-4744-22 Amendment 1, Polk County, Polk County Modernization Funding

List of attachments: HE-4744-22, Polk County, Polk County Modernization Funding HE-4744-22 Amendment 1, Polk County, Polk County Modernization Funding

Presenter: Ryan Matthews and Wendy Zieker

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

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

## REQUEST FOR AUTHORIZATION OF CONTRACT HE-4744-22

**Date:** June 9, 2023  
**To:** Chief Administrative Officer  
**Cc:** Contract File  
**From:** Sarah Ortiz

**I. Subject:** Amendment Exceeds 25%

**DIPS CODE:** 190-25-23-231-2593-525999-000000-000

**Budget Authority:**  Yes  No

The Marion County Health and Human Services is requesting approval to amend a contract as described in Section 20-0265, 20-0270, 30-0320, 40-0160, and 40-0910 of the Marion County Public Contracting Rules. The contract is with Polk County, OR for Polk County Modernization Funding with a value of \$128,676 and an additional \$50,000 will be added to the contract for a new contract total of \$178,676.00 upon approval.

**A. BACKGROUND**

Explain how we got to this point, include sourcing method, initial contract value, and all previous amendments.

MCHHS contracts with Polk County to focus on the control of communicable disease and further public health modernization efforts. HHS needs to extend IGA to account for bridge funding from OHA 7/1/23 – 9/30/23 due to the legislature not being able to adjourn. The source selection method is 50-0010 General Exemptions (IGAs and QRFs) and the initial contract value is \$128,676.00.

**B. CURRENT AMENDMENT PURPOSE**

Describe the purpose of the current amendment, why we are increasing more than 25% and why this was not included in the original contract.

The purpose of the amendment is to extend the contract and add additional funds to account for bridge funding from OHA due to the legislature not being able to adjourn. This was not included in the original contract due to unforeseen circumstances.

**C. JUSTIFICATION**

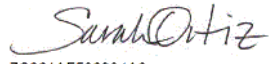
For formal procurements, indicate why the need for adding more than 25% of the total contract cost:

The additional funds are needed for the additional services being provided.

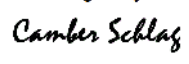
**D. BUDGET IMPACTS**

1. Are the expected expenditures for the current fiscal year under the contract, including any additional funds being requested with this action, already included in the current year adopted budget?  Yes  No
2. If yes, amount \$50,000 Program / Account PH Modernization ARPA Fund / 525999

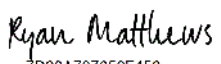
Submitted by:

DocuSigned by:  
  
7C361AF588334A0...  
Sarah Ortiz  
Health and Human Services

Reviewed by:

DocuSigned by:  
  
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Contracts & Procurement

Acknowledged by:

DocuSigned by:  
  
7D28A787856F458...  
Department Head

Acknowledged by:

DocuSigned by:  
  
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Jan Fritz, CAO



**Marion County**  
OREGON

**AMENDMENT 1 to HE-4744-22 the  
INTERGOVERNMENTAL AGREEMENT  
between  
MARION COUNTY and POLK COUNTY, OR**

The Intergovernmental Agreement, entered into pursuant to ORS Chapter 190, as may be amended from time to time, the “Agreement,” between Marion County “County”, a political subdivision of the State of Oregon, and Polk County, OR, dated October 01, 2021.

The Agreement is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by brackets):

3.1 This agreement shall be effective retroactively for the period of October 1, 2021 through December 31, 2023 [June 30, 2023] unless sooner terminated or extended as provided herein.

4.1 The total amount paid under this contract by Marion and Polk shall not exceed \$178,676 [\$128,676].

Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. The Parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**MARION COUNTY SIGNATURES  
BOARD OF COMMISSIONERS**

Chair \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: DocuSigned by:  
*Ryan Matthews* \_\_\_\_\_ 6/10/2023  
7D28A787856F458...  
Department Director or designee Date

Authorized Signature: DocuSigned by:  
*Jan Fritz* \_\_\_\_\_ 6/20/2023  
DC18351248DE4EC...  
Chief Administrative Officer Date

Reviewed by Signature: DocuSigned by:  
*Jane E Vetto* \_\_\_\_\_ 6/13/2023  
D0CFC5B04B9F483...  
Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by:  
*Camber Schlag* \_\_\_\_\_ 6/10/2023  
C5B2F3DF257F444...  
Marion County Contracts & Procurement Date

**POLK COUNTY, OR**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**POLK COUNTY and MARION COUNTY**  
**HE-4744-22**

**1. PARTIES TO AGREEMENT**

This retroactive Agreement between Polk County a political subdivision of the State of Oregon, hereafter called Polk, and Marion County, a political subdivision of the state of Oregon, hereafter called Marion, is made pursuant to ORS 190.010 (Cooperative Agreements).

**2. PURPOSE/STATEMENT OF WORK**

The purpose of this Agreement is to establish the terms and conditions under which Polk and Marion will work together to focus on the control of communicable disease and further public health modernization efforts. These services are further described in Section 5.

**3. TERM AND TERMINATION**

- 3.1 This Agreement shall be effective retroactively for the period of October 1, 2021 through June 30, 2023 unless sooner terminated or extended as provided herein.
- 3.2 This Agreement may be extended for an additional period of one year by agreement of the parties. Any modifications in the terms of such amendment shall be in writing.
- 3.3 This agreement may be terminated by mutual consent of both parties at any time or by either party upon 30 days' notice in writing and delivered by mail or in person. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- 3.4 Either party may terminate this agreement effective upon delivery of written notice to the other party or at such later date as may be established under any of the following conditions:
  - a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the purchase of the indicated quantity of services. This agreement may be modified to accommodate a reduction in funds.
  - b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - c. If any license, certificate, or insurance required by law or regulation to be held by Polk to provide the services required by this agreement is for any reason denied, revoked or not renewed.
  - d. If Polk fails to provide services called for by this agreement within the time specified herein or any extension thereof.
  - e. If Polk fails to perform any of the provisions of this agreement or so fails to pursue the work as to endanger the performance of this agreement in accordance with its terms and

after written notice from Marion, fails to correct such failure(s) within ten (10) days or such longer period as the Marion may authorize.

- 3.5 Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

#### **4. FUNDING AND BILLING**

- 4.1 The total amount paid under this contract by Marion to Polk shall not exceed \$128,676. \$100,651 for personnel; \$14,487 for travel, phone, supplies, rent, IT; and \$13,538 for administrative costs. Payments under this contract shall be made on a monthly basis upon receipt of invoices from Polk.
- 4.2 Requests for payment shall be submitted to Marion monthly to the attention of: Accounts Payable, Marion County Health and Human Services at the following address: 3180 Center St NE Suite 2100 Salem, OR 97301-4572. Final invoices are due no later than July 15, 2023.

#### **5. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT:**

##### **5.1 UNDER THE TERMS OF THIS AGREEMENT, POLK SHALL:**

- a. Employ a Public Health Worker in support of work concerning communicable disease control that will be an employee of Polk at all times to provide field and/or communicable disease investigation and case finding in Polk and/or Marion County.
- b. Ensure representation at all joint communicable disease modernization meetings, including but not limited to Leadership Team meetings, Communicable Disease Task Force meetings, executive meetings, or communication meetings.
- c. Prepare a report for submission to State funding agency at the end of this three month transition cycle, report to include all work completed on the modernization grant, including strategies implemented for all staff involved in Modernization Grant.

##### **5.2 UNDER THE TERMS OF THIS AGREEMENT, MARION SHALL:**

- a. Support Polk County data collection, analysis and outcomes reporting.
- b. Organize meetings and distribute minutes.
- c. Support Polk County with reporting on grant deliverables to State funding agency.
- d. Fulfill obligations under the mutually agreed upon Marion and Polk Modernization Workplan.

#### **6. COMPLIANCE WITH APPLICABLE LAWS**

The parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the state of Oregon.



**7. NONDISCRIMINATION**

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this agreement.

**8. HOLD HARMLESS**

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, each party agrees to waive, forgive, and acquit any and all claims it may otherwise have against the other and the officers, employees, and agents of the other, for or resulting from damage or loss, provided that this discharge and waiver shall not apply to claims by one party against any officer, employee, or agent of the other arising from such person's malfeasance in office, willful or wanton neglect of duty, or actions outside the course and scope of his or her official duties.

**9. INSURANCE**

Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon tort claims act (ORS 30.260 TO 30.300).

**10. MERGER CLAUSE**

Parties concur and agree that this agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change to the terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by its term and conditions.

**11. NOTICES**

Any notice required to be given Polk or County under this Agreement shall be sufficient if given, in writing, by first class mail or in person as follows:

For Polk County:

Polk County Public Health  
Attn: Public Health Administrator  
182 SW Academy St.  
Dallas, OR 97338

For Marion County:

Procurement & Contracts Manager  
555 Court Street NE, Suite 5232  
P.O. Box 14500  
Salem, OR 97309  
Fax No. 503-588-5237

**12. FALSE CLAIMS, FRAUD, WASTE AND ABUSE**

Both parties shall cooperate with and participate in activities to implement and enforce policies and procedures to prevent, detect and investigate false claims, fraud, waste and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. Both parties 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. Both parties 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. Both parties are 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. Both parties are required to check the following databases for excluded individuals and entities:

Excluded Parties List System (EPLS) [www.sam.gov](http://www.sam.gov)

- 13. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**  
The Business Associate Contract Provisions required by the Health Insurance Portability and Accountability Act, of 1996, (HIPAA), as amended, are attached as ADDENDUM #1 to this contract and are incorporated herein.

- 14. **SIGNATURES**  
This agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the parties hereto as of the effective date set forth herein.

In witness whereof, the parties hereto have caused this agreement to be executed on the date set forth below.

**MARION COUNTY SIGNATURE BOARD OF COMMISSIONERS:**

	8/10/2022
Chair	Date

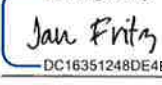
**Not Present At Meeting**

	8.10.2022
Commissioner	Date

	7/15/2022
Commissioner <small>DocuSigned by: Ryan Matthews 7D28A787656F458...</small>	Date

	7/15/2022
Ryan Matthews, Administrator <small>DocuSigned by: Katrina Rothenberger 03A5DB54852A4D2...</small>	Date

	7/15/2022
Katrina Rothenberger, Division Director <small>DocuSigned by: Jeremiah Elliot 42E82FBDB73F484...</small>	Date

	7/22/2022
Jeremiah Elliott, Sr. Admin Svcs Manager <small>DocuSigned by: Jan Fritz DC16351248DE4EC...</small>	Date
Chief Administrative Officer	Date

DocuSigned by: <i>Jane E Vetto</i> DOCFC5B04B9F483	7/22/2022
Marion County Legal Counsel	Date
DocuSigned by: <i>Camber Schlag</i> C5B2F3DF257F444	7/15/2022
Marion County Contracts & Procurement	Date

**POLK COUNTY SIGNATURE**

  
Signature: \_\_\_\_\_  
Print Name: GREGORY P. HANSEN

## ADDENDUM NO 1

### 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 POLK COUNTY; a political subdivision of the State of Oregon, 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 POLK COUNTY.
  - 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:

Office of Inspector General (OIG) <https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>  
Excluded Parties List System (EPLS) [www.sam.gov](http://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 purposes 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.