

PROFESSIONAL SERVICES CONTRACT (Psychiatric Services)

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Department of Health and Human Services, hereinafter referred to as the “County”, and ACCESSIBLE PSYCHIATRY, LLC, an Oregon corporation whose Federal Employer Identification No. is 88-15554223, hereinafter referred to as the “Provider”.

RECITALS

WHEREAS, The County operates its various publicly funded specialty behavioral health clinics through its Department of Health and Human Services (HHS); and

WHEREAS, In order to provide adequate services for its varied HHS programs, it is necessary for the County to contract with a qualified consultant with clinical supervision experience; and

WHEREAS, The Provider possesses such training, abilities, knowledge, qualifications, and experience and is willing to perform the certain services for the County as set forth herein; and

WHEREAS, This Contract is considered a Personal Services Contract and is thereby compliant with both ORS 279A.055 and YCC 3.20.047.0910(a)(i); and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

AGREEMENT

1. TERM. This Contract shall become effective, and services required hereunder shall commence, on April 9, 2024. Unless otherwise terminated as provided herein, the Contract shall automatically renew annually, with a maximum term not-to-exceed ten years.
2. CONSIDERATION. As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Provider an hourly rate of \$225.00 for services rendered under this Contract. The County shall make payment upon receipt and acceptance of the services as invoiced by the Provider. The County shall pay invoices within thirty (30) days after an invoice has been received and approved by the authorized a County representative.
 - a. Provider shall provide up to forty (40) hours of service per week unless otherwise approved by the HHS Director or designee, dependent upon County needs for services and available funding. No minimum number of hours is guaranteed by this Contract.
 - b. The compensation provided herein shall be exclusive, and the County shall neither pay nor provide Contractor with any fringe benefits, including, but not limited to, retirement, health insurance, workers’ compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Provider for any purpose whatsoever unless

otherwise agreed in writing. The Provider shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to Contractor.

3. SERVICES. The Provider shall provide the following services to the satisfaction of the County:
- a. The Provider shall provide professional psychiatric behavioral health services ("Services") to clients of the County as directed by the HHS Director or designee. The manner and means of providing the services required under this Contract shall be in the sole discretion and professional judgment of the Provider, subject to the direction of the treating licensed medical practitioner, if any, and the laws, rules and regulations relating to the provision of services by HHS.
 - b. Services under this Contract shall be provided in places determined to be appropriate by the Provider. Services shall include, but shall not be limited to, treatment of social/psychological disorders, direct treatment management, psychotropic prescribing, medical involvement with the administration of or care of persons requiring prescribed psychotropic medication, on-call consultation to staff members of the County and authorized health care service providers in times of client crisis situations, and may include psychiatric support to persons with mental illness at the Yamhill County Jail and other clinical sites, as directed by the HHS Director or designee.
 - c. The Provider shall provide and maintain appropriate credentials of professional qualifications, including written verification of current professional Oregon licensure with the Oregon Medical Board and Drug Enforcement Administration upon execution of this Contract. In the event Provider is unable to maintain professional licensure, Provider shall notify the County immediately and the Contract shall be terminated.
 - d. The Provider shall satisfactorily pass a criminal history check.
 - e. The Provider shall not be listed as an excluded party on the Excluded Parties List System (EPLS) and Office of Inspector General's (OIG) exclusion list.
 - f. The Provider shall take immediate steps, upon execution of this Contract, to become an approved provider of Medicaid, Medicare, and contracted private insurance services for the County in the State of Oregon.
 - g. The Provider shall record and report to HHS referred patients' reaction to treatment, changes in patients' conditions, summary of care given and patients' progress and current mental health status pursuant to Oregon Administrative Rules concerning the Oregon Health Authority Addictions and Mental Health Division program mandates. Reports shall be made in a timely manner. The Provider shall complete and type all progress notes and treatment plans collaboratively with clients they serve in the current Electronic Medical Record (EMR) by the end of the session in compliance with the HHS documentation policy.
 - h. The Provider shall maintain clinical logs/documentation in compliance with Oregon Administrative Rules and licensing boards.
 - i. The Provider shall provide the HHS Director or designee with a monthly invoice by the County's last working day of the month in which services were provided. The invoice shall reflect hours worked and services provided.

- j. The Provider shall provide County with reasonable advance notice in any instance when Provider will be completely unavailable, temporarily unavailable, or will need to change service schedule.
4. COUNTY OBLIGATIONS. In addition to other obligations provided herein, the County shall:
- a. Provide the Provider with pertinent client records, including health data and other necessary financial information, for the Provider's performance under this Contract, provided that the Provider shall be subject to the rules and regulations of the County relating to the confidentiality of client records;
 - b. Be responsible for maintenance of client records and the billing and collection of third-party funds for services provided hereunder; and
 - c. Provide, at the County's expense, a cell phone and computer for remote work connected to performance of the Provider's duties under this Contract that will be returned to the County at the conclusion of this Contract.
5. ADMINISTRATION AND PROFESSIONAL SUPERVISION.
- a. The Provider shall have the sole authority to determine the manner and means of performing the services required hereunder, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, however, that the County shall direct Provider as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the services being rendered.
 - b. Professional supervision and resolutions of complaints lodged against the Provider's professional performance shall be the responsibility of the Provider and/or the Oregon State Board of Licensed Social Workers.
6. BUSINESS ASSOCIATE AGREEMENT. The Provider acknowledges that the County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191, and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"). In accordance with Exhibit A, the terms of this Contract create the relationship of "Covered Entity" and "Business Associate" between the County and the Provider. HIPAA and the Privacy and Security Rule, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act), require "Covered Entities" and "Business Associates" to enter into a Business Associate Agreement to protect certain health information. The Business Associate Agreement between the County (the Covered Entity) and the Provider (the Business Associate) is set forth in the attached Exhibit A and is incorporated herein by this reference.
7. WARRANTY OF SERVICES. The County has relied upon the professional ability, qualifications, and training of the Provider as a material inducement to enter into this Contract. Accordingly, the Provider represents and warrants that: (i) the Provider shall perform all services set forth herein in a good and workmanlike manner, in conformance with the terms, conditions, and requirements of this Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) the Provider warrants that each of the Provider's employees assigned to perform services under this Contract has the proper skill, training, and background to be able to perform the services in a competent, timely, and professional manner and that all services shall be so performed; and (iii) the Provider shall at

all times maintain and keep current all professional licenses, certifications, and professional liability insurance required to perform the work set forth in this Contract.

8. **INDEPENDENT CONTRACTOR.** This agreement is not a contract of employment. The County does not seek to hire Contractor as an employee(s) of the County nor does the Provider desire to be an employee(s) of the County for performance of the services described herein. The parties intend that the Provider, in performing the services specified herein, shall be and act as an independent contractor and shall have professional control of the work and the manner in which it is performed. The Provider shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Contractor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Provider's services. The Provider shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Provider.
9. **AMENDMENT.** This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and local ordinances. No amendment shall bind either party unless in writing and signed by both parties.
10. **COMPLIANCE WITH ORS 279B.220.** For all services provided under this Contract, the Provider shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Provider or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Provider does not pay promptly any claim that is due for the services furnished to the Provider by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Provider under this Contract. The County's payment of a claim does not relieve the Provider or its surety, if any, from their obligations for any unpaid claims.
11. **HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.**
 - a. Pursuant to ORS 279B.235(3), the Provider shall pay the Provider's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 - b. Pursuant to ORS 279B.235(1)(b), the Provider shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.
 - c. Pursuant to ORS 279B.235(1)(c), the Provider shall not prohibit any of the Provider's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not

retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

- d. Pursuant to ORS 279B.235(5)(b), the Provider shall notify, in writing, any person employed by the Provider under this Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Provider may require the employees to work.
12. **WORKERS' COMPENSATION.** If the Provider is a subject employer for workers' compensation or unemployment insurance purposes, Contractor shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Provider and the Provider's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Provider or the Provider's employees.
 13. **COMPLIANCE WITH LAWS.** The Provider shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Contractor of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Contractor shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.
 14. **INDEMNIFICATION.** The Provider shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Provider in connection with the performance of any services required hereunder. The Provider shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.
 15. **INSURANCE.** The Provider shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:
 - a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, covering all activities and operations of the Provider;
 - b. Commercial Automobile Liability Insurance, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, for all owned, non-owned, and hired vehicles used in the performance of the services required hereunder; and
 - c. Medical Malpractice Insurance. The Provider shall maintain medical malpractice insurance in the amount of \$1,000,000. Yamhill County Health and Human Services shall be identified as a practice site. The Provider shall, at the Provider's expense,

ensure that such medical malpractice insurance shall also cover any independent practice and liabilities outside the Provider's duties under this Contract, and that such insurance is written by a responsible insurance company licensed to do business in Oregon. The Provider hereby agrees to not hold the County responsible for any liability arising from such independent practice. Provider shall provide the County with a copy of such insurance policy upon execution of this Contract, and he County, at any time during the term of this Contract, shall be entitled and have authority to obtain information concerning the status of said policy.

d. Additional Insurance Requirements:

- i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
- ii. Insurance coverage shall apply on a primary and non-contributory basis.
- iii. Prior to commencing services, the Provider shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Provider's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Provider or its insurer to the County. If requested, the Provider shall provide complete copies of insurance policies to the County.

16. TERMINATION. Either party may terminate this Contract by providing the other party with written notice of the termination at least thirty (30) calendar days before the intended termination date. Such termination shall be without liability or penalty, and in no circumstance shall the Provider be entitled to lost profits for work not performed due to termination. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
17. FORCE MAJEURE. Neither the County nor the Provider shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of the County or the Provider. The Provider shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Provider until such time as the County has accepted the services required hereunder.
18. ASSIGNMENT; DELEGATION; SUCCESSOR. The Provider shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Provider of any obligations under this Contract, and any assignee, transferee, or delegate is considered the

Provider's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.

19. GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES. This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Provider that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Provider hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
20. RECORDS. The Provider shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Provider shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Provider's performance hereunder. The Provider acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Provider for a minimum of six (6) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
21. NOTICES. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

County: HEALTH AND HUMAN SERVICES
ATTN: Lindsey Manfrin
535 NE 5th Street
McMinnville, Oregon 97128
manfrinl@co.yamhill.or.us

Provider: ACCESSIBLE PSYCHIATRY, LLC
ATTN: Ashutosh Lodhi
15325 SW Woodwind Ct.
Beaverton, Oregon 97007
lodhia@yamhillcounty.gov

22. FOREIGN CONTRACTOR. If the Provider is not domiciled in or registered to do business in the State of Oregon, the Provider shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Provider has met this requirement.

23. TAX CERTIFICATION. The Provider hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Provider's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
24. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
25. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
26. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
27. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
28. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE PROVIDER, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Contract on the date indicated by their duly authorized officials.

ACCESSIBLE PSYCHIATRY, LLC



Signature

Ashutosh Lodhi

Name (printed)

MD, Psychiatrist

Title

3/30/2024

Date

YAMHILL COUNTY

DocuSigned by:



Chair, LINDSAY BERSCHAUER

DocuSigned by:



Commissioner, MARY STARRETT

DocuSigned by:



Commissioner, KIT JOHNSTON

4/12/2024

Date

APPROVED AS TO FORM

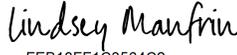
DocuSigned by:

By: 

Jodi Gollehon, Assistant County Counsel

APPROVED AS TO CONTENT:

DocuSigned by:

By: 

Lindsey Manfrin, HHS Director

Approved by the BOC on: 4/11/24

via Board Order No.: 24-108

EXHIBIT A
BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT

RECITALS

A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under the Agreement; and

B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and

C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by 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, Public Law 111-5 (“ARRA”); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement pursuant to this Business Associate/Qualified Service Organization Agreement (“BAA”); and

D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

NOW, THEREFORE, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

AGREEMENT. The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this BAA. Capitalized terms used, but not otherwise defined in this BAA, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

1. SERVICES. Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this BAA, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.

2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this BAA), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this BAA, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

(b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this BAA, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this BAA.

(d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this BAA, of which it becomes aware.

(e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this BAA, to CONTRACTOR with respect to such information.

(f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.

(h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.

(i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this BAA, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the COUNTY.

(l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms “Unsecured Protected Health Information” and “Breach” shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as “Discovered” in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of CONTRACTOR’s Breach of Unsecured Protected Health Information.

3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

(a) General Use and Disclosure Provisions.

(1) Except as otherwise limited or prohibited by this BAA, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this BAA, provided that such use or disclosure would not violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY's Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

(b) Specific Use and Disclosure Provisions.

(1) Except as otherwise limited in this BAA, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this BAA, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

4. OBLIGATIONS OF COUNTY.

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

5. PERMISSIBLE REQUESTS BY COUNTY.

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

6. TERM AND TERMINATION.

(a) Effective Date; Term. This BAA shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This BAA shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the BAA is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this BAA, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this BAA, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this BAA if the party in breach does not cure the breach of the terms of this BAA or end the violation within the time specified;

(2) Immediately terminate the Agreement and this BAA if the party in breach has breached a material term of this BAA and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this BAA are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this BAA, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this BAA to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

7. MISCELLANEOUS.

(a) Regulatory References. A reference in this BAA to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Rules may be subsequently amended from time to time.

(b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this BAA from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA.

(c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this BAA shall survive the termination of the Agreement and this BAA.

(d) Interpretation; Order of Precedence. Any ambiguity in this BAA or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this BAA amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this BAA and the Agreement are to be harmonized. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control; provided, however, that this BAA shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this BAA) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.

(e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA.

(f) Successors and Assigns. The provisions of this BAA and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

(g) Except As Amended. Except as amended by this BAA, all terms and conditions of the Agreement shall remain in full force and effect.

8. SIGNATURES.

By signing this BAA, the parties certify that they have read and understood this BAA, that they agree to be bound by the terms of this BAA and the Agreement, as amended, and that they have the authority to sign this BAA.

CONTRACTOR:

By: Ashutosh Lodhi

Title: MD, Psychiatrist

Date: 03/30/2024

COUNTY:

By: DocuSigned by:
Lindsay Berschauer
1E3542C8E2074D7...

Title: Chair, Board of Commissioners

Date: 4/12/2024