

CONTRACT EMPLOYMENT AGREEMENT
Marly Kennedy
Psychiatric Behavioral Health Nurse Practitioner

THIS AGREEMENT (“Agreement”) is between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners and Department of Health and Human Services (“Agency”) and Marly Kennedy, an individual, 1548 NW Cabernet Court, McMinnville, OR 97128 (“Kennedy”).

WHEREAS, Agency and Kennedy are agreeable to the acceptance of duties under the terms and conditions hereinafter stated;

In exchange for the promises and other consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

A. Kennedy AGREES TO:

1. Provide professional psychiatric behavioral health services (“Services”) to clients of Agency as directed by Agency’s Health and Human Services (HHS) Director or designee. The manner and means of providing the Services under this Agreement shall be in the sole discretion and professional judgment of 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 Agency. Services under this Agreement shall be provided in places determined to be appropriate by Kennedy. Services shall include, but not be limited to, treatment of social/psychological disorders, direct treatment management, medical involvement with the administration of or care of persons requiring prescribed psychotropic medication, on-call consultation to staff members of Agency and authorized health care service providers in times of client crisis situations, and may include psychiatric support to persons with mental illness at Yamhill County Jail and other clinical sites, as directed by the HHS Director or designee.

2. Record and report to Agency 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. Kennedy will complete and type all progress notes and treatment plans collaboratively with clients she serves in current Electronic Medical Record (EMR) by the end of the session in compliance with documentation policy.

3. To provide up to 40 hours of service per week, and in any event to work no more than 40 hours in any one week unless otherwise approved by the HHS Director or designee, dependent upon Agency needs for services and funding available. However, no minimum number of hours is guaranteed by this agreement.

4. Provide Agency with reasonable advance notice in any instance when Kennedy will be completely unavailable, will be temporarily unavailable, or will need to change the usual schedule.

5. Provide evidence of current licensure in good standing as a registered nurse and certified nurse practitioner in Oregon.

6. Provide Agency with an hourly time sheet by the dates established by Agency for submission of time sheets, and according to Agency requested format.

7. Kennedy shall at Kennedy's expense, procure and maintain liability insurance to cover any independent practice outside the duties under this Agreement written by a responsible insurance company licensed to do business in Oregon, and will not hold Agency responsible for any liability arising from such independent practice. Kennedy shall provide Agency with a copy of such insurance policy and Agency, at any time during the term of this Agreement, shall be entitled and have authority to obtain information concerning the status of said policy.

8. HIPAA Compliance. Kennedy acknowledges that Agency 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"). Agency and Kennedy hereby agree to the respective obligations in the attached Exhibit A, "Business Associate/Qualified Service Organization Agreement" which is incorporated herein by this reference.

9. Kennedy acknowledges that Kennedy may, in the course of her performance under this Agreement, be exposed to or acquire information that is the confidential information of Agency or Agency's clients. Any and all (i) client information, (ii) information provided by Agency and marked confidential, (iii) Protected Health Information or EPHI as described or defined in Exhibit A, or (iv) information identified as confidential in a separate writing, that becomes available to Kennedy in the performance of this Agreement shall be deemed to be confidential information of Agency ("Confidential Information"). Any reports or other documents or items, including software, that result from Kennedy's use of the Confidential Information are also deemed Confidential Information. Kennedy agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Kennedy uses in maintaining the confidentiality of Kennedy's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Kennedy agrees that, upon termination of this Agreement or at Agency's request, Kennedy will return to Agency all documents, papers and other matter in Kennedy's possession that embody Confidential Information and Kennedy will certify that all such Confidential Information has either been returned or destroyed.

B. AGENCY AGREES TO:

1. Pay Kennedy the sum of \$87.00 per hour for the Service described in Section A as assigned by the HHS Director or designee and if applicable, pay Kennedy an additional \$175.00 per seven day period for scheduled on-call crisis availability to carry a pager which is voluntary; call out will be paid at straight time up to 40 hours per week of employment and at time and a half for time spent on calls over the 40 hour work week. No minimum amount of hours is guaranteed Kennedy by this Agreement, but the parties understand the Agency intends to assign 40 hours of work per week as negotiated with HHS Director or designee. Kennedy shall be paid based on timesheets submitted using the normal pay period schedule for employees.

2. Pay its proportionate share of social security and Medicare tax for services performed under this Agreement and to withhold and pay to the Internal Revenue Service Kennedy's proportionate share of social security and Medicare taxes due for services performed under this Agreement. For purposes of these taxes, Kennedy shall be treated as an employee of Agency.

3. Withhold state and federal income taxes from the monthly payment owed Kennedy and to pay the Internal Revenue Service and Oregon Department of Revenue all such sums withheld on behalf of Kennedy.

4. Provide, at Agency's expense, worker's compensation insurance for Kennedy's performance of services under this Agreement.

5. Provide, at Agency's expense, liability insurance coverage for claims connected to performance of Kennedy's duties under this Agreement through its policy with City Agency Insurance Services subject to the provisions of the Oregon Tort Claims Act.

6. Agency shall be responsible for maintenance of client records, and the billing and collection of third-party funds for services provided. Agency will provide materials such as computer, printer and forms for documentation of services by Kennedy.

7. Provide access to all resources needed to provide care of patients in the described settings, including clinical records, space, equipment, staff and other essential materials and supplies.

C. BOTH PARTIES AGREE:

1. Agency and Kennedy agree to comply with the rules and regulations of Agency, applicable federal regulations and all provisions of federal and state law relating to Kennedy's performance of services under this Agreement. The requirements of ORS 279B.200 through 279B.240 and Article IX, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference.

2. That a contract employee/employer relationship is created by this Agreement. The only compensation due Kennedy is specifically stated in this Agreement. Specifically, both

parties agree that Kennedy will not be entitled to any benefits typically granted to Agency employees, including but not limited to vacation, holiday or sick leave, other leaves with pay, tenure, health and welfare coverage, life and disability insurance, overtime, or to any other benefit not specifically referred to above, except as required by law. The Agency will make required contributions (if any) to Kennedy's PERS account based on the number of hours worked in this calendar year.

3. Any expenses incurred by Kennedy in the performance of the terms and conditions of this Agreement not specifically provided for in this Agreement shall be the sole and separate responsibility of Kennedy.

4. The Effective Date is October 9, 2019, with an initial term through June 30, 2020. Upon conclusion of the initial term of this Agreement, this Agreement will automatically be renewed on a year-by-year basis, under the same terms and conditions as set forth herein, unless terminated as allowed in paragraph 9. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this agreement.

5. That this Agreement does not exclude either party from entering into other contracts for the same or similar services.

6. That Kennedy will provide services to Agency clients without regard to race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1964.

7. That an administrative evaluation shall be done annually by Agency according to approved format. Professional evaluation shall be completed periodically as agreed upon by both parties but in no event less than annually. All evaluations will be written and filed appropriately.

8. This Agreement may be modified or amended only by mutual, written agreement in an instrument signed by both parties.

9. Either party may terminate this Agreement on thirty (30) days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

10. This Agreement shall not be subcontracted or assigned by Kennedy without the prior written consent of Agency.

11. That in the event either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may reasonably incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connections with any non-judicial action.

12. That the failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision. The parties agree that if any term of provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and

the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

13. That this Agreement is the entire agreement between the parties, and no statements, promises or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding.

14. That this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively "Claim") between Agency and Kennedy that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. KENNEDY, BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

IN WITNESS WHEREOF the parties have executed this Agreement on the date set forth adjacent to the signatures below.

Marly Kennedy, PMHNP
MARLY KENNEDY, PMHNP
Date: 10/8/19

YAMHILL COUNTY

By: Rick Olson
RICHARD I. "RICK" OLSON, Chair
Board of Commissioners
Date: 10-19-19

By: Silas Halloran-Steiner
SILAS HALLORAN-STEINER, Director
Department of Health and Human Services
Date: 10/9/19

APPROVED AS TO FORM:

By: Christian Boenisch
CHRISTIAN BOENISCH
County Counsel
Date: 10/10/19

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: Marly Kennedy
Title: PM/ANP
Date: 10/8/2019

COUNTY:

By: [Signature]
Title: MHS DIRECTOR
Date: 10/9/19