

**INDEPENDENT CONTRACTOR AGREEMENT**

**Ashley Taylor**

THIS AGREEMENT ("Agreement") is made by and between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners and its Health and Human Services Department, Behavioral Health Programs ("County") and Ashley Taylor, an individual ("Taylor").

**RECITALS:**

A. The County and Taylor desire Taylor to provide certain guardianship services to a County client as an independent contractor.

B. The purpose of this Agreement is to set forth the terms and conditions for a continued relationship between Taylor and County. NOW THEREFORE,

IN CONSIDERATION OF THE MUTUAL PROMISES HEREINAFTER STATED, the parties agree as follows:

1. **Responsibilities of Taylor.** Taylor shall act as a legal guardian for a specific individual [REDACTED] who is within the County's system of care and Taylor shall perform the functions of a court appointed legal guardian in accordance with applicable law. Taylor agrees to be available, if needed, for after-hours, on-call consultation with staff by cell phone. Taylor is also responsible for obtaining and maintaining all necessary authority as required by state law to provide guardianship and related Services.

2. **Term of Agreement; Termination.**

a. Unless cancelled as provided in subsection (b), the term of this Agreement is for a period of one year effective upon the court approval date of the legal guardianship.

b. Either party may terminate this Agreement, with or without cause, at any time upon thirty (30) days prior written notice to the other party. Termination shall not excuse liabilities incurred prior to termination date.

c. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, if Taylor engages in any act that would subject County or Taylor to criminal liability; upon dissolution of County; or upon any of the following (i) the insolvency of the Taylor, (ii) the filing of a voluntary or involuntary petition by or on behalf of Taylor under federal bankruptcy law, (iii) upon a party entering into an agreement with creditors for the liquidation of its assets, or (iv) upon the appointment of a receiver or trustee to take charge of all the assets of Taylor, County will provide written notice of termination of this Agreement to Taylor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination.

d. Taylor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

B.O. 17-80

3. **Compensation; Statement of Services.** County will pay Taylor for costs related to the guardianship for a period of one year effective upon the court approval date of the legal guardianship at a rate of up to \$100.00 per hour for each hour of services performed. The maximum not-to-exceed amount paid by County under this Agreement is \$5,000. Taylor shall submit a statement for services performed under this Agreement, for review and approval, on a form approved by County to the program supervisor within 30 days of the end of the one year term. Any expenses incurred by Taylor 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 Taylor.
4. **Work Location.** Taylor shall perform services from her office and agrees to be available as necessary to meet at County offices.
5. **Independent Contractor.** Taylor is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:
- A. Taylor is not an officer, employee, or agent of the County or the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- B. If Taylor is currently performing work for the County, State of Oregon or the federal government, Taylor by signature to this Agreement, represents and warrants that Taylor's Services to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which Taylor currently performs work would prohibit Taylor's Services under this Agreement. If compensation under this Agreement is to be charged against federal funds, Taylor certifies that Taylor is not currently employed by the federal government.
- C. Taylor is responsible for all federal and State taxes applicable to compensation paid to Taylor under this Agreement and, unless Taylor is subject to backup withholding, County will not withhold from such compensation any amounts to cover Taylor's federal or State tax obligations. Taylor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Taylor under this Agreement, except as a self-employed individual.
- D. Taylor shall perform all Services as an independent contractor. County reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, County may not and will not control the means or manner of Taylor's performance. Taylor is responsible for determining the appropriate means and manner of performing the Services.
6. **Business Associate Clause - HIPAA restrictions.** Taylor acknowledges that 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"). County and Taylor hereby agree to the respective obligations in the attached Exhibit A, "Business Associate/Qualified Service Organization Agreement" which is incorporated herein by this reference.
7. **Confidentiality.** Taylor acknowledges that it or its agents may, in the course of their performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County clients. Any and all (i) client information, (ii) information

provided by County 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 Taylor or its agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Taylor's use of the Confidential Information are also deemed Confidential Information. Taylor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Taylor uses in maintaining the confidentiality of Taylor'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. Taylor agrees that, upon termination of this Agreement or at County's request, Taylor will turn over to County all documents, papers and other matter in Taylor's possession that embody Confidential Information.

8. **Indemnification.** TAYLOR AGREES TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS AND ACTIONS, AND ANY LIABILITIES, DAMAGES OR EXPENSES RESULTING THEREFROM, INCLUDING COURT COSTS, ALLEGING INJURIES TO PERSONS OR DAMAGE TO PROPERTY RELATING TO OR ARISING OUT OF ANY OF THE SERVICES PERFORMED BY TAYLOR UNDER THIS AGREEMENT.

9. **Insurance.** Taylor, at Taylor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- A. Workers' Compensation Insurance in compliance with statutory requirements;
- B. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- C. Professional Liability Insurance, including errors and omissions coverage, covering Taylor pursuant to this Agreement, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services provided under this Agreement;
- D. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$250,000 per occurrence, for bodily injury and property damage with respect to Taylor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Taylor in connection with the Services provided under this Agreement;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, Taylor shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name the County, State of Oregon, OHA and their divisions, directors, officers, and employees as

additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause but only with respect to Taylor's activities to be performed under this Agreement. Taylor shall immediately notify County orally of the cancellation or restriction and shall confirm the oral notification in writing within three days of notification by the insurance company to Taylor.

10. **Rules and Regulations.** County and Taylor agree to comply with the rules and regulations of County, applicable state and federal regulations and all provisions of federal and state law relating to Taylor's performance of Services under this Agreement. The requirements of ORS 279B.220 through 279B.240 and Article XI, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference. Without limiting the generality of the foregoing, Taylor agrees to provide services to County clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954. In addition, Taylor agrees that Taylor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.

11. **Entire Agreement.** This Agreement is the entire agreement between the parties as to the subject matter, 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. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties. This Agreement supersedes and replaces any prior employment agreement between the parties whether written or oral.

12. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts or law. Any claim, action, suit or proceeding, (collectively "Claim") between County and Taylor 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. TAYLOR, BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

13. **Waiver; Severability.** The failure of County to enforce any provision of this Agreement shall constitute a waiver by County of that or any other provision. The parties agree that if any term or 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.

14. **Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

15. **Subcontracts; Assignment.** Taylor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. This Agreement shall not be assigned by Taylor without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement.

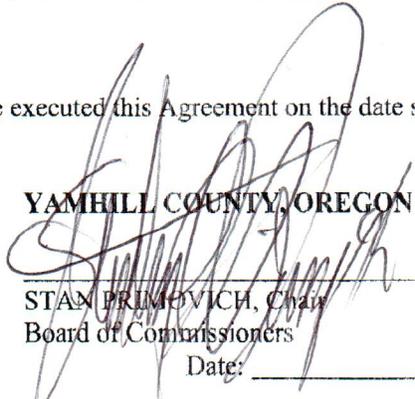
16. **Attorney Fees and Costs.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

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

  
ASHLEY TAYLOR

Date: 2-25-17

SSN: (on file)

**YAMHILL COUNTY, OREGON**  
  
STAN PRIMOVICH, Chair  
Board of Commissioners

Date: \_\_\_\_\_

  
SILAS HALLORAN-STEINER, Director  
Department of Health & Human Services

Date: 3/13/17

FORM APPROVED BY:

  
CHRISTIAN BOENISCH  
County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
3-16-17 by Board Order  
# 17-84

**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; 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 Amendment. Capitalized terms used, but not otherwise defined in this Amendment, 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 Amendment, 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 Amendment), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this Agreement, 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 Amendment, 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 Amendment.
- (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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment, 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 Amendment. 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 Agreement 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 Agreement 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 Amendment shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This Amendment shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the Amendment is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this Agreement, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this Amendment, 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 Amendment if the party in breach does not cure the breach of the terms of this Amendment or end the violation within the time specified;

(2) Immediately terminate the Agreement and this Amendment if the party in breach has breached a material term of this Amendment 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 Amendment 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 Amendment, 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 Amendment 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 Amendment 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 Amendment 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 Amendment 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 Amendment.

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

(d) Interpretation; Order of Precedence. Any ambiguity in this Amendment 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 Amendment amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this Amendment and the Agreement are to be harmonized. In the event of a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control; provided, however, that this Amendment 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 Amendment) 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 Amendment and are the only parties entitled to enforce its terms. Nothing in this Amendment 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 Amendment.

(f) Successors and Assigns. The provisions of this Amendment 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 Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

(signature page follows)

**8. SIGNATURES.**

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

**CONTRACTOR:**

By: Ashley Taylor  
Title: Guardian  
Date: 2-25-17

**COUNTY:**

By: Silas Mellow-Stein  
Title: HHS DIRECTOR  
Date: 3/13/17