



COPY

Richard Swift
Interim Director

June 11, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement #44-1664 with
Multnomah County Dept. of County Human Services,
Aging & Disability Services Division

Purpose/Outcomes	To participate in the regional FamilyCare Home Delivered Meals (FC-HDM) pilot project to provide home delivered meals to at-risk members enrolled in FamilyCare's Oregon Health Plan & Medicare Advantage Plan.
Dollar Amount and Fiscal Impact	The maximum agreement is \$26,712. The contract is funded through the Multnomah County provider agreement with the FamilyCare Coordinated Care Organization.
Funding Source	FamilyCare - no County General Funds are involved.
Safety Impact	Reduction of participants nutritional risk
Duration	Effective March 15, 2015 and terminates on March 31, 2016
Previous Board Action	
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	7099

BACKGROUND:

Clackamas County Social Services, as part of a seven county Aging & Disability Resource Connection Consortium, will participate in the Family Care Home Delivered Meals (FC-HDM) pilot with the Multnomah County Aging & Disability Services Division (Multnomah ADS) is serving as the lead agency and fiscal agent.

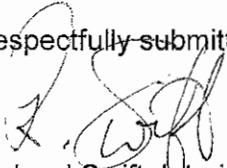
The goal of the FC-HDM pilot is to provide home delivered meals to persons identified by FamilyCare staff that meets the eligibility criteria. This 7-county pilot is intended to assist FamilyCare members identified as being at risk nutritionally with needed nutritional supports to assist them in successfully transitioning back to home.

This agreement is late due to Multnomah County not being able to release agreements to the other participating counties until their funding source released their agreement. This resulted in the delay of Multnomah County sending out its agreements. This agreement is effective March 15, 2015 through March 31, 2016. No County General Funds are involved in this agreement. The agreement was reviewed and approved by County Council on May 26, 2015.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes Richard Swift, H3S Interim Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Swift', is written over the text 'Respectfully submitted,'.

Richard Swift, Interim Director

INTERGOVERNMENTAL AGREEMENT

Contract Number 4400001664

This is an Agreement between Multnomah County (County) and Clackamas County Social Services (Contractor).

PURPOSE. This agreement purchases the services of the Clackamas County Social Services to provide services as part of the **FamilyCare Home Delivered Meals** program. This is a pilot project funded by FamilyCare (FC), a Coordinated Care Organization, to provide home delivered meals to at-risk members enrolled in FamilyCare's Oregon Health Plan and Medicare Advantage Plan in Morrow, Umatilla, Washington, Clackamas, Multnomah, Marion and Clatsop counties. Multnomah County will administer the program on behalf of FamilyCare and the 7-county coalition of Area Agencies on Aging/Aging & Disabilities Resource Connections (ADRCs). Contractor shall provide services in Clackamas County.

The parties agree as follows:

1. **TERM.** The term of this agreement shall be from March 15, 2015 to March 31, 2016. This agreement may be renewed if the program is extended by the funder.
2. **RESPONSIBILITIES OF CONTRACTOR.** Contractor agrees to provide home delivered meals ordered by FamilyCare in Clackamas County, in accordance with the Program Model, described below.

Program Model: One (1) to two (2) meals a day shall be provided for a benefit period ranging from one (1) to a maximum of three (3) weeks. Meals provided shall comply with the dietary and programmatic guidelines contained in the Older Americans Act - Oregon Nutrition Program Standards. If desired by FamilyCare, a participant survey shall be distributed at least once during the initial week of service. Meals may be either fresh or frozen depending on the need and capacity of local meal providers. Volunteers who deliver for local meal providers are trained to observe and report safety concerns. Both parties are committed to quality service delivery and agree to on-going and as-needed training and communication to ensure exceptional services are delivered to at-risk consumers.

Contractor shall provide the following services and deliverables:

- a. Accept FC orders for home delivered meals in Clackamas County through their ADRC Information and Assistance staff, as described in the attached **Procedure for Referring FamilyCare Authorized Home Delivered Meals (Attachment A)** or as modified by County in consultation with FC and the Contractors involved in the program. Note: Contractor is called "Service Partner" in the attachment.
- b. Provide the meals ordered, either directly or by contract with a local home-delivery meal provider. Meals shall meet the requirements of the Program Model. Meals shall be ordered in increments of one (1) week. Meals may be either fresh or frozen depending on the need and the capacity of local meal provider.
- c. Confirm the meal order start date by secure email or fax to the FC person who ordered the meal.

- d. Ensure that for meal orders received by **3:00 pm** on a business day, provision of meals shall start within **two (2) business days** of the receipt of the order by Service Provider, or by the next scheduled delivery date. For meal orders that are terminated early, ensure that delivery is stopped within **one (1) business day** of receiving termination notice or phone call.
- e. Enter appropriate information in the ADRC statewide database and keep other records as necessary to meet the requirements of the project.
- f. Require the local meal provider, in addition to delivering the meals ordered, to distribute any participant survey material supplied by FC. Meal providers shall document:
 - a. Contact with FC member;
 - b. Start and end date of meal delivery service;
 - c. Number of meals delivered to each FC member each week;
 - d. Any issues/problems that occur (e.g. member re-hospitalized, member refuses or calls to stop meals, etc.)
- g. Accept and respond to FC member complaints about the meal delivery or quality of the meals in Contractor's service area.
- h. Ensure that appropriate Contractor staff participate in County-provided training on project procedures and attend quarterly check-in meetings.
- i. Ensure that all communications that contain consumer information are sent by a secure method, preferably secure email.
- j. Pay local meal providers monthly. Before paying invoice from local meal provider, verify that the meals billed were ordered by FamilyCare, using ADRC database report.
- k. Invoice County on a monthly basis, including copies of local meal provider's invoice and documentation, ADRC database report used to verify meal orders, and copies of any consumer complaints received with information on response/resolution. Deadline for submitting invoices to Multnomah County ADVSD is the **20th calendar day** of the month following the month in which meals were provided.

3. **RESPONSIBILITIES OF COUNTY.** County is responsible for administering the program on behalf of FamilyCare (FC) and the 7-county-coalition of Area Agencies on Aging (AAA)/Aging & Disabilities Resource Connections (ADRC). County is responsible for:

- a. Training of Contractor and FC staff in project procedures and required documentation;
- b. Working with FC to provide outreach to FC provider networks;
- c. Acceptance of meal orders and early termination requests from FC;
- d. Documentation of meal orders in the ADRC RTZ database;
- e. Referral of meal orders and early termination requests to appropriate Contractor;
- f. Distribution of participant survey (if requested by FamilyCare) and envelopes to Contractor for local meal providers;
- g. Payment to Contractor of \$9.54 for each authorized meal delivered in Clackamas County;
- h. Submission of invoices and reports to FamilyCare;
- i. Coordination of and participation in quarterly project check-in meetings;

- j. Final report analyzing the effectiveness of the project, based on data provided by FamilyCare.
4. **REQUEST FOR PAYMENT.** County will pay Contractor **\$9.54 per meal** for an estimated maximum of **2,800** meals ordered by FamilyCare and delivered in Clackamas County, up to and not-to-exceed a maximum of **\$26,712** for the term of this agreement. Contractor shall provide monthly invoices, along with the documentation described above, to County by the 20th calendar day of the month. If required documentation and invoices are received on time and are complete and correct, County will process payments within thirty (30) calendar days of receipt of monthly invoice and documentation.

All requests for payment shall be sent **by secure email** to:

ADS.Contracts@multco.us; cc janet.mcmanus@multco.us

County will remit payments to:

Clackamas County Social Services Division
P.O. Box 2950
Oregon City, OR 97045

5. **TERMINATION.** This agreement may be terminated by either party upon thirty (30) days' written notice. Termination of this Agreement shall be without prejudice to expenses accrued prior to such termination.
6. **INDEMNIFICATION.** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless Contractor from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 Contractor shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of Contractor, its officers, employees and agents in the performance of this agreement.
7. **INSURANCE.** Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
8. **ADHERENCE TO LAW.** Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.
9. **NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
10. **ACCESS TO RECORDS.** Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.

11. **SUBCONTRACTS AND ASSIGNMENT.** Neither party will subcontract or assign any part of this agreement without the written consent of the other party. County consents to subcontracts to local meal providers as needed to carry out the program.

12. **ADDITIONAL TERMS AND CONDITIONS.**

- a. If funds cease to be available to County in the amounts anticipated for this Agreement, County may reduce the scope of services to be provided and Contract funding accordingly.
- b. Services provided are subject to the Medicaid and Medicare terms in Attachments B and C.
- c. Contractor is a Business Associate of County for the purposes of this program, and shall sign the attached Business Associate Agreement (Attachment D.)

13. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

MULTNOMAH COUNTY, OREGON:

CONTRACTOR:

County Chair or Designee:

Deborah Kaufman/ew
Date: 3/25/15

Signature: _____

Print Name: _____

Dept Director or Designee:

Kel J. Morrison
Date: 3/10/2015

Title: _____

Date: _____

Jenny M. Madkour,
County Attorney for Multnomah County

Approved as to form by:

Kim Ybarra via phone

By Assistant County Attorney

Approved via email by Patrick Henry

Date:

5/26/15

Date: 3/6/2015

Attachment A

Procedure for Referring FamilyCare Authorized Home Delivered Meals

FamilyCare Care Coordinator completes Home delivered Meals (HDM) Referral Form and securely emails form to ADRC@multco.us before 2:00 PM. Email should be sent from FamilyCare Care Coordinator using 'request for read receipt' function. Multnomah County ADRC confirms read receipt upon viewing email.

Multnomah County ADRC staff documents referral in ADRC Call Module:

- ❖ Caller – Agency
- ❖ Referral Source – Health Professional
- ❖ Method of Contact – Email
- ❖ Contact date – date email sent from FamilyCare
- ❖ Non-Consumer name – FamilyCare agent completing referral form
- ❖ Phone number – FamilyCare phone number
- ❖ Agency – FamilyCare
- ❖ Call Back proposed date – Date HDM begin (proposed)
- ❖ Consumer:
 - GCID – auto assigned by ADRC
 - Name – search for existing; if no existing create new record
 - Age
 - Gender
 - Race
 - Ethnicity
 - County
 - Zip Code
 - Veteran Status – (veteran, spouse, child, no)
 - English Fluency – (needs translation, limited, fluent)
 - Primary Language
 - Functionally Impaired – (other cognitive impairment, mental health/illness/dementia/Alzheimer's, non, physical disability, ID/DD, other, emotional, hearing, TBI, vision)
 - Needs Category – Financial Aid/Food/Clothing/Material Goods
 - Taxonomy – Home Delivered Meals (BD-5000.3500)
 - Referred Listing – Applicable Service Partner: Multnomah County Helpline, CAPECO (Umatilla or Morrow), NWSDS (Marion or Clatsop), Washington County DAV, Clackamas County Social Services
 - Perform Follow-Up – Check box>enter **end (stop)** date of HDM service
 - Notes – example: Received referral for HDM.
 - Units – enter total number of meals authorized
 - Call outcome – Referral
 - Complete call – (GetCare Call ID auto assigned)
 - Record GetCare Call ID and GetCare ID# on FamilyCare referral form

Multnomah County ADRC staff securely emails referral form to applicable Service Partner, or to Meals on Wheels People for meals in Multnomah County, by 3:00 PM day referral was received.

Processed FamilyCare referral form is saved in FamilyCare HDM folder of ADRC@multco.us email.

Service Partner receives referral and accesses call record using ADRC Contact Manager.

Service Partner adds meal service provider listing to call record in Add/Search for Additional Referrals.

Service Partner submits referral to applicable meal service provider requesting start date of meal delivery within two business days or the next scheduled delivery date.

Service Partner adds note to ADRC call record documenting receipt of referral and meal delivery start date.

Service Partner communicates start date for meal delivery with FamilyCare Care Coordinator via email, telephone, or FAX.

ATTACHMENT B
OREGON HEALTH PLAN – SPECIFIC PROVISIONS

FamilyCare, Inc. (“Contractor”) has entered into a Health Plan Services Contract, Coordinated Care Organization Contract with the State of Oregon, acting by and through its Oregon Health Authority (“OHA”), Division of Medical Assistance Programs (“DMAP”) and Addictions and Mental Health Division (“AMH”) to provide and pay for Coordinated Care Services (the “OHP Contract”). The OHP Contract requires that the provisions in this Attachment B be included in any subcontracts and contracts with Participating Providers.

This Attachment B is incorporated by reference into and made part of the FamilyCare, Inc. & FamilyCare Health Plans, Inc. Service Level Agreement with Multnomah County, Aging, through its Disability and Veterans Services Division (the “Subcontractor”) (the “Agreement”) with respect to goods and services rendered under the Agreement by the Subcontractor to enrollees of Contractor who are enrolled in the Oregon Health Plan Medicaid managed care program (“Members”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to Members who are enrolled in the Oregon Health Plan Medicaid managed care program, this Attachment B shall control.

Subcontractor shall comply with the provisions in this Attachment B to the extent that they are applicable to the goods and services provided by Subcontractor under the Agreement; provided, however, that the Agreement shall not terminate or limit Contractor’s legal responsibilities to OHA for the timely and effective performance of Contractor’s duties and responsibilities under the OHP Contract. Capitalized terms used in this Attachment B, but not otherwise defined in the Agreement shall have the same meaning as those terms in the OHP Contract, including definitions incorporated therein by reference.

1. **OHA.** To the extent any provision in the OHP Contract applies to Contractor with respect to the Work Contractor is providing to OHA through the Agreement, that provision shall be incorporated by reference into the Agreement and shall apply equally to Subcontractor.

2. **Termination for Cause.** In addition to pursuing any other remedies allowed at law or in equity or by the Agreement, the Agreement may be terminated by Contractor, or Contractor may impose other sanctions against Subcontractor, if the Subcontractor’s performance is inadequate to meet the requirements of the OHP Contract. A determination of inadequate performance by Subcontractor may be made by OHA at its sole discretion or by Contractor based on reasonable review.

3. **Monitoring.**

3.1. *By Contractor.* Contractor will monitor the Subcontractor’s performance on an ongoing basis and perform at least once a year a formal review of compliance with delegated responsibilities and Subcontractor’s performance, deficiencies or areas for improvement, in accordance with 42 CFR 438.230(a)(1). Upon identification of deficiencies or areas for improvement, Subcontractor shall take the Corrective Action identified by Contractor.

3.2. *By OHA.* Subcontractor agrees that OHA is authorized to monitor compliance with the requirements in the Statement of Work under the OHP Contract and that methods of

monitoring compliance may include review of documents submitted by Subcontractor, OHP Contract performance review, Grievances, on-site review of documentation or any other source of relevant information, including Subcontractor information and cooperation required under Exhibit B, Part 8 (Operations).

4. **Federal Medicaid Managed Care.** Subcontractor shall comply with the requirements of 42 CFR 438.6 that are applicable to the Work required under the Agreement.

5. **Hold Harmless.** Subcontractor shall not hold OHA nor a Member receiving services liable for: (a) any costs or charges related to Contractor-authorized Covered Services rendered to a Member whether in an emergency or otherwise, including Holistic Care; (b) Contractor's or Subcontractor's debt due to Contractor's or Subcontractor's insolvency; or (c) any payments for Covered Services authorized or required to be provided under the OHP Contract and the Agreement to a Member, for which (i) OHA does not pay Contractor; or (ii) Contractor does not pay Subcontractor. Furthermore, Subcontractor may not hold a Member liable for any payments for Covered Services furnished pursuant to the Agreement to the extent that those payments are in excess of the amount that the Member would owe if Contractor provided the services directly. Nothing in this paragraph 5 limits Subcontractor from pursuing other legal remedies that will not result in Member personal liability for such payments.

6. **Continuation.** After termination of the OHP Contract, Subcontractor shall continue to provide Covered Services through the period for which Payments were made to Contractor, including inpatient admissions up until discharge.

7. **Billing and Payment.** Subcontractor shall not bill Members for services that are not covered under the OHP Contract unless there is a full written disclosure or waiver on file signed by the Member, in advance of the service being provided, in accordance with OAR 410-141-0420.

8. **Reports.** Subcontractor shall provide timely access to records and facilities and cooperate with OHA in collection of information through consumer surveys, on-site reviews, medical or dental chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with the OHP Contract, including but not limited to verification of services actually provided, and for developing and monitoring performance and outcomes.

9. **Quality Improvement.** In conformance with 42 CFR 438 Subpart E, Subcontractor shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, Services provided under the OHP Contract.

10. **Access to Records.**

10.1 Subcontractor shall maintain all financial records related to the OHP Contract in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Subcontractor shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of Subcontractor, whether in paper, electronic or other form, that are pertinent to the OHP Contract

(the "Records") in such a manner to clearly document Subcontractor's performance. Subcontractor shall provide timely and reasonable access to Records to: (a) OHA; (b) the Secretary of State's Office; (c) the U.S. Department of Health and Human Services; (d) the Comptroller General of the United States; (e) the Oregon Department of Justice Medicaid Fraud Control Unit; and (f) all their duly authorized representatives, to perform examinations and audits, make excerpts and transcripts, and evaluate the quality, appropriateness and timeliness of services performed.

10.2 Subcontractor shall retain and keep accessible all Records for the longer of: (a) for non-clinical records, six years following final payment and termination of the OHP Contract; (b) for Clinical Records, seven years following the Date of Service; (c) the retention period specified in the OHP Contract; (d) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (e) until the conclusion of any audit, controversy or litigation arising out of or related to the OHP Contract.

10.3 Subcontractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. The right also includes timely and reasonable access to Subcontractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph 10 are not limited to the required retention period, but shall last as long as the Records are retained.

11. Clinical Records and Confidentiality of Member Records. Subcontractor shall comply with Contractor's policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act, 42 USC 1320d et seq., and the federal regulations implementing the Act ("HIPAA"), and complete Clinical Records that document the Covered Services received by the Members. Contractor shall regularly monitor Subcontractor's compliance with these policies and procedures and Subcontractor shall be subject to and comply with any Corrective Action taken by Contractor that is necessary to ensure Subcontractor compliance.

12. Reporting of Abuse. Subcontractor shall comply with all patient abuse reporting requirements and fully cooperate with the State for purposes of ORS 410.610 et seq., ORS 419B.010 et seq., ORS 430.735 et seq., ORS 433.705 et seq., ORS 441.630 et seq., and all applicable Administrative Rules. In addition, Subcontractor shall comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765. This includes all patients observed in an office setting.

13. Fraud and Abuse. Subcontractor shall comply with Contractor's Fraud and Abuse policies to prevent and detect Fraud and Abuse activities as such activities relate to the OHP, and shall promptly refer to the Contractor and the Medicaid Fraud Control Unit ("MFCU") any incident with any of the referral characteristics listed in the OHP Contract, and any other incident found to have characteristics which indicate Fraud or Abuse which Subcontractor has verified. Subcontractor shall permit the MFCU or OHA or both to inspect, evaluate, or audit books, records, documents, files, accounts, and facilities maintained by or on behalf of Subcontractor, as required to investigate an incident of fraud and Abuse. Subcontractor shall cooperate with the

MFCU and OHA investigator during any investigation of fraud and Abuse. Subcontractor shall provide copies of reports or other documentation regarding any suspected fraud at no cost to MFCU or OHA during an investigation

14. **Certification.** Subcontractor certifies that all Claims data submissions by the Subcontractor, either directly or through a third party submitter, is and will be accurate, truthful and complete in accordance with OAR 410-141-3420 and OAR 410-120-1280.

15. **Mental Health Services and Substance Use Disorder Services.**

15.1. *MOTS Reporting.* If Subcontractor provides Mental Health Services and/or substance use disorder services, Subcontractor shall enroll its Members in the Measures and Outcomes Tracking system ("MOTS"), formerly known as CPMS, as specified at <http://www.oregon.gov/oha/amh/mots/Pages/compass/index.aspx>.

15.2. *Community Services.* If Subcontractor provides substance use disorder services, Subcontractor shall provide to Members, to the extent of available community resources and as clinically indicated, information and referral to community services which may include, but are not limited to: child care, elder care, housing, transportation, employment, vocational training, educational services, mental health services, financial services, and legal services.

15.3. *Training.* Where Subcontractor provides substance use disorder services and evaluates Members for access to and length of stay in substance use disorder services, Subcontractor represents and warrants that it has the training and background in substance use disorder services and working knowledge of American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-Revised (PPC-2R).

16. **State Provisions.** Subcontractor shall comply with all State and local laws, rules, regulations, executive orders and ordinances applicable to the OHP Contract or to the performance of Work under the Agreement, including but not limited to the following: (a) ORS Chapter 659A.142; (b) OHA rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (c) all other OHA Rules in OAR Chapter 410; (d) rules in OAR Chapter 309 pertaining to the provision of mental health services; (e) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (f) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; and (g) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, rules, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to the OHP Contract and required by law to be so incorporated. Contractor's performance under the Agreement is conditioned upon Subcontractor's compliance, as applicable, with the provisions of ORS 279B.220, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Subcontractor shall, to the maximum extent economically feasible in the performance of the Agreement pertinent to the OHP Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled products" is defined in ORS 279A.010(1)(ii)).

17. **Americans with Disabilities Act.** In compliance with the Americans with Disabilities Act of 1990, any written material that is generated and provided by Subcontractor under the OHP Contract to Members, including Medicaid-Eligible Individuals, shall, at the request of such individuals, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Subcontractor shall not be reimbursed for costs incurred in complying with this provision.

18. **Information/Privacy/Security/Access.** If the items or services provided under the Agreement permits Subcontractor to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Subcontractor access to such OHA Information Assets or Network and Information Systems, Subcontractor shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305.

19. **Governing Law, Consent to Jurisdiction.** The OHP Contract 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 between the OHA (or any other agency or department of the State of Oregon) and Subcontractor that arises from or relates to the OHP Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court of the District of Oregon. In no event shall this paragraph 19 be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. **SUBCONTRACTOR, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

20. **Independent Contractor.**

20.1. *Not an Employee of the State.* Subcontractor represents and warrants that it is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30:265 or otherwise.

20.2. *Current Work for State or Federal Government.* If Subcontractor is currently performing work for the State of Oregon or the federal government, Subcontractor by signature to the Agreement represents and warrants that Subcontractor's Work to be performed under the Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Subcontractor currently performs work would prohibit Subcontractor's work under the Agreement or the OHP Contract. If compensation under the Agreement is to be charged against federal funds, Subcontractor certifies that it is not currently employed by the federal government.

20.3. *Taxes.* Subcontractor shall be responsible for all federal and State of Oregon taxes applicable to compensation paid to Subcontractor under the Agreement and, unless Subcontractor is subject to backup withholding, OHA and Contractor will not withhold from such

compensation any amount to cover Subcontractor's federal or State tax obligations. Subcontractor shall not be eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Subcontractor under the Agreement, except as a self-employed individual.

20.4. *Control.* Subcontractor shall perform all Work as an independent contractor. Subcontractor understands that OHA reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, OHA may not and will not control the means or manner of Subcontractor's performance. Subcontractor is responsible for determining the appropriate means and manner of performing the Work delegated under the Agreement.

21. **Representations and Warranties.** Subcontractor represents and warrants to Contractor that: (a) Subcontractor has the power and authority to enter into and perform the Agreement; (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Subcontractor enforceable in accordance with its terms, (c) Subcontractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Subcontractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Subcontractor's industry, trade or profession; and (d) Subcontractor shall, at all times during the term of the Agreement, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

22. **Assignment, Successor in Interest.** Subcontractor shall not assign or transfer its interest in the Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other matter, without prior written consent of Contractor. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Contractor and OHA may deem necessary, including but not limited to Exhibit B, Part 8, Section 13 and 14 of the OHP Contract. No approval by Contractor of any assignment or transfer of interest shall be deemed to create any obligation of Contractor in addition to those set forth in the Agreement. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

23. **Subcontracts.** Where Subcontractor is permitted to subcontract certain functions of the Agreement, Subcontractor shall notify Contractor, in writing, of any subcontract(s) for any of the Work required by the OHP Contract other than information submitted in Exhibit G of the OHP Contract. In addition, Subcontractor shall ensure that any subcontracts are in writing and include all the requirements set forth in this Attachment B that are applicable to the service or activity delegated under the subcontract. Contractor's consent to any subcontract shall not relieve Subcontractor of any of its duties or obligations under the Agreement.

24. **Severability.** If any term or provision of the OHP Contract, the Agreement or this Attachment B is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the OHP Contract, the Agreement or this Attachment B did not contain the particular term or provision held to be unlawful.

25. Reserved.

26. **Compliance with Federal Laws.** Subcontractor shall comply with federal laws as set forth or incorporated, or both, in the OHP Contract and all other federal laws applicable to Subcontractor's performance relating to the OHP Contract or the Agreement. For purposes of the OHP Contract and the Agreement, all references to federal laws are references to federal laws as they may be amended from time to time. In addition, unless exempt under 45 CFR Part 87 for Faith-Based Organizations, or other federal provisions, Subcontractor shall comply with the following federal requirements to the extent that they are applicable to the OHP Contract, the Agreement, Subcontractor, and/or to Subcontractor's Work:

26.1. *Federal Provisions.* Subcontractor shall comply with all federal laws, regulations, and executive orders applicable to the OHP Contract or to the delivery of Work under the Agreement. Without limiting the generality of the foregoing, Subcontractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the OHP Contract and the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the OHP Contract and the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

26.2. *Equal Employment Opportunity.* If the OHP Contract, including amendments, is for more than \$10,000, then Subcontractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

26.3. *Clean Air, Clean Water, EPA Regulations.* If the OHP Contract, including amendments, exceeds \$100,000 then Subcontractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 USC 1251 to 1387), specifically including, but not limited to Section 508 (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subcontractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this subparagraph.

26.4. *Energy Efficiency.* Subcontractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC 6201 et seq. (Pub. L. 94-163).

26.5. *Truth in Lobbying.* Subcontractor certifies, to the best of the Subcontractor's knowledge and belief that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Subcontractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. Subcontractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

26.6. *HIPAA Compliance.* Subcontractor acknowledges and agrees that Contractor is a "covered entity" for purpose of the privacy and security provisions of HIPAA. Accordingly, Subcontractor shall comply with HIPAA and the following:

a. Individually Identifiable Health Information ("IIHI") about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. IIHI relating to specific individuals may be exchanged between Subcontractor and Contractor and between Subcontractor and OHA for purposes directly related to the provision of services to Members which are funded in whole or in part under the OHP Contract. However, Subcontractor shall not use or disclose any IIHI about specific individuals in a manner that would violate (i) the HIPAA Privacy Rules in CFR Parts 160 and 164; (ii) the OHA Privacy Rules, OAR Chapter 407 Division 014, or (iii) the OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/cfl/FORMS/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA.

b. Subcontractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rule in 45 CFR Part 164 to ensure that Member Information is used by or disclosed only to the extent necessary for the permitted use or

disclosure and consistent with applicable State and federal laws and the terms and conditions of the OHP Contract and the Agreement. Security incidents involving Member Information must be immediately reported to the Contractor's privacy officer and to the Oregon Department of Human Services' ("DHS") Privacy Officer.

c. Subcontractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS Electronic Data Transmission Rules, OAR 410-001-0000 through 410-001-0200. If Contractor intends to exchange electronic data transactions with OHA in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, Subcontractor shall comply with OHA Electronic Data Transmission Rules.

d. If Subcontractor reasonably believes that the Contractor's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Subcontractor shall promptly consult Contractor or the OHA HIPAA officer. Contractor or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

26.7. *Resource Conservation and Recovery.* Subcontractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

26.8. *Audits.* Subcontractor shall comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

26.9. *Debarment and Suspension.* Subcontractor represents and warrants that it is not excluded by the U.S. Department of Health and Human Services Office of the Inspector General or listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension." (See 2 CFR Part 180). Subcontractor further represents and warrants the following:

a. Subcontractor is not controlled by a sanctioned individual;

b. Subcontractor does not have a contractual relationship that provides for the administration, management or provision of medical services, or the establishment of policies, or the provision of operational support for the administration, management or provision of medical services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act; or

c. Subcontractor does not employ or contract, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with any of the following: (i) any individual or entity excluded from participation in Federal health

care programs; or (ii) any entity that would provide those services through an excluded individual or entity.

d. Subcontractor does not knowingly have a person with ownership of more than 5% of the Subcontractor's equity who is (or is affiliated with a person/entity that is) debarred, suspended, or excluded from participation in federal healthcare programs.

26.10. *Drug-Free Workplace.* Subcontractor shall comply with the following provisions to maintain a drug-free workplace:

a. Subcontractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Subcontractor's workplace or while providing services to Members. Subcontractor's notice shall specify the actions that will be taken by Subcontractor against its employees for violation of such prohibitions;

b. Establish a drug-free awareness program to inform its employees about: the dangers of drug abuse in the workplace, Subcontractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

c. Provide each employee to be engaged in the performance of services under the Agreement a copy of the statement mentioned in subparagraph 26.10.a above;

d. Notify each employee in the statement required by subparagraph 26.10.a that, as a condition of employment to provide services under the OHP Contract the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

e. Notify OHA and Contractor within ten days after receiving notice under subparagraph 26.10.d from an employee or otherwise receiving actual notice of such conviction;

f. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

g. Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs 26.10.a through 26.10.f;

h. Require any subcontractor to comply with subparagraphs 26.10.a through 26.10.g;

i. Neither Subcontractor, nor any of Subcontractor's employees, officers, agents or subcontractors may provide any service required under the Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable

person to believe the Subcontractor or Subcontractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Subcontractor or Subcontractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to Members or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities;

j. Violation of any provision of this subparagraph 26.10 may result in termination of the Agreement and the OHP Contract.

26.11. *Pro-Children Act.* Subcontractor shall comply with the Pro-Children Act of 1994 (codified at 20 USC Section 6081 et seq.).

26.12. *Clinical Laboratory Improvements.* Subcontractor and any laboratories used by Subcontractor shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438, which require that all laboratory testing sites providing services under the OHP Contract shall have either a Clinical Laboratory Improvement Amendments ("CLIA") certificate of waiver or a certificate of registration along with a CLIA identification number. Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of the waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

26.13. *Home Health Agencies.*

a. *OASIS.* To the extent applicable, Subcontractor shall comply with the Outcome and Assessment Information Set ("OASIS") reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to the CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program.

b. *Surety Bond.* In order to receive payment from Contractor for home health services (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital), an agency must provide the state with a surety bond as specified in Section 1861(o)(7) of the Social Security Act.

26.14. *Patient Rights Condition of Participation.* To the extent applicable, Subcontractor shall comply with the Patient Rights Condition of Participation that hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Attachment B, hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals.

26.15. *Federal Grant Requirements.* Subcontractor shall not expend any of the funds paid under the Agreement for roads, bridges, stadiums, or any other item or service not covered under the Oregon Health Plan ("OHP").

27. **Marketing.** To the extent applicable to the Work provided under the Agreement, Subcontractor shall comply with the marketing requirements contained in the OHP Contract.

Without limiting the generality of the foregoing, Subcontractor shall not (a) distribute any Marketing Materials without Contractor first obtaining OHA approval; (b) seek to compel or entice Enrollment in conjunction with the sale of or offering of any private insurance; (c) directly or indirectly engage in door-to-door, telephone, or Cold Call Marketing activities; or (d) intentionally mislead Potential Members about their options. Subcontractor's communications that express participation in or support for the Contractor or another coordinated care organization shall not constitute an attempt to compel or entice a Potential Member's enrollment, provided that Subcontractor expresses participation in or support for all CCOs that Subcontractor participates in, including Contractor.

28. Workers' Compensation Coverage. If Subcontractor employs subject workers, as defined in ORS 656.027, then Subcontractor shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirements for an exemption under ORS 656.126(2). If Subcontractor is a subject employer, as defined in ORS 656.023, Subcontractor shall obtain employers' liability insurance coverage.

29. Third Party Resources.

29.1. Provision of Covered Services. Subcontractor may not refuse to provide Covered Services to a Member because of a Third Party Resource's potential liability for payment for the Covered Services.

29.2. Reimbursement. Subcontractor understands that where Medicare and Contractor have paid for services, and the amount available from the Third Party Liability is not sufficient to satisfy the Claims of both programs to reimbursement, the Third Party Liability must reimburse Medicare the full amount of its Claim before any other entity, including Subcontractor, may be paid. In addition, if a Third Party has reimbursed Subcontractor, or if a Member, after receiving payment from a Third Party Liability, has reimbursed Subcontractor, the Subcontractor shall reimburse Medicare up to the full amount the Subcontractor received, if Medicare is unable to recover its payment from the remainder of the Third Party Liability payment.

29.3. Confidentiality. When engaging in Third Party Resource recovery actions, Subcontractor shall comply with federal and State confidentiality requirements, described in Exhibit E of the OHP Contract.

29.4. No Compensation. Except as permitted by the OHP Contract including Third Party Resources recovery, Subcontractor may not be compensated for Work performed under the OHP Contract from any other department of the State; nor from any other source including the federal government.

29.5. Third Party Liability Records. Subcontractor shall maintain records of Subcontractor's actions related to Third Party Liability recovery, and make those records available for Contractor and OHA review.

29.6. Right of Recovery. Subcontractor shall comply with 42 USC 1395y(b), which gives Medicare the right to recover its benefits from employers and workers' compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including Contractor, Subcontractor or their subcontractors.

29.7. *Disenrolled Members.* If OHA retroactively disenrolls a Member at the time the Member acquired Third Party Liability insurance, pursuant to OAR 410-141-3080(2)(b)(D) or 410-141-3080(3)(a)(A), Subcontractor may not seek to collect from a Member (or any financially responsible Member Representative) or any Third Party Liability, any amounts paid for any Covered Services provided on or after the date of Disenrollment.

29.8. *Third Party Liability and Personal Injury Liens.* Subcontractor shall comply with all the applicable the requirements of Exhibit B, Part 8 Section 11 of the OHP Contract.

30. **Preventive Care.** Where Subcontractor provides Preventive Care Services, all Preventive Care Services provided by Subcontractor to Members shall be reported to Contractor and shall be subject to Contractor's Case Management and Record Keeping responsibilities.

31. **Accessibility.**

31.1. *Timely Access, Hours.* If Subcontractor is a Participating Provider, Subcontractor shall meet OHP standards for timely access to care and services, taking into account the urgency of the need for services, as specified in OAR 410-141-3220 and 410-141-3160. This requirement includes that Subcontractor offer hours of operation that are not less than the hours of operation offered to Contractor's commercial members (as applicable) and non-Members as provided in OAR 410-141-3220.

31.2. *Special Needs.* Subcontractor and Subcontractor's facilities shall comply with the requirements of Title VI of the Civil Rights Act and Title II of the Americans with Disabilities Act by: (a) assuring communication and delivery of Covered Services to Members who have difficulty communicating due to a disability, or limited English proficiency or diverse cultural and ethnic backgrounds; and (b) providing services to Members with disabilities in the most integrated setting appropriate to the needs of those Members. proficiency.

32. **Member Rights.**

32.1. *Treating Members with Respect and Equality.* If Subcontractor is a Participating Provider, Subcontractor shall treat each Member with respect and with due consideration for his or her dignity and privacy. In addition, Subcontractor shall treat each Member the same as other patients who receive services equivalent to Covered Services.

32.2. *Information on Treatment Options.* If Subcontractor is a Participating Provider, Subcontractor shall ensure that each Member receives information on available treatment options and alternatives in a manner appropriate to the Member's condition, preferred language and ability to understand.

32.3. *Participation Decisions.* If Subcontractor is a Participating Provider, Subcontractor shall ensure that each Member has the right to participate in decisions regarding his or her healthcare, including the right to refuse treatment, and has the opportunity to execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, substance Use Disorder or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127.505 to 127.660 and the OBRA 1990 - Patient Self-Determination Act.

32.4. *Copy of Records.* Subcontractor shall ensure that each Member is allowed to request and receive a copy of his or her Health Record, (unless access is restricted in accordance with ORS 179.505 or other applicable law) and to request that the records be amended or corrected as specified in 45 CFR Part 164.

32.5. *Exercise of Rights.* Subcontractor shall ensure that each Member is free to exercise his or her rights, and that the exercise of those rights does not adversely affect the way the Subcontractor, its staff, its subcontractors, its Participating Providers, or OHA treat the Member. Subcontractor shall not discriminate in any way against Members when those Members exercise their rights under the OHP.

33. **Grievance System.** Subcontractor shall participate fully with Contractor in the handling of complaints and grievances of Members. If Contractor chooses to delegate the complaints and grievance process to Subcontractor, except for the adjudication of final appeals, Subcontractor shall have in place written policies and procedures for accepting, processing and responding to all complaints and appeals from Members, their family members, and other representatives in accordance with the OHP Contract.

34. **Authorization of Service.** Subcontractor shall follow Contractor's procedures for the initial and continuing Service Authorization Requests, which requires that any decision to deny a Service Authorization Request or to authorize a service in an amount, duration or scope that is less than requested, be made by a Health Care Professional who has appropriate clinical expertise in treating the Member's physical, mental or oral health condition or disease in accordance with 42 CFR 438.210. In addition, Subcontractor must obtain authorization for Covered Services from Contractor, except to the extent prior authorization is not required in OAR 410-141-2420 or elsewhere in the OHP Contract Statement of Work.

35. **Non-Discrimination.** Subcontractor shall not discriminate between Members and non-OHP persons as it relates to benefits and services, including Mental Health Services, to which they are both entitled.

36. **Record Keeping System.** If Subcontractor is a Participating Provider, Subcontractor shall, based on written policies and procedures, develop and maintain a record keeping system that: (a) includes sufficient detail and clarity to permit internal and external review to validate encounter submissions and to assure Medically Appropriate services are provided consistent with the documented needs of the Member; (b) conforms to accepted professional practice; and (c) allows the Subcontractor to ensure that data submitted to Contractor is accurate and complete by: (i) verifying the accuracy and timeliness of reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats to the extent feasible and appropriate.

37. **Enrollment; Unique Provider Identification Number.** Subcontractor, if Subcontractor is a provider, and each of Subcontractor's Physicians and other qualified providers, if any, shall be enrolled with OHA and have a unique provider identification number that complies with 42 USC 1320d-2(b).

38. **Accreditation.** If Subcontractor is a Participating Provider and provides programs or facilities that are not required to be licensed or certified by a State of Oregon board or licensing agency, then such programs or facilities operated by Subcontractor shall be accredited by nationally recognized organizations recognized by OHA for the services provided (e.g., Council on Accredited Rehabilitation Facilities, or The Joint Commission) where such accreditation is required by OHA rule to provide the specific service or program.

39. **Advocacy.** Except as provided in the OHP Contract, Subcontractor shall not prohibit or otherwise limit or restrict Subcontractor's Health Care Professionals acting within the lawful scope of practice, from advising or advocating on behalf of a Member, who is a patient of the professional, for the following: (a) for the Member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered, that is Medically Appropriate even if such care or treatment is not covered under the OHP Contract or is subject to Co-Payment; (b) any information the Member needs in order to decide among relevant treatment options; (c) the risks, benefits, and consequences of treatment or non-treatment; and (d) the Member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

40. **Health Information Technology.** Subcontractor shall comply with Contractor's policies and procedures relating to electronic health information exchange to support the exchange of patient health information among Participating Providers.

41. **No Actions.** To the extent Subcontractor is a Participating Provider, Subcontractor represents and warrants that neither the state nor federal government has brought any past or pending investigations, legal actions, administrative actions, or matters subject to arbitration involving the Subcontractor, including key management or executive staff, over the past three years on matters relating to payments from governmental entities, both federal and state, for healthcare or prescription drug services.

42. **Notice of Termination.** Subcontractor acknowledges and agrees that Contractor will provide written notice of the termination of Subcontractor's agreement with Contractor to provide Covered Services to Members, to each Member who received his or her primary care from, or was seen on a regular basis by, the Subcontractor, within 15 days of such termination.

43. **Subrogation.** Subcontractor agrees to subrogate to OHA any and all claims the Subcontractor has or may have against manufacturers, wholesale or retail suppliers, sales representatives, testing laboratories, or other providers in the design, manufacture, marketing, pricing or quality of drugs, pharmaceuticals, medical or dental supplies, medical or dental devices, durable medical equipment or other products.

44. **Stop-Loss Documentation.** If Subcontractor participates in a Practitioner Incentive Plan under the Agreement that places Subcontractor at Substantial Financial Risk, Subcontractor shall submit stop-loss documentation to Contractor in accordance with Contractor's policies and procedures.

45. **Drug Rebate Program.** Subcontractor shall report prescription data in a timely manner so as to permit Contractor to reasonably comply with all the requirements of Exhibit B, Part 8, Section 12 regarding the provision of information to OHA to facilitate drug rebates.

46. **Valid Claims Submission.** Subcontractor shall submit Valid Claims for services including all the fields and information needed to allow the claim to be processed without further information from Subcontractor or the provider, and within the time frames that assure all corrections have been made within four months of the Date of Service. Subcontractor and Contractor may, by mutual agreement, establish an alternative payment schedule not to exceed the minimum requirements.

47. **Data Delivery.** Subcontractor shall provide data used for analysis of delivery system capacity, consumer satisfaction, financial solvency, encounters, utilization, quality improvement, and other reporting requirements under the Agreement to Contractor sufficiently in advance to allow Contractor to reasonably meet its reporting obligations under the OHP Contract.

48. **Certified Traditional Health Workers.** Any Certified Traditional Health Workers employed by Contractor must meet the requirements for background checks as described in OAR 410-180-0326.

ATTACHMENT C
MEDICARE ADVANTAGE - SPECIFIC PROVISIONS

FamilyCare Health Plans, Inc. ("Contractor") participates in the Medicare Advantage Plan ("MA Plan") as a Medicare Advantage Organization pursuant to a contract (the "MA Contract") with the U.S. Department of Health and Human Services ("HHS"), Centers for Medicare and Medicaid Services ("CMS"). The MA Contract and MA Plan regulations require that the provisions in this Attachment be included in any subcontracts or contracts with Participating Providers. This Attachment is incorporated by reference into and made part of the FamilyCare, Inc. & FamilyCare Health Plans, Inc Service Level Agreement with Multnomah County, Aging, through its Disability and Veterans Services Division (the "Subcontractor") (the "Agreement") with respect to goods and services rendered under the Agreement by the Subcontractor to members of Contractor who are enrolled in FamilyCare's MA Plan (the "FamilyCare MA Plan"). In the event of any conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to FamilyCare MA Plan members ("Members"), this Attachment shall control. Subcontractor shall comply with the provisions in this Attachment to the extent that they are applicable to the goods and services provided by Subcontractor under the Agreement.

1. Compliance with Law.
 - 1.1. Medicare Program. The Medicare Advantage program is governed by applicable statutes and regulations, including but not limited to 42 USC § 1395w-21 et seq. and 42 CFR Part 422, and the MA Contract. Contractor is ultimately responsible to CMS for complying with all terms and conditions of the MA Contract. However, Subcontractor agrees that Subcontractor will comply with all applicable laws, regulations, CMS instructions and the MA Contract in providing services to Contractor in connection with the Medicare Advantage program under this Agreement.
 - 1.2. Other Laws. Subcontractor agrees that Subcontractor will comply with federal and state laws affecting the rights of Members. Applicable federal laws include, but are not limited to: i) HIPAA administrative simplification rules at 45 CFR Parts 160, 162, and 164; and ii) federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse to include but not limited to applicable provisions of federal criminal law, the False Claims Act (31 U. S.C. 3729 et seq.), and the anti-kickback statute (§1128B(b) of the Act).
2. Access to Records; Audit. Subcontractor agrees that HHS, the U.S. Comptroller General, Contractor, or their designees have the right to inspect, evaluate and audit any contracts, books, documents, papers, medical records, patient care documentation and records of the Subcontractor or its related entity(s), contractor(s), or subcontractor(s) involving transactions related to the MA Contract. This right of HHS, the Comptroller General, Contractor, or their designees to inspect, evaluate and audit any pertinent information for any particular contract period will continue for ten (10) years following (a) the date of termination of the Agreement; or (b) completion of any audit commenced prior to termination of the Agreement, whichever is later, unless such ten year period is further

extended for reasons specified in 42 CFR § 422.504(e)(4). Subcontractor will maintain financial, clinical, and other records pertinent to the Agreement to permit inspection, evaluation and audit of such records as specified in this Section 2 and agrees to cooperate, assist, and provide information to HHS, the Comptroller General, Contractor, or their designees, as requested.

3. Member Protections.

3.1. Hold Harmless. Subcontractor will hold Members harmless for the payment of fees that are the legal obligation of Contractor, for example, as a result of Contractor's insolvency, contract breach, or other financial difficulty.

3.2. Medicare and Medicaid Eligible. For all Members who are enrollees eligible for both Medicare and Medicaid, Subcontractor shall hold Members harmless for Medicare Part A and B cost sharing when the State is responsible for paying such amounts. Accordingly, Subcontractor shall accept the Contractor payment for services provided to Members as payment in full, or shall bill the appropriate State source.

3.3. Continuation of Benefits. As applicable, Subcontractor will provide for continuation of health care benefits for all Members for the duration of the contract period for which CMS payments have been made; and for Members who are hospitalized, on the date the MA Contract terminates, or in the event of Contractor's insolvency, through the date of the Member's discharge.

4. Confidentiality and Member Records. Subcontractor will comply with all federal and state laws regarding confidentiality requirements of Member information. Subcontractor will use and disclose Member health information and enrollment information only in accordance with applicable federal or state law and agrees to safeguard Member privacy and confidentiality and assure accuracy of Member health records. Subcontractor will ensure that Members receive timely access to the records and information that pertain to them.

5. Delegation. With respect to all activities and responsibilities of Contractor under the MA Contract that are delegated to Subcontractor pursuant to the Agreement or otherwise, Subcontractor will cooperate in ensuring that such delegation is clearly specified in writing, and that responsibility for reporting to CMS is clear. Any such delegated activities must be consistent and comply with the MA Contract. Performance of Subcontractor will be monitored by Contractor on an ongoing basis. In the event that either CMS or Contractor should determine that Subcontractor has not satisfactorily performed such delegated activities or reporting requirements, Contractor may at any time, revoke such delegation and requirements.

6. Credentialing. Where the Subcontractor or an affiliate performs provider credentialing for Contractor, all Contractor credentialing requirements, including all applicable Medicare Advantage credentialing requirements, must be met. The credentials of medical professionals providing services to Members will be either reviewed by

Contractor or Contractor will review and approve, and audit on an on-going basis, the credentialing process.

7. Subcontracts. Subcontractor shall not subcontract or delegate any of Subcontractor's duties under the Agreement without the prior written consent of Contractor. Contractor retains the right to approve, suspend, or terminate any such arrangement. Subcontractor will cause all services or activities performed by persons other than Subcontractor that relate to the Agreement or the provision of health care or administrative services for or with respect to the MA Plan or Members in the MA Plan ("Contract Providers") to be subject to and performed in accordance with the terms and conditions of the Agreement, and to be consistent and comply with Contractor's obligations under the MA Contract. Subcontractor shall also cause each agreement with Contract Providers (the "Contract Provider Agreement") to contain all provisions required by applicable law to be in such agreement, or to otherwise satisfy such applicable law, including but not limited to those provisions required by 42 CFR 422.504(i). A Contract Provider Agreement includes every direct agreement between Subcontractor and a Contract Provider and every subcontract between two Contract Providers relating to the Agreement for or with respect to the MA Plan or Members in the MA Plan.
8. Reporting Requirements. Subcontractor will maintain and provide to Contractor data and information reasonably requested by Contractor to permit Contractor to comply with reporting requirements under the MA Contract, including but not limited to data and information necessary to (1) administer and evaluate the Medicare Advantage program, (2) establish and facilitate a process for current and prospective beneficiaries to exercise choice in obtaining Medicare services, (3) allow Contractor to provide CMS data and information with respect to: the cost of its operations; the patterns of utilization of its services; the availability, accessibility and acceptance of its services; developments in the health status of Members; and fiscal soundness.
9. Physical Premises. Subcontractor shall allow HHS, the Comptroller General, or their designees to evaluate through inspection and other means the premises, physical facilities and equipment and records of the Subcontractor that pertain to Members and any additional information that CMS may require.
10. Provider-Patient Relationship. Subcontractor shall maintain the provider-patient relationship and nothing in the Agreement shall contain any provision that interferes with the provider-patient relationship.
11. Prompt Payment. Contractor agrees to provide prompt payment in accordance with the terms agreed to between Contractor and Provider in the Agreement.
12. Provider Selection. If the Agreement provides for the selection of providers by Subcontractor or its designee, then Contractor retains the right to approve, suspend, or terminate any such arrangement.
13. Policies and Procedures. Subcontractor will comply with Contractor's policies and procedures, as applicable to the Services, that include Medicare Advantage-related

provisions and provisions relating to Medicare Managed Care Manual, Chapter 11 – Medicare Advantage Application Procedures and Contract Requirements, Section 100.4.

14. Part D. Where Contractor is a Part D plan sponsor the following provisions also apply.
 - 14.1. Access to Records; Audit. HHS, the U.S. Comptroller General, Contractor, or their designees have the right to inspect, evaluate and audit any pertinent contracts, books, documents, papers, and records of Subcontractor or related entity(s), contractor(s), or subcontractor(s) involving transactions related to CMS' Part D contract with Contractor ("Part D Plan Contract"). HHS', the Comptroller General's, Contractor's, or their designee's right to inspect, evaluate and audit any pertinent information for any particular contract period will exist for ten (10) years following (a) the date of termination of the Agreement or (b) completion of any audit commenced prior to termination of the Agreement, whichever is later, unless such ten year period is further extended for reasons specified in 42 CFR § 423.505(e)(4). Subcontractor will maintain financial, clinical, and other records pertinent to the Agreement to permit inspection, evaluation and audit of such records as specified in this Section 14.1.
 - 14.2. Member Protections. Subcontractor will hold Members harmless for the payment of fees that are the legal obligation of Contractor.
 - 14.3. Delegation. With respect to all activities and responsibilities of Contractor under the Part D Plan Contract that are delegated to Subcontractor pursuant to the Agreement or otherwise, Subcontractor agrees to cooperate in ensuring that such delegation is clearly specified in writing, and that responsibility for reporting to CMS is clear. Contractor maintains ultimate responsibility for compliance with the Part D Plan Contract and is required to monitor such delegated activities on an ongoing basis. Any such delegated activities must be consistent and comply with the Part D Plan Contract. In the event that either CMS or Contractor should determine that Subcontractor has not satisfactorily performed such delegated activities or reporting requirements, Contractor may at any time revoke such delegation.
 - 14.4. Subcontracts. Subcontractor shall not subcontract or delegate any of Subcontractor's duties under the Agreement without the prior written consent of Contractor. Contractor retains the right to approve, suspend, or terminate any such arrangement. Subcontractor will cause all services or activities performed by persons other than Subcontractor that relate to the Agreement to be subject to and performed in accordance with the terms and conditions of the Agreement, and to be consistent and comply with Contractor's obligations under the Part D Plan Contract.

ATTACHMENT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement"), dated March 15, 2015 (the "Effective Date"), is entered into between Multnomah County Department of County Human Services Aging, Disability and Veterans Services ("ADVS") and Clackamas County Social Services ("Business Associate"). ADVS and the Business Associate are each a party to this Agreement and are referred to collectively as the "parties."

Recitals

Business Associate either (i) performs or assists in performing certain functions or activities to or on behalf of ADVS, which sometimes may involve (a) the use or disclosure of Protected Health Information (as defined below) by Business Associate, or (b) the creation, receipt, maintenance or transmission of Electronic Protected Health Information (as defined below) by Business Associate; or (ii) provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or on behalf of ADVS, which sometimes may involve (a) the use or disclosure of Protected Health Information by Business Associate, or (b) the creation, receipt, maintenance or transmission of Electronic Protected Health Information by Business Associate. Accordingly, the use, disclosure, transmission, and maintenance of Protected Health Information by Business Associate is subject to the privacy regulations (the "HIPAA Privacy Regulations") and security regulations (the "HIPAA Security Regulations") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended, as set forth at 45 C.F.R. Parts 160 and 164 (collectively the "HIPAA Privacy and Security Regulations") with respect to such services. This Agreement is intended to document the Business Associate assurances required by the HIPAA Privacy and Security Regulations and will govern the terms and conditions under which ADVS may disclose or have disclosed to Business Associate, and Business Associate may create, use, disclose, maintain, transmit or receive Protected Health Information on behalf of ADVS.

ADVS is a business associate of FamilyCare Health Plans, Inc. ("Covered Entity"), a HIPAA covered entity. ADVS must pass on the provisions of its business associate agreement with Covered Entity to downstream service providers that are performing services tying back to the agreement between ADVS and Covered Entity.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, and for other good and valuable consideration, the parties agree as follows:

1. Definitions. Capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meanings as those terms in the HIPAA Privacy and Security Regulations. Unless otherwise stated, a reference to a "section" is to a section in this Agreement. For purposes of this Agreement, the following terms shall have the following meanings.

1.1 Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.

1.2 Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.

1.3 Electronic Protected Health Information or EPHI. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of ADVS.

1.4 Individual. "Individual" shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.5 Protected Health Information or PHI. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of ADVS.

1.6 Required by Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

1.7 Secretary. "Secretary" shall mean the Secretary of the federal Department of Health and Human Services or that person's designee.

1.8 Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

1.9 Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of ADVS.

2. Permitted Uses and Disclosures by Business Associate.

2.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, ADVS, provided that such use or disclosure would not violate the HIPAA Privacy Regulations if done by ADVS or Covered Entity or the minimum necessary policies and procedures of ADVS or Covered Entity.

2.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a Business Associate of ADVS, if necessary:

2.2.1 for the proper management and administration of Business Associate;

2.2.2 to carry out the legal responsibilities of Business Associate; or

2.2.3 to provide Data Aggregation services to ADVS, which relate to the health care operations of ADVS in accordance with the HIPAA Privacy Regulations.

2.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a Business Associate of ADVS for the proper management and administration of Business Associate, provided that:

2.3.1 the disclosure is Required by Law, or

2.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not individually identifiable health information ("De-Identified Information") is not subject to the provisions of this Agreement. ADVS may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by ADVS.

3. Obligations and Activities of Business Associate.

3.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or Business Associate's agents or subcontractors in violation of the requirements of this Agreement.

3.4 Reporting. Business Associate will report promptly, but in no case later than ten (10) days after discovery, to ADVS any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

3.5 Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, ADVS agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.6 Access. When PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from ADVS, Business Associate will make such PHI available to ADVS or, as directed by ADVS to an Individual, that is necessary for ADVS to respond to Individuals' requests for access to PHI about them in accordance with 45 C.F.R. § 164.524. In the event an Individual contacts Business Associate or

Business Associate's agent or subcontractor directly about gaining access to the Individual's PHI, Business Associate will forward such request to ADVS within two (2) business days of such contact and will provide access to and copies of such Individual's PHI to ADVS or to such Individual in accordance with the requirements of the HIPAA Privacy Rule as ADVS may direct. Business Associate will provide such PHI in an electronic format upon request by ADVS unless it is not readily produceable in such format in which case Business Associate will provide ADVS an alternative readable electronic format.

3.7 Amendment of PHI. When PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from ADVS or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

3.8 Disclosure Documentation. Business Associate will document its disclosures of PHI and information related to such disclosures as would be required for ADVS or Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.9 Accounting of Disclosures. Within fifteen (15) days of receiving a request from ADVS, Business Associate will provide to ADVS information collected in accordance with Section 3.8 of this Agreement, as necessary to permit ADVS or Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.

3.10 Access to Business Associate's Internal Practices. Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (i) PHI received from, or created or received by Business Associate on behalf of, ADVS; and (ii) EPHI created, received, maintained or transmitted by Business Associate on behalf of ADVS, available to the Secretary or to ADVS or Covered Entity, in a time and manner designated by the Secretary or reasonably specified by ADVS, for purposes of the Secretary determining ADVS's or Covered Entity's compliance with the HIPAA Privacy and Security Regulations.

3.11 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify ADVS of such Breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, in no case later than fifteen (15) calendar days after discovery of the Breach.

3.11.1 Notice to ADVS required by this Section 3.11 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach, to mitigate harm to the individual(s), and to protect against further Breaches; and (v) any other information that ADVS determines it needs to include in notifications to the individual(s) under 45 C.F.R. § 164.404(c).

3.11.2 After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by Business Associate or of a Breach, involving Unsecured Protected Health Information, for which the Business Associate is otherwise responsible, ADVS may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on ADVS's or Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than thirty (30) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach. Business Associate shall indemnify, hold harmless, and defend ADVS from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by ADVS in its sole discretion), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation the costs of ADVS's actions taken to (i) notify the affected individual(s) of and to respond to the Breach, (ii) mitigate harm to the affected individual(s), and (iii) respond to questions or requests for information about the Breach.

4. Obligations of ADVS.

4.1 Requested Restrictions. ADVS will notify Business Associate in writing of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.2 Changes in or Revocation of Permission. ADVS will notify Business Associate, in writing, of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

4.3 Permissible Requests by ADVS. ADVS will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Regulations if done by ADVS, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate.

5. Security Restrictions on Business Associate.

5.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of ADVS as required by the HIPAA Security Regulations.

5.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom ADVS provides EPHI agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of such EPHI.

5.3 Reporting of Security Incidents. Business Associate shall report promptly, but in no case later than fifteen (15) days after discovery, to ADVS any Security Incident affecting EPHI created,

received, maintained or transmitted by Business Associate on behalf of ADVS, of which Business Associate becomes aware. This Section constitutes notice to ADVS of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems, including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized access to EPHI.

5.4 HIPAA Security Regulations Compliance. Business Associate shall comply with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations.

6. Term and Termination.

6.1 Term. This Agreement shall take effect on the Effective Date, and shall terminate when all of the PHI provided by ADVS to Business Associate, or created or received by Business Associate on behalf of ADVS, is destroyed or returned to ADVS, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 Termination for Cause. If ADVS determines that Business Associate has breached a material term of this Agreement, ADVS will provide written notice to Business Associate, which sets forth ADVS's determination that Business Associate breached a material term of this Agreement, and ADVS may:

6.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by ADVS, then ADVS may immediately thereafter terminate this Agreement; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.2.3 If neither termination nor cure are feasible as provided in Sections 6.2.1 and 6.2.2 of this Agreement, ADVS will report the violation to the Secretary.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from ADVS, or created or received by Business Associate on behalf of ADVS. This provision applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

6.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to ADVS notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Indemnification. To the fullest extent permitted by law, each party agrees to indemnify, defend, and hold harmless the other party and its officers, employees, agents and representatives from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys' fees) asserted or imposed against them arising out of the acts or omissions, or in any way connected with acts or omissions, arising out of negligent or other legally culpable acts or omissions that constitute a violation of HIPAA by the indemnitor's employees or agents.

8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy and Security Regulations means the section as in effect or as amended.

8.2 Interpretation. Any ambiguity in this Agreement shall be resolved to permit ADVS and Covered Entity to comply with the HIPAA Privacy and Security Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, on any person other than Business Associate and ADVS and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.4 Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their permitted successors and assigns.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.6 Amendment. If any new state or federal law, rule, regulation or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy and Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Business Associate, ADVS to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least fifteen (15) days' prior written notice to the other party.

8.7 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's

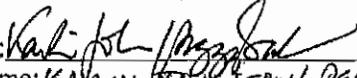
right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.8 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

8.9 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement ("Effect of Termination") shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

Multnomah County

By: 
Name: KARIN JOHNSON / PEGGY SAMOLINSKI
Title: DIVISION DIRECTOR

[BUSINESS ASSOCIATE]

By: _____
Name: _____
Title: _____