

June 2, 2022

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement #13872 with Multnomah County for the provision of services to Clackamas County residents. The source of the funding is the U.S. Administration for Community Living. Total value is \$313,180.88. Funding through 3/31/2024

No County General Funds are involved

Purpose/Outcomes	To provide supports for Veterans Directed Care services for eligible Veterans who reside in Clackamas County.
Dollar Amount and Fiscal Impact	The total agreement is \$313,180.88. No County General Funds are involved
Funding Source	Multnomah County agreement with the Veterans Administration
Duration	Effective April 1, 2022 through March 31, 2024
Previous Board Action	None. Item at County Issues: 5/31/22
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
County Counsel	1. Date of Counsel review: 5/11/22 2. Initials of County Counsel performing review: AN
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> If no, provide brief explanation: This is an IGA with Multnomah County.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S#10680

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services Department request approval of Agreement #DCHS-IGA-E-13872-2022, with Multnomah County, by and through its Aging, Disability and Veterans Services Division for the delivery of Veterans Directed Care (VDC) services to eligible Veterans who reside in Clackamas County. Clackamas County Social Services, as part of the State's Aging & Disability Resource Connection (ADRC) network, is participating with Multnomah County to coordinate program delivery for the VDC services. Multnomah County Aging, Disability, and Veterans Services Division (Multnomah ADVSD) is serving as the lead agency and fiscal agent.

The goal of the VDC program is to provide case management supports to veterans who are in need of nursing care at home, have needs that exceed the hours available through the VA's Homemaker/ Home Health Aid Program, and are interested in self-directed care. These services and supports will allow them to remain independent and engaged in their community as long as possible.

This Contract was delayed as Multnomah County was not being able to release agreements to its subcontractors until their funding source released their agreement and approved the subcontracts. It is effective April 1, 2022 through March 31, 2024 and adds up to \$313,180.88 in funding. No County General Funds are involved in this agreement. The Agreement was reviewed and approved by County Council on May 11, 2022.

RECOMMENDATION:

Staff recommends the Board approve this Intergovernmental Amendment, and authorization for the Chair to sign on behalf of the County.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook, Director
Health, Housing and Human Services Department

Attachment:
H3S#10680



INTERGOVERNMENTAL AGREEMENT

Contract Number: DCHS-IGA-E-13872-2022

This is an Agreement between CLACKAMAS COUNTY SOCIAL SERVICES DIVISION (Contractor) and MULTNOMAH COUNTY (County), referred to collectively as the "Parties."

CONTRACTOR ADDRESS:
CLACKAMAS COUNTY SOCIAL SERVICES DIVISION
P.O. BOX 2950
OREGON CITY, OR 97405-8856

Contract Documents. This Contract includes the following attached documents:

Attachments

Attachment Letter	Description
A	Veteran Directed Care Program
B	Electronic Protected Health Information Guidance
H-1	HIPAA Business Associate Agreement

PURPOSE:

The purpose of this Agreement is:

This Agreement purchases the services of Contractor to implement the Veteran Directed Care (VDC) program for eligible Veterans in Clackamas County. The VDC program is for Veterans enrolled in the Veterans Administration (VA) health care system who are in need of nursing care and/or Care Giver services at home, have needs that exceed the hours available through the VA's Homemaker/Home Health Aid Program, and are interested in self-directed care. The program is a collaboration between the local VA Medical Center (MC) and the Aging & Disabilities Resource Connection (ADRC) serving eligible Veterans. Multnomah County is administering the program on behalf of the ADRCs serving Clackamas, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Multnomah and Washington Counties. A summary of the current program rules is shown in **Attachment A**.

The parties agree as follows:

1. **TERM.** The term of this Agreement shall be from Friday, April 1, 2022 12:00 AM to Sunday, March 31, 2024 11:59 PM. This Agreement may be renewed if the program is continued by the funder.
2. **CONSIDERATION.** The estimated maximum payment under this Contract, including expenses, is \$313,180.88.
3. **RESPONSIBILITIES OF CONTRACTOR.** The Contractor agrees to:
 - A. Designate a VDC Program Manager who shall coordinate Contractor's activities.
 - B. Assign Case Manager(s) to the VDC program and ensure that all appropriate staff is trained in the requirements and procedures of the program.
 - C. Carry out the activities described for the ADRC Case Manager provided by Multnomah County, including:
 1. Accept referrals from the VDC Veterans Affairs Medical Center (VDC-VAMC) Program Coordinator;
 2. Provide assessment(s) for each referred Veteran;
 3. Work with Veterans authorized for the program to designate a Director and then to develop and finalize a spending plan;
 4. Provide Veteran/Director with orientation on hiring employees/caregivers, being an employer and how to work with the Financial Management Services (FMS) provider to hire new employees, complete background checks, enter and approve time worked, etc.;

5. Submit a completed Employer of Record form to the FMS provider, who then sets the Veteran up in their system and pre-populates Federal and State tax forms
6. Work with FMS provider to get each Veteran entered into the participant online portal; provide support or assistance as needed;
7. Authorize budgets in FMS provider portal for monthly spending plans and for authorized purchases, and revise as necessary and as allowable per assessment, the Oregon VDC-VAMC Service Matrix, and approval from the local VDC-VAMC Program Coordinator;
8. Monitor each enrolled Veteran's health, safety and outcomes by at least one (1) monthly phone call and one (1) visit each quarter, verify plan goals, spending, and identify any change in needs that could require a reassessment, and consult with the VDC-VAMC Program Coordinator regarding any significant changes in Veterans' situation or needs;
9. Coordinate Veteran reassessments at six months and annually thereafter;
10. Follow procedures for voluntary and involuntary disenrollment of Veterans from the program and participate in reconciliation of Veterans' accounts;
11. Communicate with Multnomah County, the VDC-VAMC Program Coordinator, FMS provider and Veterans as needed for effective services and operation of the program.

D. Participate in monthly VDC-VAMC program meetings coordinated by Multnomah County.

E. Participate in any data collection on the program requested by Multnomah County, such as client satisfaction surveys, and by the VA Administration on Community Living, such as Veteran census information.

4. **RESPONSIBILITIES OF COUNTY.** The County agrees to:

A. Designate a VDC ADRC Program Manager who will coordinate the overall program.

B. Provide initial training to Contractor on the requirements and procedures of the program, as well as updated information and/or training as the requirements and procedures change.

C. Contract with a Financial Management Services (FMS) provider, currently Premier FMS LLC, to manage individual Veterans' accounts.

D. Carry out the activities described for Multnomah County including:

1. Paying FMS provider;
2. Invoicing VA's Network Payment Center (VA NPC) for services;
3. Paying Contractor (and other ADRC partners) for services;
4. Providing Veteran monthly spending reports to the Case Manager(s) and the local VDC-VAMC Program Coordinator(s) to review and approve; and
5. When a Veteran is unenrolled, work with case manager and FMS provider to finalize expenses and billing to VA NPC.

E. Coordinate monthly meetings that include the VDC-VAMC programs, the ADRC VDC programs and the FMS provider.

F. Coordinate quarterly meetings that include the County and the VDC-VAMC Program Coordinators.

G. Act as liaison with VA Network Payment Center and FMS provider.

H. Provide quality assurance by monitoring the work of Contractor and other ADRC partners.

5. **TERMINATION.** This Agreement may be terminated by either party upon thirty (30) day's written notice.

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.
- 12. **PAYMENT/BILLING.** Contractor shall invoice Multnomah County monthly for fees, up to an **estimated maximum of \$313,180.88 for the term duration of the Agreement.**

The estimated total funding for this Agreement is not guaranteed. Fluctuations in funding throughout the year, and from year to year should be expected. County cannot ensure that any particular level of funding will be provided and the Agreement will permit the County to add or remove funding as necessary depending on service levels and the availability of funding.

Fees are currently:

- A. Full or Partial Assessment (one-time assessment fee) of **\$869.33** for each full assessment (new Veteran referred and accepted into the program) or **\$434.28** for each partial assessment (Veteran assessed as a poor candidate for the program), up to and not-to-exceed an estimated maximum of **\$20,860.88** for the term duration of the Agreement.
- B. Professional Fees Consultation (case management fee) of **\$487.20** per Veteran per month for an estimated maximum of 300 consultations per year, up to and not-to-exceed an estimated maximum of **\$292,320.00** for the term duration of the Agreement.

If the allowable fees are changed by the VA, the fees listed will be changed by County. Notice of changes in fees will be made in writing. County will give Contractor advance notice of fee changes, to the extent County receives such notice from the VA.

Contractor shall provide back-up to invoice showing individual Veterans served, using the form provided (or approved) by Multnomah County. Invoice and back-up are due by the 15th calendar day of the month. If required documentation and invoices are received on time, are complete and correct, the County will process payments within thirty (30) calendar days of receipt of monthly invoice and documentation.

All requests for payment shall be sent to the attention of:

Multnomah County
Department of County Human Services/Aging, Disability & Veterans Services Division
Contract Deliverables
P.O. Box 40488
Portland, OR 97204-0488

If submitting electronically, send **by secure email** to: vdc.program@multco.us

County will remit payment to:

Clackamas County Social Services Division
P.O. Box 2950
Oregon City, OR 97405-8856

- 13. **ORS 190-COOPERATION OF GOVERNMENT UNITS.** This Agreement does not constitute an authorization by a public body under ORS 190.010 for a Party to perform one or more inherent governmental responsibilities of or for the other Party.
- 14. **FEDERAL FUNDS SUBRECIPIENT.** The Catalog of Federal Domestic Assistance (CFDA) number(s), title(s) and amount(s) of the Federal funds are shown below along with other required information about the Federal award per CFR200, Subpart D – Post Federal Award Requirements Standards for Financial and Program Management, Section §200.331. If this Contract is a subaward (making Contractor a sub recipient of Federal funds), Contractor shall conduct an audit as described under 2 CFR 200.500-521 (which replaces OMB Circular A-133) if such an audit is required by Federal regulations. If there is a change to funding for this Contract that adds Federal funding or changes existing funding to Federal, Contractor will be notified via a certified letter within 30 days.

CFDA #	Program Title	Program Amount
N/A	N/A	N/A

- 15. **FISCAL REQUIREMENTS.** Not applicable.
- 16. **ADDITIONAL TERMS AND CONDITIONS:**
 - A. This is a requirements funding Agreement for services on an as needed basis. 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. Contractor will be notified in writing of any funding changes.
 - B. Contractor is a Business Associate of County for the purposes of this Contract (see attached Business Associate Agreement, Attachment H-1).
- 17. **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 INTERGOVERNMENTAL AGREEMENT

Contract Number: DCHS-IGA-E-13872-2022

CONTRACTOR SIGNATURE

I have read this Contract including any attached Exhibits and Attachments. I understand the Contract and agree to be bound by its terms.

Signature: _____

Title: _____

Name (print): _____

Date: _____

MULTNOMAH COUNTY SIGNATURE

This Contract is not binding on the County until signed by the Chair or the Chair's designee.

DocuSigned by:
County Chair or Designee: Emilie Schullhoff for Deborah Kafoury Date: 3/1/2022
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Department Director Review (optional):

Director or Designee: _____ Date: _____

County Attorney Review:

Reviewed: JENNY M. MADKOUR, COUNTY ATTORNEY FOR MULTNOMAH COUNTY, OREGON

By Assistant County Attorney: Approved by Jonathan Strauhull via MMP Date: 2/24/2022

ATTACHMENT A

Veteran Directed Care Program

Note: *This is current description; Veterans Administration (VA) may change program rules.*

Target Population: All Veterans enrolled in VA health care system are eligible to participate in the Veteran Directed Care (VDC) program when the Veteran is “in need of nursing home care” and interested in self-directed care. Veterans are determined to be “in need of nursing home care” when **one (1)** or more of the following conditions is met:

- Three (3) or more activities of daily living (ADL) dependencies
- Significant cognitive impairment
- Receiving hospice services
- Two (2) ADL dependencies **and two (2)** or more of the following:
 - Three (3) or more instrumental activities of daily living (ADL) dependencies;
 - Recently discharged from inpatient rehabilitation facility or discharge contingent on receipt of VDC services;
 - 75 years old or greater;
 - Three (3) hospitalizations or 12 outpatient clinic/emergency evaluations in the past 12 months;
 - Diagnosis of Clinical Depression;
 - Lives alone in the community.
- Meets some of the criteria of the target population, but clinically determined by the local VA Medical Center (VAMC) to need services.

VBC program is targeted to Veterans and caregivers whose home care needs exceed the average number of hours generally available through the Homemaker/Home Health Aide (H/HHA) Program at a VAMC or have difficulty with the traditional agency-based home care system, and who want to self-direct their services and supports.

Services & Goods: Aging & Disability Resource Connections (ADRCs) offering VDC must provide or assist in arranging self-directed services (within an approved budget based upon the needs and preferences of the participating Veterans and/or their representatives), including:

- Veteran or representative-directed Care Services, including, but not limited to:
 - Personal Care (e.g. physical or verbal assistance with eating, bathing, dressing, grooming, and/or physical transfers)
 - Homemaker (e.g. cleaning, laundry, meal planning & preparation, shopping)
 - Adult Day Care
 - Assistive Technology (e.g. emergency response system, electronic pill minder)
 - Home-Delivered Meals
 - Caregiver Support (e.g. counseling, training)
 - Respite Care
 - Environmental Support (e.g. yard care, snow removal, extensive cleaning)
 - Other goods and services needed to remain safely in the community (e.g. small appliances, adaptive devices, grab bars, ramp, lift chair, etc.)

Note: *VDC services provided through the VDC program cannot duplicate any services that are already being provided to a Veteran or their family caregiver(s) by or through the VAMC.*

- Service Coordination and Administration:
 - Assessments

- Options Counseling/Support Services including case management
- Financial Management Services (FMS) - Fiscal/Employer Agent model preferred

The purchase of goods and services should meet all of the following criteria:

1. Meet the identified needs and outcomes in the Veteran's plan to assure the health and safety of the Veteran; **AND**
2. Collectively provide a feasible alternative to an institution; **AND**
3. Be the least costly alternative that reasonably meets the Veteran's identified needs; **AND**
4. Be for the benefit of the Veteran; **AND**
5. Be needed as the result of the Veteran's disability.

If all the above criteria are met, goods and services are appropriate purchases when they are reasonably necessary to meet the following outcomes:

- Maintain the ability of the Veteran to remain in the community;
- Enhance community inclusion and family involvement;
- Develop or maintain personal, social, physical, or work related skills;
- Decrease dependency on formal support services;
- Increase the Veteran's independence;
- Increase the ability of unpaid family members and friends to receive training and education needed to provide support.



MULTNOMAH COUNTY CONTRACT

Attachment B: Electronic Protected Health Information Guidance

Pursuant to the Business Associate Agreement, Contractor shall have systems, procedures and safeguards to protect Protected Health Information from unpermitted access or disclosure. This Schedule applies to PHI in electronic and hard copy/paper form.

The Contractor shall review the HIPAA Security Rule and the guidance and framework of NIST Special Publication 800-53 Rev.4 to implement controls, practices and procedures that will safeguard the PHI created, maintained, received or transmitted by Contractor on behalf of the County or to provide a service to County.

In the event it assists the Contractor, the following describes some of the County's suggested best practices that Contractor may wish to consider. It is not an exhaustive list of all controls, practices and procedures that Contractor should consider and implement.

1. Access to PHI.

a. **General.** Access to PHI, in all forms and formats, equipment, systems, networks, applications, and media is limited to only those employees of Contractor and permitted subcontractors performing services on behalf of, or to, the County.

i. Process is defined for granting and terminating access.

ii. The list of approved employees and permitted subcontractors is reviewed and updated at least once per quarter.

b. Physical Access.

i. PHI is stored in a secure facility or area which has appropriate physical controls to limit access (e.g. locks or access cards).

ii. Physical access to such areas is granted only to those employees of Contractor and permitted subcontractors performing tasks on behalf of the County and is monitored 24 hours per day/7 days per week by Contractor.

iii. Guests and visitors are escorted in secure areas.

c. Electronic Access.

i. Each employee accessing electronic PHI must have a unique account and password.

ii. Contractor prohibits guest accounts which are shared or not tied to an employee.

iii. Employees shall be advised that accounts and passwords cannot be shared under any circumstances.

iv. Employees must be locked out of their accounts after multiple unsuccessful attempts.

v. Contractor must require employees to have complex passwords and not permit passwords that are solely words found in the dictionary.

vi. Contractor must force an employee to change their password at a reasonable interval.

vii. Contractor periodically reviews accounts and disables them when access is no longer required to perform tasks on behalf of the County.

d. Personal Devices.

i. Employees must use passwords on all personal devices that access PHI.

ii. Employees must employ anti-virus software and operating system service packs as they are released on such personal devices.

iii. Employees must never store PHI on personal devices, even if password protected.

iv. Deploy mobile device management on personal devices to allow the Contractor to remotely wipe any access to PHI in the event the device is lost or stolen.

2. Restrictions for electronic PHI on Uses of Portable Devices or Media.

a. PHI is not stored, processed, or downloaded on any portable device or storage media without encryption. Portable devices include without limitation laptops, notebooks, smartphones, USB/jump drives.

b. Laptops are deployed with full disk encryption.

3. Transportation and Transmission of PHI.

a. All data containing PHI must be encrypted when transmitted, such as through VPN, encrypted/secured FTP, TLS, SSL, or HTTPS.

b. All access and communication to or from the Internet must occur through an actively managed Internet firewall.

c. PHI transported in hard copy/paper format must be carried in locked bags and never left unattended, such as in cars.

4. Software Controls.

a. Employ virus protection on systems or networks which store, process or transmit PHI.

b. Perform real time or periodic scans on all systems or networks which store, process or transmit PHI.

5. **Security Training, Awareness, and Sanctions.** Ensure all employees that access PHI receive training on their obligations under this Contract and the HIPAA Security Rule. Contractor should consider sanctions for any employee that

violates Contractor's policies, procedures or obligations under this Contract or HIPAA.

6. Violations and Audit.

- a. Implement technical features or controls to record security-relevant activity.
- b. Require employees to immediately report known or suspected incidents, breaches and complaints involving PHI to Contractor's privacy and/or security officer.
- c. Periodically review activity logs, investigate and resolve incidents identified.

7. Disposal of Files or Media Which Contain PHI.

- a. **Hard Copy/Paper Format.** Physically destroyed such that the PHI is rendered essentially unreadable, indecipherable, and otherwise cannot be reconstructed via shredding, burning, or pulverizing.
- b. **Electronic Format.** Fully remove PHI from electronic media prior to reuse or disposal by clearing (using software or hardware products to overwrite media with non-sensitive data) or purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains) the PHI.

8. Risk Assessment and Risk Management Plan (see also NIST Special Publication 800-300 Rev.1 and/or ONC Security Assessment Tool).

- a. Prior to creating, receiving, maintaining or transmitting PHI on behalf of the County or to provide a service to the County, conduct an accurate and thorough enterprise-wide assessment of the potential risks and vulnerabilities to confidentiality, integrity, and availability of PHI.
- b. Update the assessment as reasonably necessary in response to environmental and operational changes affecting the security of PHI not less than once every two years.
- c. Maintain and implement an ongoing risk management plan to reduce the identified risks pursuant to the assessment to reasonable and appropriate levels.

Attachment H-1**Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate Agreement****A. General:**

For purposes of this Contract, Contractor is County's business associate and will comply with the obligations set forth below and under HIPAA. Contractor and County agree to amend this Contract if necessary to allow County to comply with the requirements of HIPAA and its implementing regulations.

B. Definitions:

Terms used, but not otherwise defined in this Section, will have the same meaning as those terms in 45 CFR 160.103, 164.103, 164.402 and 164.501. A reference to a regulation means the section as in effect or as amended, and for which compliance is required.

- *Breach*: as defined in 45 CFR 164.402 and includes the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) that compromises the security or privacy of such information.
- *Designated Record Set*: as defined in 45 CFR 164.501.
- *Individual*: as defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule*: the standards for privacy at 45 CFR Part 160 and Part 164, subpart A and E.
- *Protected Health Information (PHI)*: means any information created for or received from County under the Contract from which the identity of an Individual can reasonably be determined, and includes, but is not limited to, all of the information within the statutory meaning of "Protected Health Information" in 45 CFR 160.103.
- *Required by Law*: as defined in 45 CFR 164.103.
- *Secretary*: the Secretary of the U.S. Department of Health and Human Services (HHS) or designee.
- *Security Rule*: the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subpart A and C.
- *Unsecured Protected Health Information*: PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 45 CFR 164.402.

C. Contractor's Obligations:

1. Contractor agrees to not use or disclose Protected Health Information (PHI) other than as permitted or required by this Contract or as Required or Permitted by Law. Contractor further agrees to use or disclose PHI only on behalf of, or to provide services to, the County in fulfilling Contractor's obligations under this Contract, and to not make uses or disclosures that would violate the Privacy Rule if done by County or violate the minimum necessary standard as described below.
2. When using, disclosing, or requesting PHI, Contractor agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, in accordance with 45 CFR 164.514(d), with the following exceptions:
 - a) disclosures to or requests by a health care provider for treatment
 - b) disclosures made to the Individual about his or her own PHI
 - c) uses or disclosures authorized by the Individual
 - d) disclosures made to the Secretary in accordance with the HIPAA Privacy Rule
 - e) uses or disclosures that are Required by Law, and
 - f) uses or disclosures that are required for compliance with the HIPAA Transaction Rule.
3. Contractor is directly responsible for full compliance with the requirements of the HIPAA Privacy Rule and Security Rule to the same extent as County.
4. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Contract.
5. Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County as required by 45 CFR 164 Subpart C.
6. Contractor agrees to immediately notify County of any known or suspected incident or complaint involving PHI, including use or disclosure of PHI in violation of or not provided for by this Contract of which it becomes aware.
7. Contractor shall immediately notify County of a Breach of Unsecured PHI of which Contractor (or Contractor's employee, subcontractor, officer or agent) knows or should have known of through the exercise of reasonable diligence. Contractor's notification to County must:
 - a) Be in writing and provide an individual's contact information if needed for County's follow up communications,
 - b) Be made to County without unreasonable delay and no later than 10 calendar days after discovery of the Breach. A Breach is considered discovered as of the first day on which the Breach is known, or reasonably should have been known, to Contractor, subcontractor of Contractor, or any employee, officer or agent of Contractor, other than the individual committing the Breach,

- c) Include the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach and the types of PHI involved,
 - d) Include the date of the Breach and date of discovery of the Breach,
 - e) Include description of what Contractor is doing to investigate the Breach, to mitigate loss, and to protect against any further or future Breaches,
 - f) Provide all information necessary for County to notify impacted Individuals under 45 CFR 164.404 without unreasonable delay after Contractor's discovery of the Breach, and
 - g) Provide any and all information, including preparation of reports or notices, needed for County to provide notification required under 45 CFR 164.406 and 164.408, as required or requested by County.
8. Contractor agrees to mitigate, to the extent practicable and without unreasonable delay, any harmful effect that is known to Contractor of a use or disclosure of PHI or Breach of Unsecured PHI by Contractor in violation of the requirements of this Contract or HIPAA.
 9. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Contractor on behalf of County, agrees in writing to the same restrictions and conditions that apply through this Contract to Contractor with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
 10. Contractor agrees to provide access to PHI about an Individual contained in a Designated Record Set within the time, manner, form and format specified in Individual's or County's request as necessary to satisfy the County's obligations under 45 CFR 164.524. If an Individual requests access to information directly from Contractor, Contractor agrees to forward the request to County within 2 working days of receipt. County will be responsible for any denials of requested PHI.
 11. Contractor agrees to make any amendments to PHI in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR 164.526 within the time and manner specified in County's request. Contractor shall not respond directly to requests from Individuals for amendments to their PHI in a Designated Record Set. Contractor agrees to forward the request to County within 2 working days of receipt.
 12. Contractor agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained or received by Contractor on behalf of County available to County or Secretary upon request of County or Secretary, in a time and manner designated by the County or the Secretary for purposes of the Secretary determining County's compliance with HIPAA.
 13. Contractor agrees to document disclosures of PHI and information related to such disclosures as required for County to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528.
 14. Contractor will make available, at a minimum, the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Contractor agrees to implement an appropriate record keeping process to comply with this Section.
 15. Contractor agrees to provide County or an Individual, within the time and manner specified in the request from County or Individual, information under Item 13 of this Section, to permit County to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528.
 16. Contractor must forward to County within 2 working days of receipt any request for restriction or confidential communications as described under 45 CFR 164.522 received from an Individual. Contractor must process such request in the time and manner as directed by County.
 17. If Contractor conducts in whole or part electronic transactions on behalf of County for which HHS has established standards, Contractor will comply and require its subcontractors and agents to comply, with each applicable requirement of the HIPAA Electronic Transactions Rule under 45 CFR Parts 160 and 162 and of any operating rules adopted by HHS with respect to the standard transactions.

D. Termination:

1. Notwithstanding any other termination provisions in this Contract, County may terminate this Contract in whole or in part upon 5 working days written notice to Contractor if the Contractor breaches any provision contained in this Contract and fails to cure the breach to County's satisfaction within the 5 working day period; provided, however, that in the event termination is not feasible County may report the breach to the Secretary.
2. Upon termination of this Contract for any reason, Contractor will extend the protections of this Contract to any PHI that Contractor is required to retain under any provision of this Contract. The terms of this Contract shall remain in effect until all of the PHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI as agreed upon by County, protections are extended to such information, in accordance with the termination provisions in this Section.
3. The obligations of Contractor under this Section D shall survive termination of the Contract.

E. Remedies in Event of Breach: Contractor recognizes that irreparable harm will result to County, and to County business, in the event of breach by Contractor of any of the covenants and assurances contained in this Contract. As such, in the event of breach of any of the covenants and assurances contained in Section C above, County will be entitled to enjoin and restrain Contractor from any continued violation of Section C. Furthermore, in the event of breach of Section C by Contractor, County is entitled to reimbursement and indemnification from Contractor for County's reasonable attorneys' fees and expenses and costs, including notices the County is required to give as a result of any Breach of Unsecured PHI, that were reasonably

incurred as a result of Contractor's breach. The remedies contained in this Section E are in addition to (and do not supersede) any action for damages and/or any other remedy County may have for breach of any part of this Contract. This provision in Section E shall survive termination of the Contract.

- F. **Interpretation:** Any ambiguity in this Contract shall be resolved in favor of a meaning that permits County to comply with HIPAA and its implementing regulations.