

AGREEMENT

THIS AGREEMENT is made and entered into by and between the County of Lancaster, Nebraska, hereinafter referred to as "County," and , Mary Apthorpe MA, LIMHP, LADC, Lincoln, Nebraska, hereinafter referred to as the "Contractor." Collectively the County and the Contractor may be referred to as "Parties," and individually each may be referred to as a "Party."

WHEREAS, the County through the Mental Health Crisis Center of Lancaster County, hereinafter referred to as "Crisis Center," presently provides mental health services to citizens of Lancaster County;

WHEREAS, the Crisis Center desires the professional services of a Certified Alcohol and Drug Abuse Counselor, which is commonly referred to as a LADC; and

WHEREAS, the Contractor shall provide a counselor who is qualified with the necessary skills and expertise, to provide the County with the services of a LADC and a Licensed Independent Mental Health Professional (LMHP);

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the Parties as follows:

1) Purpose. This Agreement is entered into by the Parties for the provision of the services of a Licensed Alcohol Drug Counselor (LADC) and Licensed Independent Mental Health Practitioner (LIMHP) for the Crisis Center.

2) The County and the Contractor hereby mutually agree that in performing its obligations and responsibilities as set out herein, the Contractor will designate Mary Apthorpe MA, LIMHP, LADC, to act as its LADC and LIMHP to provide the services and responsibilities associated with that position as specified hereinafter.

3) Responsibilities. The Contractor shall have the following duties and responsibilities:

- A. Provide the County with proof of certification of its LADC and LIMHP and notify the County immediately if the Contractor or designated representative no longer meets the certification requirements or is no longer certified.
- B. Provide substance abuse evaluations as requested by the Crisis Center or for admissions to the Crisis Center, where the evaluations are ordered by the psychiatrist or psychologist. The Contractor agrees to use its best efforts to perform an evaluation within twenty-four (24) hours of notification of the request for an evaluation.
- C. Provide the County with a written report of findings and recommendations for each evaluation conducted. Such report shall be completed within twenty-four (24) hours after the evaluation is conducted.
- D. Contractor agrees that in no event will it transport any clients of the Crisis Center, nor will he/she utilize his personal automobile on behalf of the Mental Health Crisis Center.
- E. Provide the County with up to and no more than twenty (20) total hours per week of the LADC/LIMHP substance abuse evaluation services for the

Crisis Center.

4) Compensation. The County shall reimburse the Contractor at a rate of Eighty Five Dollars (\$85.00) per evaluation completed. In addition, the County shall reimburse the Contractor for time spent providing services other than evaluations at a rate of Thirty Two Dollars (\$32.00) per hour. Compensation shall only be paid upon presentment of a statement for reimbursement and documentation that services have been provided pursuant to this Agreement. The Parties agree that this Agreement does not provide for compensation in the form of a retainer. The Contractor, in seeking reimbursement under this Agreement, agrees that it shall not be paid until services have been provided as outlined in this Agreement. Contractor further agrees that it will make any additional information available to the County to support any claim for services rendered.

The County shall not be responsible for the direct payment of any wages, insurance or fringe benefits, including but not limited to, vacation, overtime, retirement benefits, workers' compensation insurance, and unemployment insurance.

5) Term. The term of this contract shall be August 1, 2018, through October 31, 2018, unless terminated pursuant to Paragraph 6 of this contract.

6) Termination. This contract may be terminated by either party hereto by giving written notice of such intent to the other party at least thirty (30) days prior to the proposed date of termination.

7) Indemnification. The Contractor shall indemnify and hold harmless the County, its agents, employees and representatives from all claims, demands, suits, actions, payments, liability, judgments and expenses (including court-ordered attorney's fees), arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by the Contractor, its employees, agents, or representatives, either directly or indirectly employed by them. This section will not require Contractor to indemnify or hold harmless the County for any losses, claims, damages and expenses arising out of or resulting from the negligence of the County.

8) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the Contractor. The Contractor and the County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the County's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave, or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

9) Assignment. The Contractor shall not assign its duties and responsibilities under this Agreement without the express written permission of the County. Any assignment without the express written permission of the County shall be absolutely void.

10) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

11) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, the Contractor shall not discriminate against an employee, applicant for employment, participant, or any other person because of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law.

12) Confidentiality. During the term of this Agreement, the Contractor shall perform all services in accordance with the established and applicable standards and in accordance with applicable state and local laws. The Contractor agrees to keep any and all information obtained in the performance of this Agreement confidential as required by law. The Contractor agrees that it shall be compliant with the Health Insurance Portability and Accountability Act of 1996 and implementing regulations pertaining to confidentiality of health information. The Contractor agrees to comply with the terms of Attachment "A," which is attached hereto and incorporated by this reference.

13) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska without respect to its conflict of laws principles.

14) Insurance.

Malpractice and Professional Liability Insurance: The Contractor shall purchase and maintain during the term of this Agreement, Malpractice and Professional Liability Insurance for the Licensed Mental Health Professional with base insurance coverage of \$300,000 per occurrence and an aggregate limit of \$1,000,000 and shall qualify for maximum qualification under the Nebraska Medical and Hospital Liability Act, Neb. Rev. Stat. §§ 44-2801 et seq. This insurance shall list the County as an additional insured.

Malpractice and Professional Liability Insurance. The Contractor shall purchase and maintain during the term of this Agreement, Malpractice and Professional Liability Insurance for the Physician with base insurance coverage of \$500,000 per occurrence and an aggregate limit of \$1,000,000 and shall qualify for maximum qualification under the Nebraska Medical and Hospital Liability Act, Neb. Rev. Stat. § 44-2801 et. seq.

Workers' Compensation Insurance: The Contractor does not maintain Workers' Compensation Insurance and thus Contractor agrees that Contractor alone will perform all obligations outlined in the Agreement and will not delegate any obligations to a third party.

15) Employee Verification. In accordance with Neb. Rev. Stat. § 4-108 through § 4-114, Contractor agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal

program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Contractor shall require any subcontractor to comply with the provisions of this section.

16) Entire Agreement: The Parties hereby agree that this Agreement constitutes the entire understanding of the Parties and supersedes all prior Contracts, agreements and negotiations between the Parties whether verbal or written.

17) Forbearance Not Waiver: County's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of County's rights.

EXECUTED this 13 day of September, 2018, by Contractor.

By: Mary Apthorpe
Mary Angela Apthorpe, MA, LIMHP, LADC

EXECUTED this _____ day of _____, 2018, by Lancaster County, Nebraska.

BY: THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this ____ day of _____, 2018.

Deputy County Attorney for
PAT CONDON, County Attorney

ATTACHMENT A

Business Associate Agreement

Covered Entity, Lancaster County, and Business Associate, Mary Apthorpe MA, LIMHP, LADC, are parties to the attached Agreement, to which the terms of this Business Associate Agreement apply. Whereby, Business Associate agrees to perform certain services or business associate functions for or on behalf of Covered Entity.

- I. Definitions. Terms used but not otherwise defined in this Addendum shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein:
- a. *Business Associate Agreement or Addendum* means all agreements or addendum, whether now in effect or hereafter entered into, between Covered Entity and Business Associate for the performance of Business Associate Functions by Business Associate.
 - b. *Business Associate Functions* means functions performed by Business Associate on behalf of Covered Entity which involve the creation of, access to, use or disclosure of, Protected Health Information by Business Associate, its agents or contractors.
 - c. *Electronic Protected Health Information (EPHI)* means electronic protected health information, as defined in 45 C.F.R. §160.103, which is transmitted by electronic media or maintained in electronic media by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
 - d. *Electronic Media* means electronic media as defined in §160.103.
 - e. *HIPAA* means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-7.
 - f. *Individual* means the same as the term "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with §164.502(g).
 - g. *Protected Health Information (PHI)* means protected health information, as defined in 45 C.F.R. §160.103, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
 - h. *Regulations* means the final Regulations implementing the privacy provisions of HIPAA, as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160 and 164.

- I. *Required by Law* means the same as the term “required by law” in 45 C.F.R. §164.103.
- j. *Secretary* means the Secretary of the Department of Health and Human Services or his designee.
- k. *“HITECH”* means the Title XII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), called the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, which codifies and expands on many of the requirements promulgated by the Department of Health and Human Services (“DHHS”) pursuant to the HIPAA to protect the privacy and security of PHI.
- l. *“Breach”* means the same as the term “breach” in 45 C.F.R. §164.402

II. Purpose. Lancaster County is a Covered Entity under HIPAA and Mary Apthorpe MA, LIMHP, LADC, is its Business Associate with respect to the attached Agreement. Business Associate will have access to PHI in order to perform its functions on behalf of Covered Entity. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates. The purpose of this Business Associate Addendum is to obtain satisfactory written contractual assurances from Business Associate that Business Associate will appropriately safeguard such PHI in accordance with 45 C.F.R. §164.314(a)(2), §164.502(e)(1) and §164.504(e)(1) of the Regulations and provide the notification in accordance with 45 C.F.R. §164.410.

III. Permitted Uses and Disclosures by Business Associate. Business Associate shall only use and disclose PHI for the following purposes:

- a. To perform Business Associate Functions.
- b. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- c. To provide data aggregation services relating to the health care operations of the Covered Entity.

IV. Special Conditions on Disclosure for Business Associate's Purposes. Before Business Associate may disclose PHI to another party for a reason described in subparagraph III(b), one of the following two conditions must be met either:

- a. The disclosure must be required by law; or
- b. Business Associate must obtain reasonable assurances from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it such person; and such person must agree in writing to

notify Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.

- V. Obligations and Assurances of Business Associate.** As an express condition of performing Business Associate functions, Business Associate agrees to:
- a. Use and/or disclose PHI only as permitted or required by this Agreement or as required by law.
 - b. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for in this Agreement.
 - c. Report to Covered Entity, within a reasonable time after discovery, any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such unauthorized disclosure.
 - d. Require that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
 - e. Provide access, at the request of Covered Entity, within a reasonable time after request, to PHI to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of 45 C.F.R. §164.524 of the Regulations.
 - f. Notify Covered Entity within three (3) business days of a request by an individual to amend PHI maintained by Business Associate on behalf of Covered Entity, direct the requesting individual to the Covered Entity in the handling of such request, and incorporate any amendment accepted by the Covered Entity in accordance with §164.526 of the Regulations. Business Associate is not authorized to independently agree to an amendment of PHI.
 - g. Document disclosures of PHI and information related to such disclosures as would be required for the 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 of the Regulations.
 - h. Notify Covered Entity within three (3) business days of any request by an individual for an accounting of disclosures, direct the requesting individual to the Covered Entity in the handling of such request, and provide Covered Entity within ten (10) days thereafter with all information in its possession or in the

possession of its agents, and contractors, which is needed to permit Covered Entity to respond to the request for accounting in accordance with 45 C.F.R. §164.528 of the Regulations. Business Associate agrees to retain necessary records from which to respond to the requests for an accounting.

- I. Make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, within a reasonable time after request, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- j. 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 the Covered Entity as required by Subpart C of the Regulations.
- k. Ensure that any agent, including a subcontractor, to whom the Business Associate provides such EPHI agrees to implement reasonable and appropriate safeguards to protect EPHI.
- l. Report to Covered Entity, within a reasonable time after discovery, any security incident or breach regarding EPHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such security incident or breach.
- m. To comply with the security rules as required by HITECH, in a manner consistent with rules and regulations that may be adopted by relevant federal agencies, to keep all electronic protected health information in a secure manner, as required under federal law.
- n. To comply with the confidentiality, disclosure, breach notification, compliance and re-disclosure requirements of HITECH and HIPAA.
- o. To comply with any and all regulatory requirements which may arise in future to comply fully with HIPAA and HITECH, including but not limited to, restrictions on disclosures to health plans, clarified minimum necessary standards, expanded accounting requirements applicable to electronic health records, revised prohibitions on the sales of PHI, and updated marketing and fund raising restrictions.

VI. Notification by Business Associate following the Discovery of a Breach of PHI

- a. Business Associate shall notify the Covered Entity in writing following the discovery of a breach of PHI or EPHI. A breach shall be treated as discovered by a Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. A Business Associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the Business Associate.
- b. Except as provided in 45 C.F.R. §164.412, the Business Associate shall provide the notification of breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.
- c. The written notification of a breach shall include and provide the identification of each individual whose PHI or EPHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach.
- d. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual affected by the breach under 45 C.F.R. 164.404(c) at the time the notification is required or promptly thereafter as the information becomes available.

VII. Responsibilities of the Covered Entity. Covered Entity agrees to:

- a. Notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

VIII. Term and Termination.

- a. *Term.* This Business Associate Addendum shall be effective on the Effective Date of the Agreement and shall continue in effect until all obligations of the

parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and/or contractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Business Associate Addendum designed to safeguard PHI shall survive expiration or other termination of the Agreement, and shall continue in full force and effect until Business Associate has performed all obligations under this Business Associate Addendum.

- b. *Termination by Covered Entity.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may immediately terminate the Agreement. Alternatively, Covered Entity may chose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms.
- c. *Effect of Termination.*
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon written notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

IX. Miscellaneous

- a. *Amendment.* The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as it necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.
- b. *Survival.* The respective rights and obligations of Business Associate under Section V (c), (l) and (o), Section VI, and Section IX(d) of this Business Associate Addendum shall survive the termination of this Business Associate Addendum and the underlying Agreement.

- c. *Interpretation.* Any ambiguity in this Business Associate Addendum shall be resolved to permit Covered Entity to comply with the HIPAA Regulations.

- d. *Indemnification.* Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and their respective officers and employees, from and against all liability, judgments, losses, claims, damages, notification expenses and other expenses (including court-ordered attorneys' fees) resulting from a breach of PHI or EPHI, arising out of the acts or omissions of its officers or employees in performance of this Business Associate Addendum. Liability includes any claims, damages, losses, notification expenses, and expenses arising out of or resulting from performance of this Business Associate Addendum that results in any claim for damage whatsoever



Certificate of Liability Insurance

Date Issued: 09/26/2018

Underwritten by: Philadelphia Indemnity Insurance Company · One Bala Plaza, Suite 100 · Bala Cynwyd, PA 19004 · NAIC #: 18058
Administered by: CPH & Associates · 711 S. Dearborn St. Ste 205 · Chicago, IL 60605 · P 800.875.1911 · F 312.987.0902 · info@cphins.com

DISCLAIMER: This certificate is issued as a matter of information only and confers no rights upon the certificate holder. The Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed thereon.

Insured: Mary Apthorpe
2450 S. 10th St.
Lincoln, NE 68502

Policy Number: E115441
Policy Term: 06/20/2018 to 06/20/2019
Occupation: Counselor

Covered Locations

Professional Liability: Portable coverage, not location specific

| Coverage Type (Occurrence Form) | Per Incident (Per individual claim) | Aggregate (Total amount per year) |
|------------------------------------|--|--------------------------------------|
| Professional Liability | \$ 1,000,000 | \$ 3,000,000 |
| Supplemental Liability | \$ 1,000,000 | \$ 3,000,000 |
| Licensing Board Defense | \$ 35,000 | \$ 35,000 |
| Commercial General Liability | N/A | N/A |
| ▫ Fire/Water Legal Liability | N/A | N/A |
| Business Personal Property | N/A | N/A |

Comments/Special Descriptions:

Certificate Holder

Lancaster County Crisis Center
Scott Etherton
825 J Street
Lincoln, NE 68508

Certificate Holder has been added as an additional insured

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). **Notice of Cancellation** will only be provided to the first named insured in accordance with policy provisions, who shall act on behalf of all additional insureds with respect to giving notice of cancellation.

Authorized Representative
C. Philip Hodson

THIS ENDORSEMENT CHANGED THE POLICY. PLEASE READ IT CAREFULLY

Additional Insured Endorsement

This endorsement modifies insurance provided under the following:

ALLIED HEALTHCARE PROVIDERS PROFESSIONAL
AND SUPPLEMENTAL LIABILITY POLICY

In consideration of the premium paid, this policy is amended as follows:

Lancaster County Crisis Center is hereby added as an Additional Insured, solely for **Damages** arising out of a **Professional Incident** covered under this policy. The **Professional Incident** must arise out of services provided by the **Insured**, under contract with **Lancaster County Crisis Center**.

Additional Insured Name and Mailing Address:

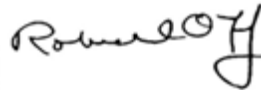
Lancaster County Crisis Center
Scott Etherton
825 J Street
Lincoln, NE , 68508

****Added to the policy effective 09/27/2018, at the additional premium of \$0**

All other terms and conditions of this policy remain unchanged. This endorsement is part of your policy and takes effect on the effective date of your Policy, unless another effective date is shown below.

Policy: E115441
Effective on and after: 09/27/2018
Issued to: Mary Apthorpe
Expiration date: 06/20/2019

PI-PHCP-05 (03/01)



By: Robert O'Leary, Authorized Representative