

AGREEMENT

THIS AGREEMENT is entered into on this ____ day of _____, 20__ (“Effective Date”), by and between Mark Lukin, Ph.D., (hereinafter referred to as “the Contractor”) and the County of Lancaster, Nebraska (hereinafter referred to as “the County”). 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, hereinafter referred to as “Crisis Center”, presently provides mental health services to citizens of Lancaster County;

WHEREAS, the Crisis Center is presently unable to provide all the needed mental health services for which it is responsible because of a shortage of qualified Psychologists on staff;

WHEREAS, the County wishes to obtain the needed services through a contract with a qualified, licensed Ph.D. Psychologist; and

WHEREAS, Mark Lukin, is a Psychologist who is qualified to provide the needed services and wishes to contract with the County for the provision of these services;

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

1. Responsibilities. The Contractor shall provide the County with up to and no more than Three Hundred Twenty (320) hours of specialized psychological services during the Term. The exact hours and duties of the Contractor shall be based upon the requests of the staff at the Crisis Center. The Contractor agrees that in providing services at the Crisis Center there shall be a written evaluation of persons served at the Crisis Center. In addition, the Contractor agrees to attend, provide input and provide recommendations at the Crisis Center Staff Meeting. The Contractor also agrees to appear and testify before the Mental Health Board. The Contractor agrees to provide supervision, assessments, individual therapy, group therapy, assist with family support, follow up consultations and other duties as requested. In addition to the up to Three Hundred Twenty (320) hours during the Term, the Contractor shall provide on-call services on the weekends only in those situations where both the Contractor and the County agree that such on-call services are warranted. The Contractor is expected to be available to the County within a reasonable amount of time if called to duty on the weekend. The Contractor warrants that he shall abide by all the laws, rules and regulations that govern the practices and procedures of a licensed psychologist.

2. Licensing. The Contractor agrees that he is and at all times during the Term of this Agreement shall be a licensed psychologist. The Contractor further agrees that should he no longer be so licensed, he shall notify the County immediately. Should the Contractor lose his license, the Parties agree that the County may terminate this Agreement immediately.

3. Term. This Agreement shall have a Term of May 1, 2019, through April 30, 2020, unless terminated pursuant to Paragraph 10 of this Agreement. Thereafter this Agreement may be renewed by mutual written Agreement of the Parties.

4. Compensation. The County will pay the Contractor Seventy-Five Dollars (\$75.00) per hour for no more than Three Hundred Twenty (320) hours during the Term. If the Contractor is called on the weekend to perform services, the Contractor shall be reimbursed at the normal rate of \$75.00 per hour. Should the need of services of the Contractor exceed Three Hundred Twenty (320) hours during the Term, excluding on-call weekend hours, any and all services provided above this amount shall be subject to the prior written approval of the Lancaster County Board of County Commissioners embodied in an amendment to this Agreement executed by both Parties. The Contractor agrees that it shall not be paid until services have been provided to County. The Parties agree that compensation is not nor shall it be deemed a retainer. The Contractor shall not be required to provide further services, beyond Three Hundred Twenty (320) hours during the Term and on-call weekends, until receiving prior written notification of the approval of the Lancaster County Board of Commissioners of additional funding for those hours.

It is understood and agreed that the amount stated above shall represent total reimbursement for the services provided under the terms of this Agreement. Neither the County nor the Crisis Center shall 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. 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 employee's compensation.

6. Assignment. 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.

7. Hold Harmless. Contractor agrees to indemnify and hold harmless, to the fullest extent allowed by law, the County and its principals, officials, officers, and employees from and

against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officials, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require Contractor to indemnify or hold harmless the County from liability for the negligent or wrongful acts or omissions of County or its principals, officials, officers, or employees.

8. 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 the applicable law.

9. Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, Contractor shall not discriminate against an employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

10. Termination. This Agreement may be terminated at any time without penalty by either Party giving thirty (30) days written notice. Should either Party materially breach this Agreement, the other Party shall notify the breaching Party of the material breach in writing and the materially breaching Party will have fifteen (15) days to cure the material breach. If the material breach is not cured within fifteen (15) days, the other Party may, at its discretion, terminate the Agreement immediately upon written notice to the breaching Party. This Agreement also may be terminated by County in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the party. In the event of unavailability of funds to pay any amounts due under the Agreement, the County shall immediately notify the Contractor, and the Agreement shall terminate without penalty or expense to the County. Upon termination of this Agreement, the County shall pay the Contractor for any approved and documented services or products completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

11. Release of Information. 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.

12. Insurance.

Malpractice and Professional Liability Insurance: The Contractor shall purchase and maintain, at all times 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. This insurance shall list the County as an additional insured.

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.

14. E-Verify. 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 Paragraph 11 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 Paragraph 14.

15. Integration. The Parties do hereby agree to all the terms and conditions of this Agreement. This Agreement shall be binding upon the Parties, their heirs, administrators, executors, legal and personal representatives, successors and assigns. 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.

16. Forbearance not Waiver. Either Party's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of that Party's rights.

17. No Third-Party Rights. This Agreement is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the Parties to this Agreement. County shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than Contractor.

18. Choice of Law and Jurisdiction. The laws and jurisdiction of the State of Nebraska shall govern any disputes or issues regarding the terms and conditions of this Agreement. The Parties further agree that they shall be subject to the jurisdiction of the State of

Nebraska. If either Party brings against the other Party any proceeding arising out of this Agreement, that Party may bring that proceeding against the other Party only and exclusively in the Lancaster County District Court in Lincoln, Nebraska, and each Party hereby submits to the exclusive jurisdiction of that court for purposes of any such proceeding.

19. Capacity. The Undersigned hereby agrees and represents that he or she is legally capable to sign this Agreement and to lawfully bind the Contractor to the terms and conditions of this Agreement.

EXECUTED by Contractor this 16th day of may, 2019.

By: 
("The Undersigned")

EXECUTED by County this _____ day of _____, 2019.

APPROVED AS TO FORM THIS
_____ day of _____, 2019.

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

For PAT CONDON
Lancaster County Attorney

By: _____

Attachment "A"

Business Associate Addendum

Covered Entity, Lancaster County, and Business Associate, Mark Lukin, Ph.D., are parties to the Agreement to which this Addendum is attached (the "Agreement"), 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 Mark Lukin, Ph.D. is its Business Associate with respect to the 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 choose 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 attorney's 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