






TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** September 24, 2015

RE: *Approval of Records Management Services Agreement between Southern Nevada Health District and Opportunity Village*

PETITION #30-15

That the Southern Nevada District Board of Health approves Records Management Services Agreement between Southern Nevada Health District and Opportunity Village.

PETITIONERS:

Ray Chua, Business Group Supervisor 
Andrew J. Glass, FACHE, MS, Director of Administration 
Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer 

DISCUSSION:

The Health District has documents currently stored at several locations which it has to maintain based on the Records Information Management System, which mandates certain records be maintained for up to seven years. The Health District will not have the space available to store these records at the new location. Opportunity Village, a non-profit organization that serves people in the Southern Nevada community with intellectual disabilities through training and employment opportunities and provides comprehensive records storage and management services, was selected to perform this service. This Agreement is for the first stage of scanning, electronic storage, and destruction of the hard copy document, which includes 1,360,000 images for Environmental Health and 277,000 images for Human Resources. This work must be completed prior to the Health District move to the new location to take place in December 2015. Future departments within the Health District may wish to also scan and store their documents; if this occurs, this Agreement will be amended accordingly.

FUNDING:

General Fund - \$168,872
Environmental Health – \$153,626 (avg \$.113, due to plans, color drawings, permits, etc.)
Human Resources - \$15,246 (avg \$.055)



**RECORDS MANAGEMENT SERVICES AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
OPPORTUNITY VILLAGE
SNHD-9-SA-15-110**

THIS RECORDS MANAGEMENT SERVICES AGREEMENT (“Agreement”) is by and between the Southern Nevada Health District (“Health District”) and Opportunity Village (“Contractor”) (may be individually referred to as “Party” and collectively, referred to as “Parties”).

WHEREAS, pursuant to Nevada Revised Statutes (NRS) Chapter 439, the Health District is the public health authority for Clark County, Nevada and has jurisdiction over all public health matters therein;

WHEREAS, Health District requires scanning of many documents; and

WHEREAS, Contractor is a not-for-profit organization that serves people in Southern Nevada community with intellectual disabilities through training and employment opportunities and provides comprehensive records storage and management services; and

WHEREAS, Health District and Contractor desire to provide in writing a full statement of their respective rights and obligations in connection with their mutual agreement in furtherance of the above described purposes; and

NOW, THEREFORE in consideration of the mutual promises and undertakings herein specified, the Parties agree as follows:

1. **TERM AND CONDITIONS.** This Agreement shall be effective from August 1, 2015 to July 31, 2016 unless sooner terminated by either Party as set forth in this Agreement. This Agreement may be extended for four (4) additional one-year periods upon issuance of an amendment signed by both Parties.
 - 1.01 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause.
 - 1.02 This Agreement may be terminated by either Party prior to the date set forth in paragraph 1, provided that a termination shall not be effective until thirty (30) days after a Party has served written notice upon the other Party.
 - 1.03 This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason State and/or Federal funding ability, or private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.

1.04 Upon termination, Contractor will be entitled to payment for services provided prior to date of termination and for which Contractor has submitted an invoice but has not been paid.

2. INCORPORATED DOCUMENTS. The services to be performed and/or the goods to be provided and the consideration therefore shall be specifically described in the attachments to this Agreement, which are incorporated into and are specifically a part of this Agreement, as follows:

ATTACHMENT A: PAYMENT

ATTACHMENT B: SCOPE OF WORK

ATTACHMENT C: BUSINESS ASSOCIATE AGREEMENT

3. COMPENSATION. Contractor will be reimbursed for expenses incurred as provided in ATTACHMENT A: PAYMENT. The total not-to-exceed amount of this Agreement is \$168,872. Contractor shall complete the services in a timely manner and consistent with the Scope of Work outlined in Attachment B, attached hereto.

4. STATUS OF PARTIES; INDEPENDENT CONTRACTOR. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement and in respect to performance of services pursuant to this Agreement. In the performance of such services, Contractor shall at all times be an independent contractor with respect to Health District. Contractor is not an employee or agent of Health District. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties.

5. BOOKS AND RECORDS.

5.01 Each Party shall keep and maintain under generally accepted accounting principles full, true and complete books, records, and documents as are necessary to fully disclose to the other Party, properly empowered government entities, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms of this Agreement and any applicable statutes and regulations. All such books, records and documents shall be retained by each Party for a minimum of three years, and for five years if any federal funds are used pursuant to this Agreement, from the date of termination of this Agreement. This retention time shall be extended when an audit is scheduled or in progress for a period of time reasonably necessary to complete said audit and/or to complete any administrative and judicial litigation which may ensue.

5.02 Health District shall, at all reasonable times, have access to Contractor's records, calculations, presentations and reports for inspection and reproduction.

6. CONFIDENTIALITY. To comply with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, to protect the security, confidentiality, and integrity of

protected health information, the Parties will execute a Business Associate Agreement, attached hereto as Exhibit C and incorporated by reference herein.

7. COOPERATION AND ASSISTANCE. Health District shall cooperate with Contractor with regard to the performance of the Services, subject to normal security requirements and in a manner that is not unnecessarily disruptive to Health District's business operations, by providing to Contractor such information, data, access to premises, management decisions and approvals as may be reasonable to permit Contractor to perform the Services hereunder.
8. RECORDS CONFIDENTIALITY - "Confidential Information" means any information relating to Health District's property, business and affairs. Unless such Confidential Information was previously known to Contractor free of any obligation to keep it confidential, is subsequently made public by Health District or by a third party having a legal right to make such disclosure, or was known to Contractor prior to receipt of same from Health District, it shall be held in confidence by Contractor and shall be used only for the purposes provided in this Agreement. Contractor shall use the same degree of care to safeguard Health District's Confidential Information as it uses to safeguard its own. However, Contractor may comply with any subpoena or similar order related to materials delivered to Contractor; provided that it shall provide Health District with prompt written notice so that Health District may seek a protective order or other appropriate remedies and/or waive compliance with this provision.
9. OWNERSHIP WARRANTY. Health District warrants that it is the owner, legal custodian or otherwise has the right to deliver for confidential destruction any and all materials Health District provides Contractor hereunder.
10. LIMITATION OF LIABILITY. Contractor shall not be responsible or liable in any manner whatsoever for the release or loss of any materials deposited in bins or otherwise delivered to it for secure destruction unless the release or loss is due to Contractor's negligence or willful misconduct. Contractor's maximum liability for any and all claims arising with respect to the Services provided under this Agreement shall not exceed the aggregate amounts paid by Health District with respect to the Services provided at the particular Health District location during the six (6) months preceding the event which gives rise to a claim. In no event shall Contractor be liable for any consequential, incidental, special or punitive damages, regardless of whether the action is brought in tort, contract or any other theory.
11. BREACH; REMEDIES. Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the right to seek reasonable attorneys' fees and costs.

12. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
13. LIMITED LIABILITY. The Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Agreement liability of both Parties shall not be subject to punitive damages.
14. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
15. INDEMNIFICATION. Neither Party waives any right or defense to indemnification that may exist in law or equity.
16. NON-DISCRIMINATION. As an Equal Opportunity Employer, Health District has an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. Contractor employs employees without regard to race, sex, color, religion, age, gender identity or expression, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender expression. Contractor likewise agrees that it will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, and the American with Disabilities Act.
17. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
18. ASSIGNMENT. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.
19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Health District to public inspection and copying. Health District will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
20. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in the documents incorporated herein.

21. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior contracts or agreement between the Parties regarding the subject matter hereof.
22. AMENDMENTS. This Agreement may be amended only by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
23. GOVERNING LAW. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this contract.
24. THIRD PARTY BENEFICIARIES. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed to create such status.
25. NOTICES: All notices permitted or required under this Agreement shall be made by personal delivery, overnight delivery, or via U.S. certified mail, postage prepaid to the other Party at their address set out below:

Southern Nevada Health District
 Financial Services Department
 Materials Management Supervisor
 P.O. Box 3902
 Las Vegas, NV 89127
 702.759.1244

Opportunity Village
 Sarah Stephens
 Document Management Account Executive
 6050 S. Buffalo Drive
 Las Vegas, NV 89113
 702.880.4092

BY SIGNING BELOW, the Parties agree that they have read, understood, and agreed to the conditions set forth above and have caused their duly authorized representatives to execute this Agreement.

SOUTHERN NEVADA HEALTH DISTRICT

OPPORTUNITY VILLAGE


By: 
 Andrew J. Glass, FACHE, MS
 Director of Administration

By: _____

Date: 9/17/15

Date: _____

Approved as to form:


 Annette L. Bradley, Esq.
 Attorney for Southern Nevada Health District

ATTACHMENT A PAYMENT

1. **Payment to Contractor:**

Payments shall be based on approved Contractor invoices submitted in accordance with this Agreement. The sum of payments shall not exceed allowable compensation stated in Paragraph 3 of this Agreement and no payments shall be made in excess of the maximum allowable total for this Agreement. Additional scanning may be required. Any additional scanning will be negotiated and agreed to in advance and this Agreement will be amended accordingly.

2. **Budget:** The total not-to-exceed amount of this Agreement is \$168,872.00. Contractor will be reimbursed for work completed and invoiced, as follows:

a. Environmental Health

- Asbestos:
 - Manifests: \$0.06 per image, estimated at \$1,980
 - Permits: \$0.15 per image, estimated at \$5,280
- Food Ops: Grey Scale: \$0.075 per image, estimated at \$54,450
- Pools: \$0.07 per image, estimated at \$36,960
- Solid Waste:
 - Illegal Dumping: \$0.07 per image, estimated at \$11,550
 - Waste Management Audits: \$0.07 per image, estimated at \$9,240
 - SWPR Inactive: \$0.05 per image, estimated at \$220
 - Special Programs: \$0.14 per image, estimated at \$28,336
- Sub Divisions: \$0.12 per image, estimated at \$264
- Vector Control: \$0.09 per image, estimated at \$5,346

b. Human Resources

- HR: \$0.055 per image, estimated at \$10,406
- Payroll: \$0.055 per image, estimated at \$4,840

3. **Pricing:**

Pricing below is based on the sample files provided. If actual files are significantly different, contractor has the right to re-quote.

- a. **Standard Fee:** Per Image Pricing – Prep, scan, index, and secured document export pricing will be charged on a per image basis.
- b. **Banker Box Pickup** - \$35.00 per pickup/per location. Health District may deliver banker boxes with files to Contractor at no cost.
- c. **Document Destruction** – No cost

- d. Initial Setup/Training Fees:
 - One-time basic training – No cost
 - Additional software demos and in-office training - \$35.00/hour
- e. Hard Drives (1 TB) - \$95.00 each (DVD use for scanned storage is at no cost)
- f. Supplemental Expenses:
 - 1) Non-standard pages will incur additional charges. Contractor will contact Health District to determine costs before proceeding.
 - 2) Carbon copies will result in an additional charge.
 - 3) Variation in data (index) locations within files will result in additional handling charges.
 - 4) Customization of software applications - \$250.00 per hour (does not apply)
 - 5) Returning banker boxes with files - \$35.00 per drop off. Health District may pick up boxes at Contractor's location at no cost.
 - 6) Conversion of documents from disc to hard drive to DOMA will incur further charges.
 - 7) Hard copy, un-scanned record retrieval fees: Up to 5 documents will be retrieved per month at no cost. After fifth document, un-scanned document retrieval will incur fees of \$1.00 per page.

4. Billing

- a. Contractor may not bill more frequently than monthly for the duration of the project. The invoice will detail costs incurred for each item identified in the project budget show in 1.02 above.
 - 1) Backup documentation including but not limited to paid invoices, receipts, monthly reports, proof of payments or any other documentation requested by Health District, is required, and shall be submitted by the Contractor in accordance with cost principles applicable to this Agreement.
 - 2) Contractor invoices shall be signed by the Contractor's official representative, and shall include a statement certifying that the invoice is a true and accurate billing.
 - 3) Cost principles contained in the Federal Acquisition Regulation 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122), shall be used as criteria in the determination of allowable costs.
- b. Health District shall not be liable for interest charges on late payments.
- c. In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved.

ATTACHMENT B SCOPE OF WORK

Contractor will perform the following services:

1. Contractor will pick up banker boxes to be scanned from Health District facilities and transport to Contractor's scanning facility. Each banker box picked up will have a record manifest attached. Boxes will be labeled with a box number, department name, and the originating office location. Contractor is not required to scan boxes received without a manifest and must advise Health District immediately.
2. Scanning, Indexing and Uploading:
 - a. Contractor will scan documents as detailed below and upload scanned documents to an external hard drive, separated by department and department category, as depicted below:
 - 1) Environmental Health
 - (a) Asbestos
 - Manifests, estimated at 15 boxes/33,000 images
 - Permits, estimated 16 boxes/35,200 images
 - (b) Food Ops, estimated at 330 boxes/726,000 images
 - (c) Pools, estimated at 240 boxes/528 images
 - (d) Solid Waste
 - Illegal Dumping, estimated 75 boxes/165,000 images
 - Waste Management Audits, estimated 60 boxes/132,000 images
 - SWPR Inactive, estimates 2 boxes, 4,400 images
 - SWPR Permit Apps, estimated 30 boxes (needs further review, if required, will be included in amendment to this Agreement)
 - (e) Special Programs, estimated 92 boxes/202,400 images
 - (f) Subdivisions, estimated 1 box, 2,200 images
 - (g) Vector Control, estimated 27 boxes, 59,400 images
 - (h) Folders & Maps, TBD (needs further review, if required, will be included in amendment to this Agreement)
 - 2) Human Resources
 - (a) Human Resources, estimated 86 boxes/189,200 images
 - (b) Payroll, estimated 40 boxes/88,000 images
 - b. Individual files to be indexed according to agreed upon format. This will vary by department. Health District will provide indexing when boxes are picked up for scanning.
 - c. All documents and graphics to be scanned in black and white, grey scale, or color as requested by Health District.

- d. Sticky notes and other markers will be scanned and will not be removed from the document to which it is affixed.
- e. Contractor is not responsible for information/images lost in the event that the DVD disc or hard drive is damaged while in the possession of the Health District. Any documents or images uploaded to a DVD disc or hard drive are recommended to be copied to an additional server or hard drive by the Health District at Health District's expense.
- f. Standard Page Specifications
 - (a) 8.5" x 11" – 8.5" x 14" (non-standard pages that cannot be converted to standard size via copying or cutting will incur additional charges, which will be negotiated in advance of scanning)
 - (b) 300 DPI resolution
 - (c) PDF format/Windows
 - (d) Double-sided documents are considered two images.

3. Retention Period for Imaged Files

- a. Unless otherwise noted below, all documents scanned will be sent to Contractor's Document Destruction upon completion of document imaging and authorized approval of destruction.
- b. Retention period for hard copies will last no longer than 60 days at Contractor's facility once the hard drive has been released to Health District. If Health District requires documents to be held for longer, documents must be transported and stored at an off-site storage facility at Health District's expense.
- c. Health District will provide authorization for destruction, including corresponding manifest verification, before any hard copy documents are destroyed by Contractor.

**ATTACHMENT C
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is made and entered into this ___ day of _____, 2015 between the Southern Nevada Health District (“Covered Entity”), and Opportunity Village (“Business Associate”), (individually referred to as “Party” or collectively as “Parties”).

WITNESSETH:

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 CFR Part 160 and 164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provision of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

WHEREAS, Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and are hereinafter referred to as “Service Agreements,” and

WHEREAS, in the course of fulfilling its responsibilities under such Service Agreements, Business Associate may have access to, use, and/or disclose Protected Health Information (as defined below); and

WHEREAS, Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document as if fully set out herein; and

WHEREAS, the enactment of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 establishes certain requirements relating to the use, disclosure, and safeguarding of protected health information by persons providing services to Covered Entities, and both Parties have mutually agreed to satisfy such requirements through this Agreement; and

NOW THEREFORE, in consideration of the Parties continuing obligations under the Service Agreement(s) and other good and valuable consideration, the Parties mutually agree to the provisions of this Agreement to address the requirements of the HIPAA Rules, establish satisfactory assurances Business Associate will appropriately safeguard any Protected Health Information received from or on behalf of Covered Entity, and, therefore, execute this Agreement.

AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT

Business Associate will provide services to Covered Entity pursuant to the following Service Agreements:

**CONFIDENTIAL DOCUMENT DESTRUCTION AGREEMENT BETWEEN SOUTHERN
NEVADA HEALTH DISTRICT AND OPPORTUNITY VILLAGE SNHD-9-SA-15-110**

DEFINITIONS

Any terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160 and 164.

- a) "Breach" means the acquisition, access, use, or disclosure of PHI a manner that is not permitted under the privacy regulations which compromises the security or privacy of the PHI. Any unpermitted access, use, or disclosure is presumed a breach absent a demonstration of a low probability that the PHI has been compromised.
- b) "Protected Health Information" (PHI) means individually identifiable health information including, without limitation, all data, documentation, demographic, medical, and financial information collected from an individual which relates to the past, present, or future physical or mental health, condition, provision of health care, or payment for the provision of health care to an individual. PHI includes without limitation "Electronic Protected Health Information" as defined below.
- c) "Electronic Protected Health Information" (ePHI) means PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.
- d) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
- e) "Required by Law" has the same meaning as the term "required by law" in 45 CFR § 164.103.
- f) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

BUSINESS ASSOCIATE CONFIDENTIALITY REQUIREMENTS (Privacy Rule).

Business Associate acknowledges and agrees:

- i) To not use or disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as Required by Law.
- ii) To use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement.
- iii) In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.
- iv) All PHI created, received, maintained, or transmitted by Covered Entity and disclosed or made available in any form or format by Covered Entity or its operating units to Business Associate or is created, received maintained or transmitted by Business Associate on Covered Entity's behalf shall be subject to this Agreement.
- v) To use or disclose any PHI solely for meeting its obligations as set forth in the Service Agreement(s) and as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity.
- vi) Ensure all such uses and disclosures of PHI are subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and minimum necessary requirements.
- vii) Ensure 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 restriction and conditions that apply through this Agreement to Business Associate with respect to such information (45 CFR § 164.314).
- viii) To fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the HIPAA Rules.
- ix) Subject to the exceptions contained in the HITECH Act, Business Associate will not directly or indirectly receive remuneration for the sale or exchange of any PHI without a

valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed “marketing” under the HIPAA Rules.

BUSINESS ASSOCIATE SECURITY REQUIREMENTS (Security Rule)

Business Associate acknowledges and agrees:

- i) To implement appropriate safeguards and internal controls to prevent the use or disclosure of PHI other than as permitted in this Agreement or by the HIPAA Rules.
- ii) To use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement, or as Required by Law. This includes the implementation of administrative, physical, and technical safeguards to reasonably and appropriately protect and secure the Covered Entity’s ePHI against any reasonably anticipated threats or hazards, utilizing technology commercially available to the Business Associate. (45 CFR §§ 164.308, 164.310, 164.312). Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training, and sanctions of its workforce member. (45 CFR §164.316).
- iii) To notify Covered Entity immediately of any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In the case of an unsuccessful attempt to gain unauthorized access, Business Associate need only notify Covered Entity of an attempt that had a reasonable probability of success.
- iv) To notify Covered Entity immediately upon discovery of a breach pursuant to the terms of 45 CFR § 164.410 and cooperate in Covered Entity’s breach analysis procedures, including risk assessment and final determination on whether to notify affected individuals, media, or HHS.
 - a. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate.
 - b. Business Associate shall provide Covered Entity with all required content of notification pursuant to 45 CFR § 164.410 and 45 CFR 404 within 15 business days of discovery of the Breach.
- v) For breaches determined to have resulted from the Business Associate actions and/or its subcontractors, Business Associate will handle and pay all costs for any breach notifications and/or mitigation to affected individuals and notifications to HHS and the media, on behalf of the Covered Entity.

BUSINESS ASSOCIATE PERMITTED USES AND DISCLOSURES

Notwithstanding the prohibitions otherwise set forth in this Agreement, Business Associate may use and disclose PHI as follows:

- i) Subject to the limitations of this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- ii) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(b).
- iii) Business Associate shall report to Covered Entity any use or disclosure of PHI which is not in compliance with the terms of this Agreement of which it becomes aware. Business

Associate shall report to Covered Entity any Security Incident it becomes aware, including breaches of unsecured PHI.

- iv) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

SPECIFIC USE AND DISCLOSURES

- i) HHS has the right to review, audit, or investigate Business Associate's records and practices related to the use and disclosure of PHI to ensure Covered Entity's compliance with the terms of the HIPAA Rules.
- ii) Upon request, provide Covered Entity with timely and appropriate access to records, electronic records, personnel, or facilities sufficient for Covered Entity to gain reasonable assurance that Business Associate is in compliance with the HIPAA Rules and the provisions of this Agreement.
- iii) At Covered Entity's Request, Business Associate agrees:
 - a. To comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed and of which Business Associate has been notified.
 - b. Within 15 days of a request by Covered Entity, account for disclosures of PHI and make an account of such disclosure available to Covered Entity as required by 45 CFR § 164.528.

TERMINATION

- i) Covered Entity shall have the right to terminate this Agreement and the Service Agreement(s) immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement.
- ii) If Covered Entity reasonably believes that Business Associate has violated a material term of this Agreement, where practicable, Covered Entity shall either:
 - a. give written notice to Business Associate with an opportunity to reasonably and promptly cure or end the violation and terminate the Agreement if the Business Associates does not cure the breach or end the violation within the reasonable time specified; or
 - b. terminate this Agreement and the Service Agreement(s) immediately.
- iii) Upon termination of the Service Agreement(s), this Agreement, or at the request of Covered Entity, Business Associate will return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information.
 - a. If such return or destruction is not feasible, Business Associate shall provide written assurances as to the means of continued protection of the data and extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible for so long as Business Associate maintains the same.
 - b. Business Associate shall consult with Covered Entity as necessary to ensure an appropriate means for the return and/or destruction of any PHI and notify the Covered Entity in writing when such destruction is complete.
 - c. If PHI is returned, the Parties shall document when the PHI has been received by the Covered Entity.

MISCELLANEOUS

- i) The Parties agree that the provisions of HIPAA and the HITECH Act that apply to Business Associate are incorporated by reference into this Agreement in their entirety.
- ii) Business Associate agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of 45 CFR § 164.526.
- iii) Except as expressly stated herein or the HIPAA Rules, the Parties to this Agreement do not intend to create any rights in any third parties.
- iv) The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement(s) and/or the business relationship of the Parties, and shall continue to bind Business Associate, its subcontractors, agents, employees, contractors, successors, and assigns.
- v) This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- vi) The Parties are independent entities and nothing contained herein shall be construed or deemed to create a relationship of employer and employee, principal and agent, partners, or any relationship other than that of independent parties voluntarily cooperating with each other solely for the purpose of carrying out the provisions herein.
- vii) This Agreement will be governed by the laws of the State of Nevada.
- viii) Failure to declare a breach or the actual waiver of any particular breach of the Agreement or Service Agreement(s) or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
- ix) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the HIPAA Rules.
- x) Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- xi) In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: Andrew J. Glass, FACHE, MS
Title: Director of Administration

Name:
Title:

Date: _____

Date: _____