



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** April 26, 2018

RE: *Intrastate Interlocal Contract Between Public Agencies, a Contract between the State of Nevada, Department of Health and Human Services (DHHS), Division of Public and Behavioral Health (DPBH) and the Southern Nevada Health District*

PETITION #15-18

That the Southern Nevada District Board of Health *approve the Intrastate Interlocal Contract between the DHHS/DPBH Bureau of Child, Family & Community Wellness Oral Health Program and the Southern Nevada Health District.*

PETITIONERS:

Fermin Leguen, MD, MPH, Chief Medical Officer & Director of Clinical Services *FL*

Andrew J. Glass, FACHE, MS, Director of Administration *AG*

Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer *JPI*

DISCUSSION:

This Contract is set forth as a partnership to provide dental services and promote oral health education for clients of the Southern Nevada Health District throughout Southern Nevada beginning in April 2018. This Contract was approved by the BOH in January 2018 with no funding. The document was not signed by the State, but was revised to include funding to the Health District for the Oral Health Program.

FUNDING:

The State of Nevada, Oral Health Program, will provide \$29,887 to cover the Health District's rural oral health program, including \$17,290 for a dental hygienist assistant, \$11,214 for dental equipment and \$1,383 in indirect costs. The State will provide supplies required at no cost.

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting by and Through Its
Department of Health and Human Services
Division of Public and Behavioral Health

**Bureau of Child, Family & Community Wellness
Oral Health Program (OHP) (“DPBH OHP”)**
3811 W. Charleston Blvd. Suite 205
Las Vegas, Nevada 89102
Ph: (702) 774-2573 · Fax: (702) 774-2521
Contact: Antonina Capurro, DMD, MPH, MBA

and

Southern Nevada Health District (“Health District”)
PO Box 3902
Las Vegas, Nevada 89127
Ph: (702) 759-1201
Contact: Joseph Iser, MD, D.Ph., MSc
C1800103

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the Parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** “State” means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective upon approval to June 30, 2018, unless sooner terminated by either Party as set forth in this Contract.
4. **TERMINATION.** This Contract may be terminated by either Party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a Party has served written notice upon the other party. This Contract may be terminated by mutual consent of both Parties or unilaterally by either Party without cause. The Parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.

5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Party at the address set forth above.

6. **INCORPORATED DOCUMENTS.** The Parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK

ATTACHMENT B: BUDGET DETAIL

ATTACHMENT C: BUSINESS ASSOCIATES AGREEMENT

7. **CONSIDERATION.** Both Parties agree to provide the services set forth in paragraph (6) with a budget of \$29,887.00 to be provided by DPBH for the purchase of personnel, equipment, and supplies. Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. **ASSENT.** The Parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Each Party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

b. **Inspection & Audit.** Each Party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained by each Party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. **BREACH; REMEDIES.** Failure of either Party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, 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 reasonable attorneys' fees and costs.

11. **LIMITED LIABILITY.** The Parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both Parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Contract 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 Contract after the intervening cause ceases.

13. INDEMNIFICATION. Neither Party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The Parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each Party is and shall be a public agency separate and distinct from the other Party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract 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.

16. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other Party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either Party in performance of its obligations under this Contract shall be the joint property of both Parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The Parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each Party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that Party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Contract on behalf of each Party has full power and authority to enter into this Contract and that the Parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. 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. The Parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

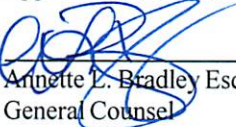
23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the Parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto, approved by the State of Nevada Office of the Attorney General.

THIS SECTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Southern Nevada Health District
Public Agency #1

 4/29/18 Director of Administration
Andrew J. Glass, FACHE, MS Date Title

Approved as to form:

Annette L. Bradley Esq. Date
General Counsel

Division of Public and Behavioral Health
Public Agency #2

for Julie Kotchevar, PhD Date

Administrator
Department of Health and Human Services
Title

for Richard Whitley, MS Date

Director,
Department of Health and Human Services
Title

Signature – Nevada State Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form and compliance with law by:

On _____
(Date)

Approved as to form and compliance with law by:

Deputy Attorney General for Attorney General, State of Nevada

On _____
Date

ATTACHMENT A: SCOPE OF WORK
Project: Oral Health Program Dental Hygiene Services

1. **Purpose:** To promote oral health education for clients of the Southern Nevada Health District (Health District) throughout Southern Nevada beginning in April of 2018. This Scope of Work (SOW) more specifically describes the dental services to be provided and the expectations of the Department of Health and Human Services (DHHS), Division of Public and Behavioral Health (DPBH), Oral Health Program (OHP) and Health District pursuant to this Contract.
2. **Resources:** All activities and services below shall be dependent on the Parties' respective and available assets and resources required to provide the necessary resources and clinical services.
3. **Payment:** All fees and expenses incurred relating to this contract shall be paid to the Party incurring such fees or expenses as outlined in Attachment B.
4. **Nevada DHHS, DPBH, OHP shall:**
 - a) Provide a licensed dental hygienist with a public health endorsement.
 - b) Provide the necessary equipment and supplies to deliver quality dental services.
 - c) Provide oral health educational resources and oral hygiene patient materials, analyze the raw data collected from patient surveys, and share findings with the Health District. Retain the sole rights to publish the findings from this collaborative model.
 - d) Seek and apply for funding opportunities individually and/or jointly with SNHD that will sustain and expand this collaboration.
 - e) List the Health District as a collaborator on any literature written as a result of this agreement, and where applicable, grant funding sources.
 - f) Retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by it in the performance of the services hereunder.
 - g) In performing the services hereunder, DPBH OHP will follow dental hygienist practices consistent with generally accepted professional standards.
5. **Health District shall:**
 - a) Provide the DPBH OHP with clinical space and administrative support
 - b) As deemed appropriate, support collaborative partnerships and opportunities for the DPBH OHP to work with Health District staff in other Health District departments
 - c) Seek and apply for funding opportunities individually and/or jointly with DHHS and or DPBH that will sustain and expand this collaboration
 - d) Provide transportation through the SNHD Mobile Clinic for DPBH OHP dental hygienist to reach patients
 - e) Maintain general liability coverage when OHP dental hygienist is located on SNHD property.
 - f) In a secure location, house the OHP mobile dental trailer which holds dental equipment and supplies.
 - g) Maintain records of all equipment and supplies purchased with funds associated with this Contract. Provide the Nevada Oral Health Program with later use of the equipment purchased under this Contract.

6. The Parties Mutually Agree:

- a) The Parties shall be solely responsible for all matters relating to the payment of their respective employees and have and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons under their respective employ.
- b) Except as the other Party expressly authorizes in writing in advance, neither Party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services.
- c) They shall fully cooperate with one another, and shall take any additional acts, or sign any additional documents as is reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.
- d) Neither DHHS, DPBH, nor OHP is an agent or employee of Health District and shall furnish services contemplated herein in its own manner and method except as required by this Contract.
- e) As Equal Opportunity Employers, the Parties have an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. The Parties employ employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression.
- f) 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 and be bound by Attachment C, Business Associate Agreement.

<i>Goal 1: Program Management: Enhance program infrastructure and capacity to provide preventive dental services.</i>						
<i>Objective</i>	<i>Activities</i>	<i>Outputs</i>	<i>Timeline</i>	<i>Target Population</i>	<i>Evaluation Measure (indicator)</i>	<i>Evaluation Tool</i>
1.1: By April 23, 2018 hire or retain a dental hygienist to provide oral health services	1.1.1 Hygienist will provide oral hygiene education, routine dental prophylaxis, dental case management, and community dental services (dental examinations, fluoride varnish application, and sealants). Hygienist should devote at least half of his/her time to service patients in community arenas specifically the SNHD mobile clinic, and partner SNHD clinics.	Hygienist will provide oral hygiene education and regular cleanings to patients	By April 23, 2018	N/A	Date and # of Hygienist (s) hired or retained	Outcomes report
	1.1.2 Provide CPR, bloodborne pathogens, infection control, and HIPPA safety and security training for dental hygienist along with verification of current vaccinations and TB testing.	Trained staff to safely provide oral hygiene education and regular cleanings to patients	By April 23, 2018	N/A	Verification of training completion	Outcomes report
	1.1.3 Assist dental hygienist in applying for public health endorsement through the Nevada Board of Dental Examiners.	Nevada Board of Dental Examiners application for May 2018 board meeting (Date TBD). Material/submission deadlines two weeks prior to May 2018 board meeting	By April 23, 2018	N/A	Submission of application	Outcomes report
1.2: Prepare educational	1.2.1 Develop oral health educational	Creation of promotional	Through June 30,	N/A	# and types of educational	Outcomes report

and marketing materials	materials that focus on the relationship between oral health and overall health for patients served by the SNHD.	cards and educational printed materials.	2018 with a final report due July 21, 2018		materials created, # of submissions accepted to include oral health educational information,	
	1.2.2 Explore partnerships with organizations that provide patient focused health related educational materials. Particularly investigate submission of an oral health section as part of the SNHD <i>Living Well with HIV</i> booklet.				and # and types of promotional materials created to market the SNHD dental services.	
	1.2.3 Develop patient promotional materials for distribution at health fairs and community events that include the SNHD contact information and NOHP dental resource directory information.					
1.3: Identify opportunities and prepare paperwork necessary to apply for grants that will provide program sustainability	1.3.1 Explore and apply for all funding options available to your organization to support program sustainability.	Application for grants	Through June 30, 2018 with a final report due July 21, 2018	N/A	# of opportunity identified # of application	Outcomes report
1.4: Identify opportunities to support the structure of the Nevada Oral Health Program.	1.4.1 Explore the feasibility of housing the NOHP Program Manager and Administrative Assistant at the SNHD.	Outline definitive steps towards this goal	Through June 30, 2018	N/A	Successful relocation of NOHP	Program record

1.5: By July 21, 2018 provide one outcomes report to the Nevada Oral Health Program.	1.4.1 Develop and submit one outcomes report that includes expense data, number and type of patient cases, outreach activities, and ability to meet expected deliverables to the NOPH.	One outcomes report	Through June 30, 2018 with a final report due July 21, 2018	N/A	# of report submitted in a timely manner	Program record
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ATTACHMENT B: BUDGET DETAIL

DPBH funding will be allocated as follows:

PERSONNEL:	Hourly Cost	Hours	Weeks	Fringe	Amount Requested
<u>Dental Hygienist Assistant</u>	\$35	38	10	30%	\$17,290
Job Description: This employee will provide oral hygiene education, assessment, and preventive services to SNHD patients in community settings and in the SNHD mobile clinic.					
TOTAL PERSONNEL COSTS:					\$17,290
EQUIPMENT:					
AseptiChair Portable Dental Chair					\$1,520
AseptiChair Portable Dental Operator's Stool					\$614
LED curing light					\$1,580
Patient bibs, fluoride varnish, sealant materials, disposable mirrors					\$3,500
Aseptico Portable Dental Unit					\$4,000
TOTAL EQUIPMENT COSTS:					\$11,214
SUPPLIES					
Oral Hygiene Charts and Instructional Aids—Provided by NOHP					\$0
Puppets—Provided by NOHP					\$0
PPE supplies (gloves, mask, gowns)—Provided by SNHD					\$0
TOTAL SUPPLIES COSTS:					\$0
INDIRECT COST:					\$1,383
(8% of Personnel Costs)					
TOTAL BUDGET					29,887

Health District agrees to request reimbursement according to the schedule specified below for the actual expenses incurred related to the Scope of Work during the contract period.

- Reimbursement may be requested monthly for expenses incurred in the implementation of the Scope of Work, and no later than 30 days of the end of the fiscal period. Fiscal period ends June 30, 2018.
- Requests for Reimbursement will be accompanied by supporting documentation, including a line item description of expenses incurred.
- Final invoices will not be approved for payment until Outcomes Report is received by the Nevada State Oral Health Program.
- Additional expenditure detail will be provided upon request from the Division.
- Provide the Nevada Oral Health Program with later use of the equipment purchased under this Contract in accordance with Attachment A, paragraph 5(g).

ATTACHMENT C
BUSINESS ASSOCIATE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
STATE OF NEVADA
ACTING BY AND THROUGH ITS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
BUREAU OF CHILD, FAMILY & COMMUNITY WELLNESS
ORAL HEALTH PROGRAM (OHP)

This Business Associate Agreement (“Agreement”) is made and entered into this _____ day of _____, 2018 between the Southern Nevada Health District (“Covered Entity”), and State of Nevada, acting by and through its Department of Health and Human Services, Division of Public and Behavioral Health, Bureau of Child, Family & Community Wellness Oral Health Program (OHP) (“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.

I. AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT

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

Agreement between Southern Nevada Health District and State of Nevada, acting by and through its
Department of Health and Human Services, Division of Public and Behavioral Health, Bureau of Child, Family
& Community Wellness Oral Health Program (OHP) – C1800103

II. 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.

- i) "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.
- ii) "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.
- iii) "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.
- iv) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
- v) "Required by Law" has the same meaning as the term "required by law" in 45 CFR § 164.103.
- vi) "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.

III. 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.

IV. 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.
- iv) 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.
- v) 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.
- vi) 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.
- vii) All notifications as permitted or required pursuant to this Agreement must be in writing, and shall be made by personal delivery, overnight delivery, via U.S. certified mail, postage prepaid to Covered Entity, or overnight courier service at the address set forth below:

Andrew J. Glass
Director of Administration and Privacy Officer
280 S. Decatur BLVD.
Las Vegas, NV 89107

V. 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).

VI. 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.

VII. 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) This Agreement shall terminate in the event the underlying relationship, functions, or services that gives rise to the necessity of this Agreement terminates for any reason. Upon such termination, the provisions of this Agreement which expressly or by their nature survive expiration or termination will remain in effect.
- iv) 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.

VIII. 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) Waiver of any term, provision or condition of this Agreement, in any one or more instances, shall not be deemed to be construed as a further waiver from any such term, provision or condition, or as a waiver of any other term, provision or condition of this Agreement.
- x) 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.
- xi) Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- xii) 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.
- xiii) This Agreement is the result of the joint efforts of Covered Entity and Business Associate, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there shall be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof.
- xiv) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

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

[SIGNATURES ON NEXT PAGE]

COVERED ENTITY
SOUTHERN NEVADA HEALTH DISTRICT

By: _____

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

Date: _____

BUSINESS ASSOCIATE
Division of Public and Behavioral Health

_____ Administrator
for Julie Kotchevar, PhD. Date Division of Public and Behavioral Health Title