



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** May 24, 2018

RE: *Approval of Service Agreement between Southern Nevada Health District and Impact Exchange*

PETITION # 11-18

That the Southern Nevada District Board of Health *approve the Service Agreement C1800138, between the Southern Nevada Health District (SNHD) and the Impact Exchange to fund the Impact Exchange to provide targeted HIV testing, linkage to care, referrals to treatment and harm reduction services to high risk populations.*

PETITIONERS:

Marlo Tonge, *Office of Epidemiology and Disease Surveillance Manager*

Michael Johnson, PhD, *Director of Community Health*

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

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

DISCUSSION:

This competitively awarded service agreement is to provide high impact HIV testing, harm reduction services, linkage to care/treatment services, PrEP referrals, and harm reduction trainings that target the injection drug use community.

FUNDING:

The Agreement awards \$120,000 to the Impact Exchange by the SNHD Office of Epidemiology and Disease Surveillance. These funds are covered by the HIV Prevention subgrant.



**PROFESSIONAL SERVICE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
IMPACT EXCHANGE
C1800138**

THIS PROFESSIONAL SERVICE AGREEMENT ("Agreement") is by and between the Southern Nevada Health District ("Health District") and Impact Exchange ("Contractor"), (individually "Party" and collectively "Parties").

RECITALS

WHEREAS, Health District is the public health entity organized pursuant to Nevada Revised Statutes (NRS), Chapter 439 with has jurisdiction over all public health matters within Clark County, Nevada; and

WHEREAS, Health District is the recipient of a grant received through the State of Nevada, Department of Health and Human Services, from the Centers for Disease Control and Prevention, CFDA Number 93.940, Grant Number 1NU62PS924579-01-00, Program Title: HIV Prevention Program, awarded December 22, 2017, in which the Health District will develop partnerships to conduct integrated HIV prevention and care planning; and

WHEREAS, Contractor, a community based non-profit Organization, acts as a syringe exchange and harm reduction and education program and has the expertise and capabilities necessary to provide the services requested; and

WHEREAS Contractor has competitively submitted a proposal which the Health District has accepted, pursuant to the above-referenced grant program; and

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

1. **TERM, TERMINATION, AND AMENDMENT.** This Agreement shall be effective from the last signature affixed hereto through December 31, 2018, unless sooner terminated by either Party as set forth in this Agreement. This Agreement may be extended upon mutual agreement of both Parties.
 - 1.01 This Agreement may be terminated by either Party prior to the date set forth in Section 1, provided that a termination shall not be effective until thirty (30) days after a Party has served written notice upon the other Party.
 - 1.02 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause.
 - 1.03 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.

- 1.04 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 grant funding budgeted to satisfy this Agreement is withdrawn, limited, or impaired.
- 1.05 This Agreement may only be amended, modified or supplemented by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
2. INCORPORATED DOCUMENTS. The services to be performed 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: SCOPE OF WORK
ATTACHMENT B: PAYMENT
ATTACHMENT C: BUSINESS ASSOCIATE AGREEMENT
3. SERVICES. Health District engages Contractor to provide Syringe Exchange Program Services (SEP Services) to residents of Clark County as set forth in RFP #SNHD-1-RFP-18-0003 and more fully described in Attachment A hereto.
 - 3.01 In providing Services under this Agreement, Contractor will perform such Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
 - 3.02 In performing these Services, Contractor shall at all times comply with all applicable federal, state, and local statutes, rules and ordinances.
4. HEALTH DISTRICT RESPONSIBILITIES
 - 4.01 Health District will provide or facilitate the following training of Contractor's staff:
 - (a) Rapid HIV Testing Certification
 - (b) PrEP/PEP
 - (c) Harm Reduction to include over dose prevention/use of Narcan
 - (d) Viral Hepatitis
 - (e) STD 101
 - (f) ICircle
5. COMPENSATION. Contractor will be reimbursed for actual expenses incurred as provided in Attachment B. This project is supported by the federal grant described on page 1 of this Agreement in the amount of \$120,000; this accounts for 100% of the total funding of this Agreement period.
6. 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 the performance of services pursuant to this Agreement. In the performance of such services, Contractor and any person employed by or contracted with Contractor shall at all times act as and be an independent contractor, and 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.
 - 6.01 Contractor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Contractor in the

performance of the Services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, and all other wages, salaries, benefits, taxes, demands, and regulations of any nature whatsoever.

7. **FISCAL MONITORING AND ADMINISTRATIVE REVIEW OF ADVERSE FINDINGS.** Health District may, at its discretion, conduct a fiscal monitoring of Contractor at any time during the term of the Agreement. Contractor will be notified in writing at least three weeks prior to the visit outlining documents that must be available prior to Health District's visit. Health District shall notify Contractor in writing of any Adverse Findings and recommendations as result of the fiscal monitoring. Adverse Findings are defined as Lack of Adequate Records, Administrative Findings, Questioned Costs and Costs Recommended for Disallowance. Contractor will have the opportunity to address adverse findings in writing responding to any disagreement of adverse findings. Health District shall review disagreement issues, supporting documentation and files and forward a decision to the Contractor in writing.
8. **AUDIT REQUIREMENTS WITH SUBRECIPIENTS RECEIVING AWARDS FROM HEALTH DISTRICT**
 - 8.01 The Contractor must comply with all applicable federal and state grant requirements including The Single Audit Act Amendments of 1996; 2 CFR Part 200 as amended; and any other applicable law or regulation, and any amendment to such other applicable law or regulation that may be enacted or promulgated by the federal government.
 - 8.02 If the Contractor is a local government or non-profit organization that expends \$750,000 or more in federal awards during its fiscal year, the Contractor is required to provide the appropriate single or program-specific audit in accordance with provisions outlined in 2 CFR Part 200.501.
 - 8.03 If the Contractor expends total federal awards of less than the threshold established by 2 CFR 200.501, it is exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials (or designees) of the federal agency, pass-through entity, and Government Accountability Office ("GAO").
 - 8.04 The Contractor must send a copy of the confirmation from the Federal Audit Clearinghouse to contracts@snhd.org the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period.
 - 8.05 The Contractor is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.
 - 8.06 Audit documentation and audit reports must be retained by the Contractor's auditor for a minimum of five years from the date of issuance of the audit report, unless the Contractor's auditor is notified in writing by the Health District, the cognizant federal agency for audit, or the oversight federal agency for audit to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the Health District, the cognizant federal agency for audit, the oversight federal agency for audit, the federal funding agency, or the GAO.
9. **BOOKS AND RECORDS.** 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.

10. **CONTRACTOR ASSURANCES.** Contractor certifies it has not been excluded by the federal government from participation in any governmental programs. Contractor will notify the Health District immediately upon Contractor receiving written or verbal notification that Contractor is proposed for exclusion from any governmental health care program.
11. **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 Attachment C and incorporated by reference herein.
12. **MUTUAL COOPERATION.** The Parties agree to cooperate fully and provide assistance to one another in the investigation and resolution of any complaints, claims, actions or proceedings that may arise out of the provision of Services hereunder.
 - 12.01 The Parties 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.
13. **SUBCONTRACTING.** Contractor shall not subcontract any portion of the Services required by this Agreement.
14. **NOTICES.** All notices permitted or required under this Agreement shall be made via U.S. certified mail, postage prepaid to the other Party at their address set out below:

Southern Nevada Health District
Director of Administration
280 S. Decatur Blvd.
Las Vegas, NV 89107

Impact Exchange
Rick Reich
6114 W. Charleston Blvd
Las Vegas, NV 89146

15. **GENERAL PROVISIONS.**
 - 15.01 **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 ability to seek reasonable attorneys' fees and costs.
 - 15.02 **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.
 - 15.03 **LIMITED LIABILITY.** 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.

- 15.04 NON-DISCRIMINATION. As an Equal Opportunity Employer, Contractor 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, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or 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.
- 15.05 FORCE MAJEURE. This Agreement shall terminate automatically upon the occurrence of a fortuitous event, including occurrences caused by Act of God which render performance of this Agreement impossible. 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.
- 15.06 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 non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
- 15.07 USE OF NAME AND LOGO. Contractor may not use the Health District's name or logo for any purpose without the Health District's prior written consent. Contractor agrees that Health District, in its sole discretion, may impose restrictions on the use of its name and/or logo. Health District retains the right to terminate, with or without cause, Contractor's right to use the Health District's name and/or logo.
- 15.08 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.
- 15.09 INTEGRATION CLAUSE. This Agreement, including all Attachments hereto, as it may be amended from time to time, contains the entire agreement among the Parties relative to the subject matters hereof.
- 15.10 GOVERNING LAW. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada, as the exclusive venue of any action or proceeding related to or arising out of this Agreement.
- 15.11 INDEMNIFICATION. Parties do not waive any right or defense to indemnification that may exist in law or equity.
- 15.12 PUBLIC RECORDS. Pursuant to NRS Chapter 239, information or documents, including this Agreement and any other documents generated incidental thereto may be opened to public inspection and copying unless a particular record is made confidential by law or a common law balancing of interest.

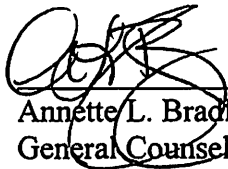
- 15.13 ASSIGNMENT. Contractor shall not assign, transfer, or delegate any rights, obligations or duties under this Agreement without the Health District's prior written consent.
- 15.14 NO THIRD-PARTY BENEFICIARIES. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 15.15 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. A signed copy delivered by facsimile, email, or other means of electronic transmission shall have the same force and effect as an original signed copy.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

SOUTHERN NEVADA HEALTH DISTRICT

Approved as to form:

By: _____
Andrew J. Glass, FACHE, MS
Director of Administration
DUNS: 137055492



Annette L. Bradley, Esq.
General Counsel

Date: _____

IMPACT EXCHANGE

By: _____
Rick Reich
Program Director
DUNS: 081156889

Date: _____

ATTACHMENT B SCOPE OF WORK

A. Contractor will:

1. Conduct 1,500 rapid HIV tests targeting drug using/seeking community members, maintaining a 1% positivity rate using client centered counseling.
2. Testing to be offered during regularly scheduled business hours with advance notice of clinic closure as much as possible.
3. Assist clients in developing a risk reduction plan and provide client centered education, safer sex kits (condoms and lubrication), harm reduction kits and appropriate referrals.
4. Refer all preliminary positive clients to a health care provider for confirmatory testing within 24-48 hours.
5. Report all preliminary positive clients to Health District OEDS within 48 hours.
6. Link all clients to medical care within 30 days of receipt of confirmation testing.
7. Establish a Memorandum of Understanding with the agency clients are referred to for HIV medical care once their status is confirmed.
8. Refer all high risk negative clients into PrEP services – document referral in iCircle.
9. Document all testing activity in iCircle. Adhere to HIPAA/Data Security standards.
10. Make use of social media to promote testing, HIV prevention and testing messages, etc.
11. Minimum of two staff to attend HIV Prevention Conferences or USCA depending on which conference is offered.
12. Chair Southern Nevada Harm Reduction Alliance, participate regularly in HIV Consortium and HIV Prevention planning group.
13. Provide training and technical assistance to agencies housing Impact Exchange vending machine, including ensuring inventory in machine is stocked at all times.
14. Provide access and appropriate space to Health District for training and observation of Health District staff on principles of client centered counseling.
15. Enter all testing data collected into iCircle.
16. Collect data to measure the harm reduction intervention and provide reports to Health District quarterly.
17. Send all harm reduction intervention data collected to Health District.

18. Agree that all data analyzed and reported as a result of harm reduction intervention be a collaborative effort. Any publications or speaking engagements that result from this intervention will be co-facilitated/written by Contractor and Health District OEDS representatives.
- B. REPORTS: Contractor will submit reports quarterly no later than the 15th day of the month following the end of the quarter. The first report for contract year 2018 will be due July 15th to reflect April – June 2018 activities. A final request will be submitted no later than 15 days after the end date of this Agreement.

ATTACHMENT B PAYMENT

1. Payment to Contractor:

- a. 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 Section 4 of this Agreement and no payments shall be made in excess of the maximum allowable total for this Agreement.

b. Budget.

Total Not-To-Exceed Budget:

\$120,000

Category	Description	Qty	Each	Total
PERSONNEL & FRINGE				
Program Coordinator 1	\$19/hr x 40 hrs/week x 52 weeks	1	\$ 39,520.00	\$ 39,520
Program Coordinator 2	\$15/hr x 420 hrs/week x 52 weeks	1	\$ 15,600.00	\$ 15,600
				\$ 55,120
Fringe	8.31%	0.083	\$ 55,120.00	\$ 4,580
Subtotal Personnel & Fringe				\$ 59,700
TRAVEL				
Mileage	\$0.545/mile, 30 miles/week x 52 wks	12	\$ 70.83	\$ 850
Conference	Travel to Orlando FL, USCA 9/6/18-9/9/18 for 2 staff (Air \$1,264, Lodging \$875, Parking \$150, meals (2 staff x 4 days @ \$59day) \$472, Registration Fees \$1,000	1	\$ 3,761.00	\$ 3,761
Subtotal Travel				\$ 4,611
SUPPLIES				
Medical Supplies	Sharps containers, alcohol wipes, gloves, band-aids, tourniquets, to support harm reduction (no syringes)	12	\$ 887.19	\$ 10,646
Testing Medical Supplies	Vacutainers, needles, butterfly needles and necessary supplies to draw blood for additional testing, as needed	12	\$ 57.92	\$ 695
Literature/Information	Guides/brochures/referral information for lower risk and provision of treatment	1,500	\$ 0.50	\$ 750
HIV Test Kits	1500 HIV Rapid Test Kits with 60 controls	1,500	\$ 10.25	\$ 15,375
Condoms and Lube	Condoms, lube, dental dams for vending machine distribution @ \$1.70 per package x 24 boxed per machine per wk x 52 wks (2 machines)	1	\$ 4,244.00	\$ 4,244
Subtotal Supplies				\$ 31,710
OTHER				
Medical Director – Laboratory	Lab Medical Director required for licensing at Trac-B Exchange site, 2 hrs per month @ \$90/hr	12	\$ 180.00	\$ 2,160
Project Director	Trac-B Contractor provides oversight of SSP vending machines, stocking, preparing packaging, maintenance, data collection, on and off site @ 3 hrs/wk x \$50/hr	52	\$ 150.00	\$ 7,800

Laboratory Licenses	Application/renewal @ HIV waived test license \$500, staff license \$60 x 2 = \$120	1	\$ 620.00	\$ 620
Testing Incentives	Quarterly incentive testing promotion offered 4 times during year @ \$5 x 100 x 4 = \$2,000	400	\$ 5.00	\$ 2,000
Waste Disposal	In-House disposal thru Sterllis bio-machine of waste per week, projected waste from vending machine project is 1,725 sharps containers full of bio-sharps- waste. Approx. 60 loads/cycles requiring 12 gal of distilled water @ \$1.50/gal/mo.= \$18, 52 machine bags @ \$1 ea.= \$52, 100 red bio bags @ \$42, 9% of machine cost (\$350 / mo.) @ \$31.50/mo.= \$378.	1	\$ 490.00	\$ 490
Subtotal Other				\$ 13,070
SUBTOTAL DIRECT				\$109,091
Indirect	10%	0.1	\$109,091.00	\$ 10,909
TOTAL				\$120,000

- c. Contractor may not bill more frequently than monthly for the duration of the Agreement.
 - i. Invoices shall contain, as a minimum, Contractor's name, Contract Number, description of work completed, and total amount invoiced.
 - ii. 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.
 - iii. Cost principles contained in OMB 2 CFR 200, Subpart E, shall be used as criteria in the determination of allowable costs.
- d. Health District shall not be liable for interest charges on late payments.
- e. In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved.

**ATTACHMENT C
BUSINESS ASSOCIATE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
IMPACT EXCHANGE**

This Business Associate Agreement ("Agreement") is made and entered into this ____ day of _____, 2018, between the Southern Nevada Health District ("Covered Entity"), and Impact Exchange ("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 Agreement(s)," and

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

WHEREAS, Service Agreement(s) 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 PHI 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:

Service Agreement between Southern Nevada Health District and Impact Exchange (C1800138)

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 in 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.

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

Andrew J. Glass
Director of Administration and Privacy Officer
280 S. Decatur Boulevard
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 that 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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

COVERED ENTITY

SOUTHERN NEVADA HEALTH DISTRICT

BUSINESS ASSOCIATE

IMPACT EXCHANGE

By: _____

Name: Andrew J. Glass, FACHE, MS

Title: Director of Administration

By: _____

Name: Rick Reich

Title: Program Director

Date: _____

Date: _____