



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

**RE:** *Approval of Service Agreement between Southern Nevada Health District and AIDS Healthcare Foundation*

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### **PETITION #20-18**

**That the Southern Nevada District Board of Health** *approve the Service Agreement C1800165, between the Southern Nevada Health District (SNHD) and AIDS HealthCare Foundation (AHF) to fund AHF to provide High Impact targeted HIV testing, linkage to care, referrals to treatment and mental health, and to provide harm reduction services to high-risk populations.*

### **PETITIONERS:**

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

**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 Prevention strategies to include mobile HIV rapid testing to targeted communities as outlined in the Nevada Integrated HIV Prevention and Care Plan, harm reduction services to those who have co-occurring conditions, linkage to care/treatment services, and offer PrEP to high- risk negatives identified through testing and screening services.

### **FUNDING:**

This Agreement Awards 125,000 to AIDS HealthCare Foundation by the Office of Epidemiology and Disease Surveillance. These funds are covered by the HIV Prevention subgrant.



**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN  
SOUTHERN NEVADA HEALTH DISTRICT  
AND  
AIDS HEALTHCARE FOUNDATION  
C1800165**

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

**RECITALS**

WHEREAS, Health District is the public health entity organized pursuant to Nevada Revised Statutes (NRS), Chapter 439 which 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 HIV/STD care and treatment provider and has the expertise and capabilities necessary to provide the services requested; 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 January 1, 2018 through December 31, 2018, unless sooner terminated by either Party as set forth in this Agreement. This Agreement may be extended upon 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 such 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 high impact prevention strategies to include mobile HIV rapid testing to targeted communities as outlined in the Nevada Integrated HIV Prevention and Care Plan, harm reduction services to those who have co-occurring conditions, linkage to care/treatment services, and either offer or refer high-risk populations as identified through testing and screening services to appropriate PrEP services.

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. 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 \$125,000; this accounts for 100% of the total funding of this Agreement period. The compensation is not determined directly or indirectly on the volume or value of any referrals provided under this Agreement.

5. 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.

5.01 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.

6. 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.

7. AUDIT REQUIREMENTS WITH SUBRECIPIENTS RECEIVING AWARDS FROM HEALTH DISTRICT

7.01 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.

7.02 If 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.

7.03 If 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").

7.04 Contractor must send a copy of the confirmation from the Federal Audit Clearinghouse to [contracts@snhd.org](mailto: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.

7.05 Contractor is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.

7.06 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.

8. 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.

9. REFERRAL, DISCLAIMER, AND STATEMENT OF ELIGIBILITY

9.01 Contractor acknowledges to the best of its knowledge, information, and belief, and to the extent required by law, neither Contractor nor any of its employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a).

- 9.02 The Parties acknowledge that the payment or receipt of any remuneration, direct or indirect, to induce the referral of any patient or for the purpose of purchasing either goods or services reimbursable under the federal Medicare or state Medicaid programs is prohibited. The Parties expressly agree that no purpose of this Agreement is to induce referrals or health care business.
- 9.03 The Parties further acknowledge that patients have the right of freedom of choice to choose a vendor for services, including medical services from private physicians. Contractor shall take such reasonable steps as may be necessary and appropriate to ensure such freedom of choice, including advising the patient as to the availability of such services from other sources in the community and conforming to all requirements of law.
10. 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.
11. 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.
- 11.01 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.
12. SUBCONTRACTING. Contractor shall not subcontract any portion of the Services required by this Agreement.
13. 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 | AIDS HealthCare Foundation   |
| Director of Administration      | Michael Weinstein- President |
| 280 S. Decatur Blvd.            | 6255 W Sunset Blvd 21 FL     |
| Las Vegas, NV 89107             | Los Angeles CA 90028         |
14. GENERAL PROVISIONS.
- 14.01 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.
- 14.02 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.
- 14.03 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.

- 14.04 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.
- 14.05 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.
- 14.06 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.
- 14.07 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.
- 14.08 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.
- 14.09 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.
- 14.10 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.
- 14.11 INDEMNIFICATION. Parties do not waive any right or defense to indemnification that may exist in law or equity.
- 14.12 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.
- 14.13 ASSIGNMENT. Contractor shall not assign, transfer, or delegate any rights, obligations or duties under this Agreement without the Health District's prior written consent.
- 14.14 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.

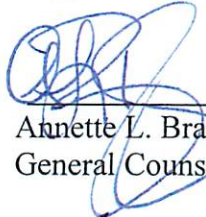
- 14.15 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. A signed copy delivered by facsimile, email, or other means of electronic transmission shall have the same force and effect as an original 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: \_\_\_\_\_

AIDS HEALTHCARE FOUNDATION

By: \_\_\_\_\_  
Michael Weinstein  
AIDS HealthCare Foundation- President  
DUNS: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT A SCOPE OF WORK**

### **A. Contractor will:**

1. Conduct 3,000 rapid HIV tests targeting high-risk populations community members, achieving a 1% positivity rate.
2. Testing to be offered through multifaceted services both in AHF's clinics and through the mobile services offered during non-traditional times at non-traditional venues.
3. Cancellations of HIV testing services will be provided to Health District staff with advanced notice so that community can be informed as soon as possible through Health District website.
4. 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.
5. Work to reduce stigma and access to care among populations with co-occurring conditions in Clark County.
6. Report all preliminary and confirmed positive clients to Health District Office of Epidemiology and Disease Surveillance (OEDS) within 48 hours.
7. Link all HIV positive clients to appropriate medical care within 30 days of receipt of confirmation testing.
8. Refer all high-risk negative clients into appropriate PrEP services; document referrals and linkages.
9. Adhere to HIPAA/Data Security standards.
10. Make use of social media to promote HIV testing, HIV prevention outreaches, and/or testing messages, etc.
11. Provide access and appropriate space to Health District DIIS to work in collaboration on HIV partner services and contact investigations.
12. Send testing data through SFTP site in format provided by Health District.

### **B. Health District will:**

1. Provide or facilitate training: Rapid HIV Testing Certification, PrEP/PEP, Harm Reduction to include overdose prevention/use of Narcan, Viral Hepatitis, STD 101, uploading data to SFTP.
2. Conduct quarterly site visits.

**C. Reports:** No later than the 15th day of the month following the end of the quarter, Contractor will submit reports capturing quarterly data. The first report will be due October 15, 2018 and will include quarterly data for the periods January – March 2018, April – June 2018, and July – September 2018. The final quarterly report will be due January 15, 2019.



## ATTACHMENT B PAYMENT

### A. Payment to Contractor:

1. 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.
2. Budget.

**Total Not-To-Exceed Budget:**

**\$125,000**

HIV Prevention/SNHD (GY 2018)				
Agency: AIDS Healthcare Foundation				
Category/Item	Detail Description	QTY	Cost Per Unit	Total
<b>Personnel &amp; Fringe</b>				
Christopher Reynolds	Regional Program Manager-IN KIND	20.00%	\$ -	\$ -
Kandance Hunt	Linkage to Care Specialist- IN KIND	25.00%	\$ -	\$ -
Rene Garcia	HIV Testing Counselor - MTU	90.00%	\$ 29,120.00	\$ 26,208.00
Justin Schindler	HIV Testing Counselor - MTU	100.00%	\$ 37,523.20	\$ 37,523.00
Michelle Jorge	HIV Testing Counselor - Wellness	100.00%	\$ 29,120.00	\$ 29,120.00
Fringe		22.50%	\$ 92,851.00	\$ 20,891.00
<b>Personnel Total:</b>				<b>\$ 113,742.00</b>
<b>Travel</b>				
USCA Conference Registration Fee	Minimum of two (2) people.- IN KIND	2	\$ -	\$ -
Flight	Round trip flight from Sept. 5, 2018 - Sept. 9, 2018- IN KIND	2	\$ -	\$ -
Lodging	5 day, 4 night stay for USCA conference- IN KIND	8	\$ -	\$ -
<b>Travel Total:</b>				<b>\$ -</b>
<b>OPERATING</b>				
				\$ -
				\$ -
				\$ -
<b>Total:</b>				<b>\$ -</b>
<b>Equipment</b>				
				\$ -
				\$ -
				\$ -
<b>Equipment Total:</b>				<b>\$ -</b>
<b>Supplies</b>				
Test Kits	1 test = \$7.49- IN KIND	5,000	\$ -	\$ -
				\$ -
				\$ -
<b>Supplies Total:</b>				<b>\$ -</b>
<b>Other</b>				
Condoms	(80,000 Condoms @\$2,888) - In Kind	0.00	\$ -	\$ -
Lube	(20,000 Lube Pillows @\$1,520) - In Kind	0.00	\$ -	\$ -
				\$ -
<b>Other Total:</b>				<b>\$ -</b>
<b>Subtotal:</b>				<b>\$ 113,742.00</b>
<b>Indirect</b>				
Administrative Costs	10% of Direct Costs	9.9%	\$ 112,580.00	\$ 11,258.00
<b>Indirect Total:</b>				<b>\$ 11,258.00</b>
<b>Budget Total:</b>				<b>\$ 125,000.00</b>

3. 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.
4. Health District shall not be liable for interest charges on late payments.
5. 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  
AIDS HEALTHCARE FOUNDATION**

This Business Associate Agreement ("Agreement") is made and entered into this 1<sup>st</sup> day of January, 2018, between the Southern Nevada Health District ("Covered Entity"), and AIDS Healthcare Foundation ("Business Associate"), (individually "Party" or collectively "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 AIDS HealthCare Foundation  
(C1800165)



## 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 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 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.

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**  
**AIDS HEALTHCARE FOUNDATION**

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

By: \_\_\_\_\_  
Name: Michael Weinstein- President  
Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_