



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** June 27, 2019

RE: *Approval of Agreement with Dr. Alireza Farabi to Provide Professional Services in the Ryan White/Sexual Health Clinic.*

PETITION #15-19

That the Southern Nevada District Board of Health *approve an agreement with Dr. Alireza Farabi to provide professional services at the Ryan White/Sexual Health Clinic.*

PETITIONERS:

Fermin Leguen, MD, MPH, Director of Clinical Services *FL*
John Shannon, Director of Administration *JS*
Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer *JPI*

DISCUSSION:

The agreement is for Dr. Alireza Farabi to provide professional services at the Ryan White/Sexual Health Clinic. The contractor will participate in the diagnosis and management of patients with HIV/AIDS and Hepatitis infections, provide expert advice on sexually transmitted conditions, assist other Health District providers in the management of these patients, and contribute to the clinical development of other Health District clinicians and nursing staff through case reviews and clinical discussions.

FUNDING:

Funding will be through the Ryan White program income generated from third-party payers for insured patients.



**PROFESSIONAL SERVICE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
ALIREZA FARABI, M.D., P.C.
C1900147**

THIS PROFESSIONAL SERVICE AGREEMENT (“Agreement”) is by and between the Southern Nevada Health District (“Health District”) and Alireza Farabi, M.D., P.C. (“Contractor”) (individually “Party” and collectively “Parties”).

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

WHEREAS, Health District desires to obtain the services of an infectious disease specialist to enhance client healthcare services offered by Health District’s Ryan White Program in its Sexual Health Clinic (the “Services”); and

WHEREAS, Contractor represents that he possesses the professional and technical expertise to provide the Services to the Health District; and

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

NOW, THEREFORE in consideration of the mutual promises and agreements hereinafter set forth, the Parties agree as follows:

- 1) **TERM AND TERMINATION.** This Agreement shall be effective from the last signature affixed hereto through February 29, 2020, unless sooner terminated by either Party as set forth in this Agreement. This Agreement may be extended for up to three (3) additional one-year terms upon mutual agreement of both Parties.
 - 1.01 This Agreement may be terminated by either Party prior to the date set forth in the first paragraph of this 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 This Agreement will immediately terminate if: (a) Contractor’s right to participate in Medicare, Medicaid, or any other federal or state health program is terminated for any reason or is relinquished voluntarily; (b) Contractor’s insurance is canceled or non-renewed; or (c) Contractor’s license to practice is revoked or suspended; or (d) Contractor’s death or disability.

- 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 private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.
- 1.05 Upon termination, Contractor will be entitled to payment for services provided prior to date of termination and for which Contractor has submitted an invoice but has not been paid.
- 2) **SERVICES.** Contractor shall provide to or for the benefit of the Health District's patients professional services under this Agreement as described in more detail in the Scope of Work and Payment, attached hereto as Attachment A.
- 3) **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 AND PAYMENT**
ATTACHMENT B: BUSINESS ASSOCIATE AGREEMENT
- 4) **COMPENSATION.**
- 1.01 Contractor will be reimbursed for actual expenses incurred and Services completed in a timely and professional manner as provided in Attachment A: Scope of Work and Payment. The total not-to-exceed amount of this Agreement is \$92,160.
- 1.02 Contractor shall be solely responsible for all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation.
- 5) **INTENT OF THE PARTIES.** All payments specified in this Agreement are consistent with what the Parties reasonably believe to be a fair market value for the Services provided.
- 5.01 The Parties acknowledge that payment or receipt of any remuneration, direct or indirect, to induce the referral of any patient or for the purpose of purchasing, leasing, or ordering 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.
- 5.02 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. The Parties 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.
- 6) **STATUS OF PARTIES; INDEPENDENT CONTRACTOR.**
- 6.01 It is expressly understood and agreed that, in the performance of Services under this Agreement, Contractor and Health District 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. In no event shall either Party be liable for debts or obligations of any other except as otherwise specifically provided in this Agreement.

- 6.02 This Agreement is non-exclusive, and both Parties remain free to enter into similar agreements with third parties. Contractor may, during the term of this Agreement or any extension thereof, perform services for any other clients, persons, or companies as Contractor sees fit, so long as the performance of such services does not interfere with Contractor's performance of obligations under this Agreement, and does not, in the opinion of Health District, create a conflict of interest.
- 6.03 Health District shall not require Contractor to devote full time to performing the services required by this Agreement.
- 6.04 Health District shall not control the manner or means by which Contractor performs the Services subject to this Agreement.
- 6.05 Contractor shall not have a claim under this Agreement or otherwise against the Health District for vacation pay, paid sick leave, retirement benefits, workers' compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind.
- 6.06 Contractor will not be treated as Health District employee for federal tax purposes. Health District will not withhold on behalf of Contractor any sums for income tax, unemployment insurance, or any other withholdings pursuant to any law or requirement of any governmental body. Any such payments, withholdings, if any, are Contractor's sole responsibility.

7) CONTRACTOR RESPONSIBILITIES AND DUTIES

- 7.01 Contractor shall, at all times during the course of this Agreement:
 - a) Maintain professional liability coverage in accordance with Section 15;
 - b) Be and remain a participating provider in the Medicare and Medicaid programs (Titles XVIII and XIX of the Social Security Act, respectively), and with all third-party payors with which the Health District is now or hereafter becomes affiliated
 - c) Possess a valid and unlimited license to practice medicine pursuant to the laws of the State of Nevada;
 - d) Possess a valid federal narcotics number;
 - e) Maintain the required skill, experience, and qualifications to perform the Services and shall perform the Services in a professional and workmanlike manner in accordance with the requisite standard of care for the same or similar services; and
 - f) Perform the Services in compliance with all applicable federal, state, and local laws and regulations;
 - g) Acknowledge to the best of its knowledge, information, and belief, and to the extent required by law, neither it nor any of its employees/contractors is/are: i) currently exclude, debarred, suspended, or otherwise ineligible to participate in any federal programs, including federal health care programs and 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). Contractor will notify the Health District's Director of Clinical Services immediately upon Contractor receiving written or verbal notification that Contractor or any its employees are proposed for exclusion from any governmental health care programs, or federal procurement or non-procurement programs.

- h) Document all Services to patients in the medical record in accordance with Health District's policies and applicable law. All such medical records shall be and remain the property of the Health District; provided, however, that Contractor shall have access to such records as necessary for quality or compliance review.
 - i) As requested, provide evidence to Health District that Contractor i) is current on Hepatitis B vaccination and TB testing; and ii) is in compliance with OSHA requirements for prevention of transmission of bloodborne pathogens; and iii) has completed the Centers for Disease Control and Prevention's TB 101 for Health Care Workers online training, located at:
<https://www.cdc.webourses/tb101/default.htm>
 - j) Ensure Contractor is fit-tested for use of a fitted respirator. Contractor is to keep an appropriately fitted respirator available and readily accessible while providing Services.
- 8) **SUBCONTRACTING.** Contractor shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without the prior written approval of Health District. Subcontracts, if any, shall contain a provision making them subject to all provisions in this Agreement
- 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 in accordance with its respective Records Retention Schedule, or for a minimum of five years; whichever is longer, 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/or judicial processes which may ensue.
- 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 B and incorporated by reference herein.
- 11) **BREACH; REMEDIES.** Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the ability to seek reasonable attorneys' fees and costs.
- 12) **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach

of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.

- 13) **LIMITED LIABILITY.** Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Agreement liability of both Parties shall not be subject to punitive damages.
- 14) **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, acts of terrorism, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
- 15) **INSURANCE.** Contractor shall, at its expense, maintain a program of self-insurance and/or commercial professional liability insurance with limits not less than \$1,000,000 per each wrongful act to insure it and Health District against liabilities arising out of or related to Services rendered under this Agreement. With respect to commercial insurance, Contractor shall require its insurer(s) or broker to provide, at least thirty (30) days' prior written notice to the Health District before any material alteration of coverage takes effect.
 - 15.01 **Proof of current Workers' Compensation coverage and Professional Liability coverage** must be provided to Health District's Contract Administrator upon execution of this Agreement, at execution of any subsequent Amendment as appropriate, and when requested by Health District. In lieu of evidence of workers' compensation coverage, Contractor may submit a copy of its State of Nevada, Division of Industrial Relations Affirmation of Compliance with Mandatory Industrial Insurance Requirements filed with the Division of Industrial Relations as proof of Contractor's statutory exemption from coverage. Contractor is responsible for providing evidence of continued Professional Liability, and if applicable, Workers' Compensation coverage throughout the term of this Agreement.
- 16) **MUTUAL COOPERATION.** 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.
- 17) **INDEMNIFICATION.** Neither Party waives any right or defense to indemnification that may exist in law or equity.
- 18) **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.
- 19) **KEY PERSONNEL.** The Health District's Director of Clinical Services, Fermin Leguen, M.D., MPH, shall be the overall manager of this Agreement, will assign all tasks and due dates for Services, and be the single point-of contact for resolution of Agreement-related issues.

Alireza Farabi, M.D. shall be the single point of contact for Contractor.

- 20) **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.
- 21) **ASSIGNMENT.** Contractor shall not assign, transfer, or delegate any rights, obligations or duties under this Agreement without the Health District's prior written consent.
- 22) **PUBLIC RECORDS.** Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Health District to public inspection and copying. Health District will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
- 23) **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.
- 24) **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.
- 25) **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties and supersedes any prior contracts or agreement between the Parties regarding the subject matter hereof.
- 26) **AMENDMENTS.** This Agreement may be amended only by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
- 27) **TIME.** Contractor agrees that time is of the essence in this Agreement.
- 28) **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.
- 29) **THIRD PARTY BENEFICIARIES.** This Agreement and attachments hereto, are not intended to confer any rights to any person or entity not a party hereto.
- 30) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 31) **NOTICES.** All notices permitted or required under this Agreement shall be made by personal delivery, overnight delivery, or via U.S. certified mail, postage prepaid to the other Party at its address as set forth below:

32)

Southern Nevada Health District
Legal Department
Contract Administrator
280 S. Decatur Blvd.
Las Vegas, NV 89107

Alireza Farabi, MD
9108 Golden Eagle Drive
Las Vegas, NV 89134

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

SOUTHERN NEVADA HEALTH DISTRICT

ALIREZA FARABI, M.D., P.C.

By: _____
John A. Shannon
Director of Administration

By: _____
Alireza Farabi, MD

Date: _____

Date: _____

APPROVED AS TO FORM:

Heather Anderson-Fintak, Esq.
Associate General Counsel
Southern Nevada Health District

ATTACHMENT A
SCOPE OF WORK AND PAYMENT

A. Scope of Work.

A.1 Contractor shall provide 12 hours per week of clinical services for the Ryan White program in the Sexual Health Clinic, located at the Southern Nevada Health District, 280 S. Decatur Blvd, Las Vegas Nevada. Contractor will participate in the diagnosis and management of HIV/AIDS patients, new and established, and will assist other Health District providers in the management of these patients. Additionally, Contractor will provide expert advice on sexually transmitted conditions, as needed. Contractor will also contribute to the clinical development of other Health District clinicians and nursing staff through case reviews, clinical discussions. Alireza Farabi, MD is the physician specifically designated by Contractor and accepted by Health District to provide the Services contemplated by this Agreement, for the term of this Agreement.

B. Payment to Contractor:

B.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 Paragraph 3 of this Agreement and no payments shall be made in excess of the maximum allowable total for this Agreement.

B.2 Budget for Period March 1, 2019 through February 29, 2020.

Total Not-To-Exceed ("NTE") Budget: \$92,160

12 hours per week x \$160 per hour = \$1,920 per week

48 weeks at \$1,920 per week = NTE \$92,160

Contractor will be reimbursed at \$160 per hour for actual work completed. Contractor will not receive reimbursement for any additional expenses.

B.3 Contractor may not bill more frequently than monthly for the duration of the Agreement.

1. 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.

2. Cost principles contained in OMB 2 CFR 200, Subpart E shall be used as criteria in the determination of allowable costs.

B.4 Health District shall not be liable for interest charges on late payments.

B.5 In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved.

**ATTACHMENT B
BUSINESS ASSOCIATE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
ALIREZA FARABI, M.D., P.C.**

This Business Associate Agreement (“Agreement”) is made and entered into this 1st day of March, 2019 between the Southern Nevada Health District (“Covered Entity”), and Alireza Farabi, M.D., P.C. (“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.

1) AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT

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

Professional Service Agreement between Southern Nevada Health District and
Alireza Farabi, M.D., P.C.
C1900147

2) 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.
- 3) **BUSINESS ASSOCIATE CONFIDENTIALITY REQUIREMENTS (Privacy Rule)**
- 4) **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.

5) 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:

John A. Shannon
Director of Administration and Privacy Officer
280 S. Decatur Boulevard
Las Vegas, NV 89107

6) 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).

7) 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.

8) 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.

9) 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) Business Associate will indemnify and hold harmless Covered Entity and any of its officers, directors, employees, or agents against any claim, cause of action, liability, damage, cost, or expense, including reasonable attorneys' fees and court or proceeding costs, arising out of or in connection with any breach of the terms of this Agreement, any Breach of Private Information under the control of Business Associate or its agents or subcontractors that requires notification under the HIPAA Rules or state law, or any failure to perform its obligations with respect to Private Information by Business Associate, its officers, employees, agents, or any person or entity under Business Associate's direction or control.
- vi) 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.
- vii) 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.
- viii) This Agreement will be governed by the laws of the State of Nevada.
- ix) 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.
- x) 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.

- xi) 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.
- xii) Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- xiii) 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.
- xiv) 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.
- xv) 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
ALIREZA FARABI, M.D., P.C.

By: _____
 Name: John A. Shannon
 Title: Director of Administration

By: _____
 Name: Alireza Farabi, M.D.

Date: _____

Date: _____