

CETS #:	31563
Agency Reference #:	

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting by and through its

Public Entity #1:	Nevada Health Authority Division of Nevada Medicaid
Address:	4070 Silver Sage Drive
City, State, Zip Code:	Carson City, NV 89701
Contact:	Thomas Tilton, Contract Manager
Phone:	(775) 684-3676 (main)
Email:	nvhapcu@nvha.nv.gov

Public Entity #2:	Washoe County for and on behalf of Washoe County Human Services
Address:	350 S. Center Street
City, State, Zip Code:	Reno, NV 89501
Contact:	Brandi Johnson
Phone:	(775) 337-4489
Email:	bajohnson@washoecounty.gov

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

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

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

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS**

TERM	DEFINITION
State	The State of Nevada and any State agency identified herein, its officers, employees and immune contractors.
Contracting Entity	The public entities identified above.
Fiscal Year	The period beginning July 1 st and ending June 30 th of the following year.
Contract	Unless the context otherwise requires, 'Contract' means this document titled Interlocal Contract Between Public Agencies and all Attachments or Incorporated Documents.

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3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 4, Termination*.

Effective From:	July 1, 2026	To:	June 30, 2030
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4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in *Section 3, Contract Term*, provided that a termination shall not be effective until **30** days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.

5. **NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.

6. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following Attachments, specifically describes the Scope of Work. This Contract incorporates the following Attachments in descending order of constructive precedence:

ATTACHMENT A:	SCOPE OF WORK AND DELIVERABLES
ATTACHMENT B:	BUSINESS ASSOCIATE ADDENDUM

Any provision, term or condition of an Attachment that contradicts the terms of this Contract, or that would change the obligations of the State under this Contract, shall be void and unenforceable.

7. **CONSIDERATION.** The parties agree that the services specified in *Section 6, Incorporated Documents* at a cost as noted below:

Total Contract Not to Exceed:	\$38,219,572.78
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Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

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

9. **INSPECTION & AUDIT**

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

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

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

10. **BREACH - REMEDIES.** Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall not exceed \$150.00 per hour.

11. **LIMITED LIABILITY.** The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts 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 Contract after the intervening cause ceases.

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

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

15. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

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

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

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

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19. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
20. **CONFIDENTIALITY.** Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.
21. **FEDERAL FUNDING.** In the event, federal funds are used for payment of all or part of this Contract, the parties agree to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
 - A. The parties certify, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation Subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - B. The parties and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
 - C. The parties and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
 - D. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
22. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in ***Section 6, Incorporated Documents.***
23. **GOVERNING LAW – JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.
24. **ENTIRE AGREEMENT AND MODIFICATION.** This Contract and its integrated Attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated Attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such Attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

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

**WASHOE COUNTY FOR AND ON BEHALF OF
WASHOE COUNTY HUMAN SERVICES**

Authorized Signature

Date

Title

ATTESTED BY:

Washoe County Clerk

Date

**NEVADA HEALTH AUTHORITY
DIVISION OF NEVADA MEDICAID**

Stacie Weeks, JD, MPH

Date

Director

Title

APPROVED BY BOARD OF EXAMINERS

Signature – Board of Examiners

On:

Date

Approved as to form by:

Deputy Attorney General for Attorney General

On:

Date

ATTACHMENT A
SCOPE OF WORK AND DELIVERABLES

TARGETED CASE MANAGEMENT AND ADMINISTRATIVE SERVICES

This Interlocal Agreement outlines the responsibilities between the Nevada Health Authority (NVHA) and the Division of Nevada Medicaid (Nevada Medicaid) and Washoe County for and on behalf of Washoe County Human Services (referred to as “the County”) with respect to Medicaid reimbursement for all allowable Targeted Case Management services and Administrative services.

Targeted Case Management (TCM) Services

- I. The County agrees to perform the following services or activities and to accept payment for the services as follows:
 - A. Provide TCM services to eligible recipients under Title XIX and Title XXI in accordance with the State of Nevada Medicaid State Plan and Nevada Medicaid Services Manual.
 - B. Be responsible for collecting and submitting the required information necessary to determine client eligibility for the Title XIX and Title XXI program to Nevada Medicaid.
 - C. Determine all expenditures in accordance with the County’s State-approved methodology for TCM services. Elements of the State-approved Cost Allocation Plan (CAP) necessary for claiming expenditures and for reimbursement are a Centers for Medicare & Medicaid Services (CMS) approved Time Study methodology, documentation of appropriate direct and indirect costs and their cost centers. Cost allocation must be consistent with the Office of Management and Budget (OMB) Circular 2 CFR 225 (A-87), the Code of Federal Regulations 45 CFR Subtitle A, Part 92, and Subtitle E, and approved by Nevada Medicaid. The County cannot unilaterally change the method of determining how the services will be counted or what the approved rate is once it is approved by Nevada Medicaid.
 - D. Provide a report of services and a cost report annually to Nevada Medicaid for TCM services in the format approved by Nevada Medicaid, which will be in an Excel format (.xls or .xlsx) or an Excel compatible format (.csv .txt). Other formats may be considered for use at the discretion of Nevada Medicaid on a case by case basis. The County must provide an electronic version of their claims for submission before Nevada Medicaid will consider that it has received the official version of the claims for the cost settlement process.
 - E. Provide Nevada Medicaid detailed back-up to support the claims being submitted for cost settlement. The back-up data must be in accordance with the State-approved standard methodology for TCM services for the County.
 - F. Provide Nevada Medicaid with the documentation that the rate for eligible services is based upon the approved methodology of Nevada Medicaid, as defined in the Nevada Medicaid State Plan, Attachment 4.19-B CPE, before any payment for those services is made by Nevada Medicaid. The interim rate is determined based on the actual historical costs and is estimated after the end of the state fiscal year.

- G. Pay the State's designated auditor the non-federal share (State's share) of those costs associated with the annual reconciliation and cost settlement.
- H. Bill Nevada Medicaid upon services rendered which are allowable based upon Nevada Medicaid defined processes for Medicaid providers. Incomplete forms will be subject to return to the County and payment may be delayed or denied.
- I. Reimburse any Title XIX and/or Title XXI funds received by the County in the event that an audit or audit by a firm of Nevada Medicaid's choosing results in a determination that such costs were not reimbursable under the Title XIX or Title XXI programs upon receipt of written notice from Nevada Medicaid of such obligation.
- J. Provide the required State matching share for Federal Medicaid funds paid for children covered under the TCM program. The County will certify in a mutually agreed format that any and all funds used by the County as match will be County or Local funds that are not used as match for any other program.

II. Nevada Medicaid agrees to perform the following services or activities and to provide the following payment for the County:

- A. Work with the Federal Government, the County, and its consultants as necessary to formulate plans and policies to ensure the appropriate availability of Title XIX and Title XXI funds for allowable costs and services, as defined in the Nevada Medicaid State Plan, Chapter 3.0 and Attachment 4.19-B, provided by both parties.
- B. Provide to the County necessary guidance and documentation related to the utilization of Title XIX and Title XXI funding for TCM and other allowable activities and services. This may include provider training related to the reimbursement for TCM services, to the County.
- C. Approve a standard methodology for the County to utilize in determining the reimbursable costs the County may charge consistent with the Office of Management and Budget (OMB) Circular 2 CFR 225 (A-87) guide, the Code of Federal Regulations 45 CFR Subtitle A, Part 92 and Subtitle E, and approved by Nevada Medicaid. The methodology will be based on an interim rate which is the actual rate from the preceding state fiscal year and should be decided upon preferably before the beginning of the upcoming state fiscal year. At the end of the state fiscal year, the County will have until December 1 of the following State fiscal year to submit its year-end claims to Nevada Medicaid for reconciliation and cost settlement. Nevada Medicaid will have two years from the end of the state fiscal year to cost settle those claims. If the County's interim payments exceed the actual certified cost of the services to Medicaid clients, Nevada Medicaid will recoup the federal share of the overpayment. If the actual, certified costs exceed the interim Medicaid payments, Nevada Medicaid will pay the federal share of the difference to the provider in accordance with the final actual certification agreement. Nevada Medicaid to pay the County through its Medicaid Management Information System (MMIS) for TCM claims submitted during the state fiscal years, which are covered under the Provider Enrollment Agreement. Those expenditures and their allocation must be in accordance with the County's State-approved standard methodology for TCM services. This payment will represent the federal share of the Federal Medical Assistance Percentage (FMAP) of the total allowable costs identified for TCM services. This medical assistance percentage is published annually pursuant to the Code of Federal Regulation (42 CFR Part 433.11

Subpart A). Correct and accurately submitted claims are generally paid within thirty (30) business days of receipt.

Administrative Services

- I. The County agrees to perform the following services or activities and to accept payment for the services as follows:
 - A. Provide Title XIX administrative services eligible for reimbursement under 42 CFR 435.1001 for children and individuals, including the homeless population, within the County in accordance with the State of Nevada Title XIX Medicaid State Plan Attachment B 4.19 and Nevada Medicaid Services Manual. These administrative services may include, but are not limited to utilization review, referral, arranging and follow up for Medicaid services, and resolving Medicaid eligibility and coverage issues.
 - B. Determine all expenditures in accordance with the County's State approved standard methodology. The elements of the standard methodology necessary for claiming expenditures and for reimbursement are a CMS-approved Random Moment Time Sampling (RMTS) methodology and/or time study, documentation of appropriate direct and indirect costs and their cost centers. Cost allocation must be consistent with the Office of Management and Budget (OMB) Circular 2 CFR 225 (A-87), the Code of Federal Regulations 45 CFR Subtitle A, Part 92, and Subtitle E, and approved by NVHA. The County cannot unilaterally change the method of determining how the services will be counted or what the approved rate is once it is approved by NVHA.
 - C. Provide an electronic version of a report of Administrative services and invoice costs to NVHA quarterly in the format approved by NVHA, which will be in an Excel format (.xls or .xlsx) or an Excel compatible format (.csv or .txt). Other formats may be considered for use at the discretion of NVHA on a case by case basis.
 - D. Provide detailed back-up to support the claims being submitted. The back-up data must be in accordance with the State approved standard methodology for Administrative Claiming for the County.
 - E. Each quarter's invoice shall be due on or before thirty (30) days following the last day of the quarter of service. The invoice will reflect both the total computable amount and the Federal Financial Participation (FFP) amount and must be completely filled out, signed and dated by an appropriate official of the County attesting to its accuracy. Forms not filled out completely will be subject to return to the County and payment delayed or denied. All signatures must be original.
 - F. Include with the invoice a certificate which: 1) is in the format provided by NVHA attesting to the County's use of local funds of not less than the current State Share of the amount invoiced for that period; and 2) certifies that the local funds are not from a Federal source of funds being used to match any other Federal Funds. The certification must be signed and dated by an authorized representative attesting to the use of the specific funds. Signatures may be original, electronic, or scanned and emailed.
 - G. Reimburse with 60 days of receipt of written notice from NVHA of such obligation, any Title XIX funds received by the County in the event that a Federal audit or audit by a contractor of NVHA results in a determination that such costs were not reimbursable under the Title XIX program.

- H. The County is responsible to ensure that all financial records comply with the OMB Circular A-133 (also referred to as the Single Audit Act of 1984). In the event of an audit by the federal agency with oversight of the program, the County shall be responsible for any disallowances or errors discovered during that audit that result in a negative fiscal impact to the County or the state. Copies of audit reports shall be sent to NVHA within (60) days of written request.

II. NVHA agrees to perform the following services or activities and to provide the following payment for the County:

- A. Work with the County and the Federal Government, as necessary, to formulate the necessary plans and policies which will ensure the appropriate availability of Title XIX funds for allowable costs and services provided by both parties. To make available to the County the federal share of the total computable funds for the Medicaid Administrative Services program.

Provide to the County necessary guidance related to the utilization of Title XIX funding for Medicaid administrative activities.
- B. Perform regular reviews and annual cost settlements of the submitted claims by the County to ensure an overpayment or underpayment does not occur and that the settlement process is accurate and timely.
- C. Provide to the County necessary guidance related to the utilization of Title XIX funding for Medicaid administrative activities.
- D. Pay the County upon receipt of a claim the federal share of those costs and services allowable under the Title XIX program. Currently for administrative claims the FFP is 50%.
- E. NVHA shall use its best efforts to pay the County for eligible services within (30) days after receipt of an accurate invoice under this agreement. This assumes there are no discrepancies or errors contained in the invoice or documentation supporting the invoice. The County acknowledges that there may be delays outside of the control of NVHA and will cooperate in submission of accurate and timely information.

III. Both Parties Agree:

- A. The County shall comply with Public Law 98-50 (Single Audit Act of 1984) and Office of Management and Budget (OMB) Circular A-133. Copies of audit reports shall be submitted to NVHA within 60 days of receipt of the audit reports.

ATTACHMENT B
BUSINESS ASSOCIATE ADDENDUM

BETWEEN

State of Nevada
Nevada Health Authority

Hereinafter referred to as the “Covered Entity”

and

Washoe County for and on behalf of Washoe County Human Services

Hereinafter referred to as the “Business Associate”

This Business Associate Agreement (“**BAA**”) is incorporated as an attachment by reference to a State of Nevada Contract (in consideration of mutual obligations contained therein and below and the exchange of information pursuant to this BAA and the State of Nevada Contract) by and between the named Nevada Health Authority (“**Covered Entity**”), a government entity, and the named Independent Contractor (“**Business Associate**”), licensed to do business in the State of Nevada in accordance with the meanings ascribed to the terms “Covered Entity” and “Business Associate” under 45 CFR § 160.103 et seq. (see also 45 CFR § 164.501). The Covered Entity and Business Associate are collectively referred to herein as the “**Parties**.”

I. RECITALS

- a. Covered Entity is either a “covered entity” in its own right or a “business associate” of a covered entity as each are defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5 (collectively, “**HIPAA**” as may be amended or in effect at the time) and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information (as defined below);
- b. The Parties have entered into or will enter into an agreement or agreements under which Business Associate provides or will provide certain specified services to Covered Entity (collectively, the “**Agreement**”);
- c. In providing services pursuant to the Agreement, Business Associate will have access to Protected Health Information (“**PHI**”), including, where applicable, through provision of services on behalf of Covered Entity which result in direct receipt of PHI from sources other than Covered Entity;

- d. By providing the services pursuant to the Agreement, Business Associate will become a “business associate” of Covered Entity as such term is defined under HIPAA;
- e. Both Parties are committed to complying with all federal and state laws governing the confidentiality and privacy of health information, including but not limited to, the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 160 and Part 164, Subparts A and E, collectively the “**Privacy Rule**”); and
- f. Both Parties intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate pursuant to the terms of this Agreement, the Contract for Services to which this Agreement is incorporated, HIPAA, and other applicable state and federal laws and regulations.

II. DEFINITIONS

- a. For the purposes of this BAA, the Parties give the following meaning to each of the terms as set forth below and in the information above. Any capitalized term used in this BAA, but not otherwise defined, has the meaning given to that term in the Privacy Rule or pertinent law.
 - i. “**Affiliate**” means a subsidiary or affiliate of Covered Entity that is, or has been, considered a covered entity as defined by HIPAA.
 - ii. “**Breach**” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI as defined in 45 CFR § 164.402 and 42 USC § 17921.
 - iii. “**Breach Notification Rule**” means the portion of HIPAA set forth in subpart D of 45 CFR Part 164.
 - iv. “**CFR**” means the Code of Federal Regulations.
 - v. “**Data Aggregation**” means, with respect to PHI created or received by Business Associate in its capacity as the “business associate” under HIPAA of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of one or more other “covered entity” under HIPAA, to permit data analyses that relate to Health Care Operations (defined below) of the respective covered entities. The meaning of “data aggregation” in this BAA shall be consistent with the meaning given to that term in the Privacy Rule.

- vi. “**Designated Record Set**” has the meaning given to such term under the Privacy Rule, including 45 CFR § 164.501.
- vii. “**De-Identify**” means to alter the PHI such that the resulting information meets the requirements described in 45 CFR §§ 164.514(a) and (b).
- viii. “**Disclosure**” means the release, transfer, provision of, access to, licensure of, use of, or divulging in any other manner of information outside the entity holding the information as defined in 45 CFR § 160.103.
- ix. “**Electronic PHI**” means any PHI maintained in or transmitted by electronic media as defined in 45 CFR § 160.103.
- x. “**Health Care Operations**” has the meaning given to that term in 45 CFR § 164.501.
- xi. “**Individual**” has the same meaning given to that term in 45 CFR §§ 164.501 and 160.103 as and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- xii. “**Individually Identifiable Health Information**” means health information, in any form or medium, including demographic information or inquiries collected from an individual, that is created or received by a covered entity or a business associate of the covered entity and relates to the past, present, or future care of the individual. Individually identifiable health information is information serving to identify the individual directly, or for which there is a reasonable basis to believe it can serve to identify the individual as provided in 45 CFR § 160.103.
- xiii. “**Protected Health Information**” or “**PHI**” has the meaning given to the term “protected health information” in 45 CFR §160.103, limited to the information created or received by Business Associate from or behalf of Covered Entity, in whichever medium it is maintained, transmitted, or stored.
- xiv. “**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.
- xv. “**Security Rule**” means the Security Standards for the Protection of Electronic Health Information provided in 45 CFR Part 160 and Part 164, Subparts A and C.

xvi. “**Unsecured Protected health Information**” or “**Unsecured PHI**” means any “protected health information” as defined in 45 CFR §160.103 that is not rendered unusable, unreadable or indecipherable to unauthorized individuals or entities through the use of a technology or methodology specified by the Secretary of the federal Department of Health and Human Services in the guidance issued pursuant to the HITECH Act and codified in 42 USC § 17932(h).

xvii. “**USC**” means the United States Code.

III. DATA OWNERSHIP

Business Associate’s data stewardship does not confer data ownership rights on Business Associate with respect to any data shared with it under the Agreement, including any and all forms thereof.

IV. USE AND DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

- a. Except as otherwise provided in this BAA and the laws and regulations related to PHI, Business Associate may use or disclose PHI as reasonably necessary to provide the services described in the Agreement to Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this BAA or as required by law.
- b. Except as otherwise limited by this BAA or federal or Nevada law, Covered Entity authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate’s business and to carry out its legal responsibilities under Contract. Business Associate may disclose PHI for its proper management and administration, provided that (i) the disclosures are required by law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from this third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and (b) an agreement from this third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.
- c. Business Associate will not use or disclose PHI in a manner other than as provided in this BAA, as permitted under the Privacy Rule, or as required by law. Business Associate will use or disclose PHI, to the extent practicable, as a limited data set or limited to the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with Section 13405(b) of the HITECH Act (codified at 42 USC § 17935(b)) and any of the act’s implementing regulations

adopted by the federal United States Department of Health and Human Services, for each use or disclosure of PHI.

- d. Upon request at any time, and at no additional cost, Business Associate will make available to Covered Entity any of Covered Entity's PHI that Business Associate or any of its agents or subcontractors have in their possession.
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).
- f. Except as otherwise limited in this BAA, Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if an Individual has required this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information relates in accordance with 42 USC § 17935.
- g. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI, as specified by 42 USC § 17935, unless the Covered Entity obtained a valid authorization, in accordance with 45 CFR § 164.508 that includes a specification that protected health information can be exchanged for remuneration.
- h. Business Associate shall not use artificial intelligence (AI), machine learning (ML), or other automated decision-making tools to create, process, analyze, or interpret PHI unless expressly authorized in writing by the Covered Entity. Any permitted use of such technologies must comply with applicable federal and state laws, including the HIPAA Privacy and Security Rules, and shall not result in automated decision-making that impacts individuals' rights or access to benefits without human oversight.
- i. Business Associate must disclose to Covered Entity any AI or ML tools it uses that interact with PHI, provide sufficient documentation of safeguards and risk assessments related to those tools, and demonstrate that such tools operate in a transparent, explainable, and auditable manner.

V. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- a. **Safeguards Against Misuse of PHI.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Agreement or this BAA and Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with 45 CFR 164.308, 164.310, 164.312, 164.316, and 164.504(e)(2)(ii)(B).

Sections 164.308, 164.310 and 164.312 of the CFR apply to the Business Associate of the Covered Entity in the same manner that such sections apply to the Covered Entity. Technical safeguards must meet the information security standards and guidelines set forth by the National Institute of Standards and Technology (NIST). Business Associate agrees to take reasonable steps, including providing adequate training to its employees to ensure compliance with this BAA and to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this BAA.

- b. Contents of Notifications to Covered Entity by Business Associate and Direction of Corrective Action.** In the event of a breach or suspected breach of PHI, the report to the Covered Entity by Business Associate in accordance with the timelines set forth below must be in writing and include the following: a brief description of the incident; the date of the incident; the date the incident was discovered by the Business Associate; a thorough description of the unsecured PHI that was involved in the incident; the number of individuals whose protected health information was involved in the incident; the steps the Business Associate is taking to investigate the incident and to protect against further incidents; and proof of timely or contemporaneous notification by Business Associate to any of the Business Associate's insurers. Business Associate must take prompt corrective action at its sole expense to cure any such deficiencies and mitigate any significant harm that may have occurred to individual(s) whose information was disclosed inappropriately based on the determinations of Covered Entity.
- c. Reporting Disclosures of PHI and Security Incidents.** Business Associate will immediately report to Covered Entity in writing any use, access, or disclosure of PHI not provided for by this BAA or on the first day Business Associate, its agents, or subcontractors become aware of the same or would have been aware by exercising reasonable diligence in accordance with 45 CFR § 164.410, 164.504(e)(2)(ii)(C) and 164.308(b) and 42 USC § 17921 and Business Associate agrees to report to Covered Entity any Security Incident affecting Electronic PHI of Covered Entity of which it becomes aware. Business Associate agrees to report any such event within five business days of becoming aware of the event.
- d. Reporting Breaches of Unsecured PHI.** Business Associate will notify Covered Entity in writing promptly upon the discovery of any suspected or actual Breach of Unsecured PHI in accordance with the requirements set forth in 45 CFR § 164.410, but in no case later than 5 calendar days after discovery of a Breach. Business Associate will be responsible for notifying Individuals whose unsecured PHI was breached in accordance with 42 USC § 17932 and 45 CFR 164.404 through 164.406 and must provide evidence to Covered Entity that appropriate and timely notification to Individuals or others when necessary as specified in 45 CFR § 164.404 and 45 CFR 164.406 has timely occurred. Business Associate is further

responsible for all costs of notification set forth herein as well as all costs associated with mitigating future breaches. Business Associate must further notify the Secretary of the federal United States Department of Health and Human Services of all breaches in accordance with 45 CFR § 164.408 and must provide Covered Entity of a contemporaneous copy of all notifications made as required.

- e. **Mitigation of Disclosures of PHI.** Business Associate will take reasonable measures to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this BAA.
- f. **Agreements with Agents or Subcontractors.** Business Associate will ensure that any of its agents or subcontractors (such agents or Subcontractors must be duly disclosed and authorized per the State of Nevada Contract to which this BAA is incorporated) that have access to, or to which Business Associate provides, PHI agree in writing to the restrictions and conditions concerning uses and disclosures of PHI contained in this BAA and agree to implement reasonable and appropriate safeguards to protect any Electronic PHI that it creates, receives, maintains or transmits on behalf of Business Associate or, through the Business Associate, Covered Entity. Business Associate shall ensure that all subcontracts and agreements provide the same level of privacy and security as this BAA and that the Business Associate implements and maintains sanctions against agents and/or subcontractors who violate such restrictions and conditions and ensure appropriate mitigation of the effects of violation(s) outlined under 45 CFR § 164.530(f) and 164.530(e)(1).
- g. **Offshore Use Limitation.** Business Associate shall not store, access, or process PHI outside the United States without the prior written consent of the Covered Entity. This includes, but is not limited to, accessing PHI through remote desktop, cloud environments, or other electronic means from locations outside the U.S. Business Associate shall maintain appropriate contractual controls and technical safeguards to enforce this restriction and must provide documentation upon request demonstrating compliance.
- h. **Audit Report.** Upon request and at no additional cost or charge, Business Associate will provide Covered Entity, or upstream Business Associate, with a copy of its most recent independent HIPAA compliance report (which meets the AT-C Section 315 attestation standard issued by the American Institute of Certified Public Accountants), HITRUST certification or other mutually agreed upon independent standards based third party audit report. Business Associate and individuals associated with Business Associate are solely responsible for all civil and criminal penalties assessed as a result of an audit, breach, or violation of HIPAA or HITECH laws or regulations.

i. Access to PHI by Individuals.

- i. Upon request, Business Associate agrees, at no additional cost or charge, to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated Record Set in the time and manner designated by Covered Entity to enable Covered Entity to respond to an Individual's request for access to PHI under 45 CFR §164.524.
- ii. In the event any Individual requests access to the Individual's PHI directly from Business Associate, Business Associate within five business days, will forward that request to Covered Entity. Any disclosure of, or decision not to disclose, the PHI requested by an Individual and compliance with the requirements applicable to an Individual's right to obtain access to PHI shall be the sole responsibility of Covered Entity, but at no additional cost or charge to Individual or Covered Entity by Business Associate.

j. Amendment of PHI.

- i. Upon request and instruction from Covered Entity, Business Associate will amend PHI or a record about an Individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate as directed by Covered Entity in accordance with procedures established by 45 CFR §164.526. Any request by Covered Entity to amend such information will be completed by Business Associate within 15 business days of Covered Entity's request.
- ii. In the event that any Individual requests that Business Associate amend such Individual's PHI or record in a Designated Record Set, Business Associate within ten business days will forward this request to Covered Entity. Any amendment of, or decision not to amend, the PHI or record as requested by an Individual and compliance with the requirements applicable to an Individual's right to request an amendment of PHI will be the sole responsibility of Covered Entity, but at no additional cost or charge to Individual or Covered Entity by Business Associate.

k. Accounting of Disclosures.

- i. Business Associate will document any disclosures of PHI made by it to account for such disclosures as required by 45 CFR § 164.528(a). Business Associate also will make available information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 CFR § 164.528. At a minimum, Business Associate will furnish Covered Entity the following with respect to any covered disclosures by Business Associate: (i) the date

of disclosure of PHI; (ii) the name of the entity or person who received PHI, and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure which includes the basis for such disclosure.

- ii. Business Associate will furnish to Covered Entity information collected in accordance with this Section, within ten business days after written request by Covered Entity, to permit Covered Entity to make an accounting of disclosures as required by 45 CFR §164.528, or in the event that Covered Entity elects to provide an Individual with a list of its business associates, Business Associate will provide an accounting of its disclosures of PHI upon request of the Individual, if and to the extent that such accounting is required under the HITECH Act or under federal United States Department of Health and Human Services regulations adopted in connection with the HITECH Act.
- iii. In the event an Individual delivers the initial request for an accounting directly to Business Associate, Business Associate will within ten business days forward such request to Covered Entity.

1. **Availability of Books and Records.** Business Associate will make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI, upon request, to the Secretary of the federal United States Department of Health and Human Services for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA, and this BAA.
- m. **Training.** Business Associate must train employees (and ensure verification of the same by Business Associate's agents and subcontractors as applicable) on the policies and procedures associated with safeguarding PHI. This includes, at a minimum, training that covers the technical, physical and administrative safeguards needed to prevent inappropriate uses or disclosures of protected health information; training to prevent any intentional or unintentional use or disclosure that is a violation of HIPAA; and training that emphasizes the criminal and civil penalties related to HIPAA breaches or inappropriate uses or disclosures of protected health information. Training must be completed within 30 days of the date of hire by Business Associate and all employees must be re-trained at least annually thereafter. The Business Associate must maintain written records for a period of six years. These records must document each employee that received training and the date the training was provided or received.
- n. **Litigation or Administrative Proceedings.** Business Associate shall make itself, any subcontractors, employees, or agents assisting the Business Associate in the performance of its obligations, available to Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event litigation or

administrative proceedings are commenced against Covered Entity, its administrators or workforce members upon a claimed violation of HIPAA, the Privacy and Security Rule, the HITECH Act, or other laws relating to security and privacy. Nothing herein limits or abrogates Business Associate's obligation under the State of Nevada Contract to which this BAA is incorporated to defend and indemnify Covered Entity.

- o. Policies and Procedures.** Business Associate must adopt written privacy and security policies and procedures and documentation standards to meet the requirements of HIPAA.
- p. Privacy and Security Officer(s).** Business Associate must appoint Privacy and Security Officer(s) whose responsibilities shall include: monitoring the Privacy and Security compliance of Business Associate; development and implementation of Business Associate's HIPAA Privacy and Security policies and procedures; establishment of Privacy and Security training programs; and development and implementation of an incident risk assessment and response plan in the event Business Associate sustains a breach or suspected breach of protected health information.

VI. RESPONSIBILITIES OF COVERED ENTITY

- a. With regard to the use and/or disclosure of PHI by Business Associate, Covered Entity agrees to:**

 - i. Notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.**
 - ii. Notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.**
 - iii. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.**
 - iv. Except for Data Aggregation or management and administrative activities of Business Associate, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.**

VII. TERM AND TERMINATION

- a. This BAA as an incorporated attachment to a State of Nevada Contract is effective upon the effective date of that referenced Contract and continues in effect extending beyond any termination of said Contract until all PHI related thereto in the custody or control of Business Associate is returned to Covered Entity and destroyed thereafter by Business Associate, or, if no feasibly destroyed, protections are extended by Business Associate to such information.
- b. Covered Entity may terminate immediately this BAA, the Agreement, and any other related agreements if Covered Entity makes a determination that Business Associate has breached a material term of this BAA and Business Associate has failed to cure that material breach, to Covered Entity's reasonable satisfaction, in accordance with the notice provisions set forth in the State of Nevada Contract to which this BAA is incorporated. Covered Entity may report the breach to the Secretary of the federal United States Department of Health and Human Services.
- c. If Business Associate determines that Covered Entity has breached a material term of this BAA, then Business Associate will comply with the notice provisions set forth in the State of Nevada Contract to which this BAA is incorporated and related cure opportunity deadline and procedures. Business Associate may immediately report the problem to the Secretary of the federal United States Department of Health and Human Services.
- d. Upon termination of the Agreement or this BAA for any reason, all PHI maintained by Business Associate will be returned to Covered Entity or destroyed by Business Associate. Business Associate will not retain any copies of such information. This provision will apply to PHI in the possession of Business Associate's agents and subcontractors. Business Associate shall provide written certification of the destruction of PHI upon termination of the Agreement, including details of the method used and the date of destruction. If return or destruction of the PHI is not feasible, in Business Associate's reasonable judgment, Business Associate will furnish Covered Entity with notification, in writing, of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate will extend the protections of this BAA to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. The Parties understand that this Section will survive any termination of this BAA or the State of Nevada Contract to which it is incorporated.

VIII. HITECH ACT COMPLIANCE

- a. The Parties acknowledge that the HITECH Act includes significant changes to the Privacy Rule and the Security Rule. The privacy subtitle of the HITECH Act sets forth provisions that significantly change the requirements for business associates and the agreements between business associates and covered entities under HIPAA and these changes may be further clarified in forthcoming regulations and guidance. Each Party agrees to comply with the applicable provisions of the HITECH Act and any HHS regulations issued with respect to the HITECH Act. The Parties also agree to negotiate in good faith to modify this BAA via a duly authorized State of Nevada Contract Amendment as reasonably necessary to comply with the HITECH Act and its regulations as they become effective but, in the event that the Parties are unable to reach agreement on such a modification, the Parties shall utilize applicable and available contract termination provisions set forth in the State of Nevada Contract to which this BAA is incorporated to the extent jointly or severally authorized, utilizing the notice deadlines and provisions related to the same.

Nothing herein creates any rights in favor of any third party except as expressly stated herein or as provided by law. The Business Associate and Covered Entity have agreed to the terms of the above written BAA by incorporation of the same as an attachment or exhibit to the State of Nevada Contract between the Parties and in accordance with the order of precedence set forth in the State of Nevada Contract except where federal law may preempt Nevada law.

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

BUSINESS ASSOCIATE

Independent Contractor's Signature Date

Independent Contractor Title

STATE OF NEVADA NEVADA HEALTH AUTHORITY

Stacie Weeks, JD, MPH Date

Director

Title