

CLARK COUNTY NEVADA

Business Associate Agreement

This Business Associate Agreement (hereinafter referred to as “Agreement”) is made and entered by and between **Clark County, Nevada** (hereinafter referred to as “Clark County”), a county duly organized pursuant to § 243.035 and § 243.040 of the Nevada Revised Statutes, with its principal place of business at 500 S. Grand Central Parkway, Las Vegas, Nevada, 89106, and the **Business Associate** that has executed this Agreement whose name and address are set forth below (hereinafter referred to as “Business Associate”).

WHEREAS, Clark County is a “hybrid covered entity” as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, 45 C.F.R. Parts 160, 162, and 164 (hereinafter referred to as “HIPAA”).

WHEREAS, Clark County and Business Associate have entered into a business relationship (hereinafter referred to as the “Underlying Agreement”) whereby Business Associate provides services to Clark County;

WHEREAS, the Underlying Agreement establishes the terms of the relationship between Clark County and the Business Associate;

WHEREAS, in furtherance of the Underlying Agreement, Clark County discloses to Business Associate certain Protected Health Information (hereinafter referred to as “PHI,”) and Electronic Protected Health Information (hereinafter referred to as “EPHI”; PHI and EPHI all as defined at 45 CFR 160.103) that is subject to protection under HIPAA;

WHEREAS, Business Associate is defined in HIPAA as a “business associate” because it is a recipient of PHI from Clark County;

WHEREAS, pursuant to HIPAA, all business associates of covered entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI and EPHI; and

WHEREAS, the purpose of this Agreement is to comply with the requirements of HIPAA, including, but not limited to, the business associate contract requirements found at 45 C.F.R § 164.504(e) and 45 C.F.R. § 164.314(a).



NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Agreement, the terms used herein have the same meanings as set forth in HIPAA.
2. Scope of Use and Disclosure by Business Associate of Protected Health Information
 - A. Business Associate shall be permitted to use and disclose PHI that is disclosed to it by Clark County as necessary to perform its obligations under the Underlying Agreement in accordance with Business Associate's established policies, procedures and requirements, provided that such use or disclosure of PHI would not violate HIPAA if done by Clark County or the minimum necessary policies and procedures of Clark County.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Business Associate may:
 - (a) Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - (b) Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate; provided however, that the disclosures are required by law or Business Associate has received from the third party written assurances that (i) the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (ii) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - (c) Aggregate the PHI with that of other covered entities for the purpose of providing Clark County with data analyses relating to the Health Care Operations of covered entity. Business Associate may not disclose the PHI of one covered entity to another covered entity without the written authorization of the covered entities involved;
 - (d) To report violations of law to appropriate Federal and State authorities; and



- (e) De-identify any and all PHI created or received by Business Associate under this Agreement; provided, that the de-identification conforms to the requirements of the Privacy Rule.

3. Obligations of Business Associate. In connection with its use and disclosure of PHI, Business Associate agrees that it will:

- A. Use or further disclose PHI only as permitted or required by this Agreement or as required by law;
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
- C. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement;
- D. Report to Clark County any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware;
- E. Establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that it creates, receives, maintains, or transmits on behalf of Clark County;
- F. Follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information (“the Security Rule”, published at 45 CFR Parts 160 - 164);
- G. Require contractors or agents to whom Business Associate provides PHI or EPHI to agree to the same restrictions and conditions that apply to Business Associate pursuant to this Agreement including, but not limited to, paragraph 3(E) above;
- H. Report to Clark County any security incident of which Business Associate becomes aware. For purposes of this agreement, a “security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations;
- I. In the event that the PHI in Business Associate’s possession constitutes a Designated Record Set, within ten (10) days of receiving a written request from



Clark County, provide to Clark County, or an individual designated by Clark County, access to PHI that is not in the possession of Clark County;

- J. In the event that the PHI in Business Associate's possession constitutes a Designated Record Set, within fifteen (15) days of receiving a written request from Clark County incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule;
 - K. Make available to the Secretary of Health and Human Services Business Associate's internal practices, books and records relating to the use and disclosure of PHI for purposes of determining Clark County's compliance with the Privacy Rule, subject to any applicable legal privileges;
 - L. To document such disclosures of PHI and information related to such disclosures as would be required for Clark County to respond to a request by an Individual for an accounting of disclosures of PHI;
 - M. Within fifteen (15) days of receiving a request from Clark County, make available the information necessary for Clark County to make an accounting of disclosures of PHI about an individual;
 - N. Not make any disclosure of PHI that Clark County would be prohibited from making or violate Clark County's minimum necessary policies and procedures.
4. Obligations of Clark County. Clark County agrees that it:
- A. Will promptly notify Business Associate of any limitations(s) in its notice of privacy practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
 - B. Will promptly notify Business Associate in writing of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI;
 - C. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI agreed to by Clark County to the extent that such restrictions may affect Business Associate's use or disclosure of PHI;
 - D. Except if the Business Associate will use or disclose PHI for data aggregation or management and administrative activities of Business Associate, will not request



Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Clark County.

5. Term and Termination.

- A. Term. This Agreement shall be effective on the date of execution by Business Associate and continue in effect until all of the PHI and EPHI provided by Clark County to Business Associate, or created or received by Business Associate on behalf of Clark County, is destroyed or returned to Clark County, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of Paragraph 5(E).
- B. Termination for Cause. Upon Clark County's knowledge of a material breach by Business Associate, Clark County shall either:
- (a) Provide Business Associate with notice of the existence of a material breach or violation and afford Business Associate thirty (30) days to cure the material breach or end the violation and immediately thereafter terminate this Agreement in the event Business Associate fails to cure the breach or to end the violation to the satisfaction of Clark County within said thirty (30) day period;
 - (b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (c) If neither termination nor cure are feasible, Clark County shall report the violation to the Secretary of the Department of Health and Human Services or his designee.
- C. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.
- D. Effect on Underlying Agreement. Termination of this Agreement will result in termination of the Underlying Agreement.
- E. Obligations of Business Associate upon Termination.
- (a) Return or Destruction. Upon the termination or non-renewal of this Agreement, for any reason, Business Associate agrees to return or destroy all PHI and EPHI in its possession pursuant to the Privacy Rule, if it is feasible to do so. This provision shall apply to PHI that is in the



possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (b) Non-Return or Destruction. If it is not feasible for Business Associate to return or destroy the PHI upon the termination or non-renewal of the Agreement, Business Associate will notify Clark County in writing. This notification will include:
 - i. A statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and
 - ii. The specific reasons for its determination.
- (c) Manner of Retaining Information. If the information is not returned or destroyed upon termination or non-renewal of the Agreement, Business Associate agrees to extend indefinitely any and all protections, limitations and restrictions contained in this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible.
- (d) Information Possessed by a Subcontractor. Upon the termination or non-renewal of this Agreement, for any reason, Business Associate must require Subcontractor to return or destroy all PHI in its possession pursuant to the Privacy Rule, if it is feasible to do so. Subcontractor shall retain no copies of the PHI. If it is not feasible, Business Associate must provide an explanation to Clark County and require its subcontractor(s) and/or agent(s) to agree to extend indefinitely any and all protections, limitations and restrictions contained in this Agreement to such PHI in the possession of the subcontractor and/or agent and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible.

- 6. Regulatory References. A reference in this Agreement to the Privacy Rule means the Privacy Rule then in effect. A reference in this Agreement to the Security Rule means the Security Rule in then effect.
- 7. Amendment. Business Associate and Clark County agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Clark County to comply with the requirements of HIPAA.



8. Survival. The obligations of Business Associate under section 5(E) of this Agreement shall survive any termination of this Agreement.
9. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
10. Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Clark County and Business Associate to comply with HIPAA.
11. Waiver. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
12. Effect of Agreement. This Agreement supplements and is made a part of the Underlying Agreement between Business Associate and Clark County. Except to the extent inconsistent with this Agreement, the Underlying Agreement shall remain in full force and effect.

Clark County

(Organization Name)

By: _____
Authorized County Employee

By: _____
(Signature)

Department: _____

(Printed Name)

(Title)

(Street)

(City, State, Zip)

(Date)

(Date)

