

CETS #:	25224
Agency Reference #:	

## INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

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

Public Entity #1:	<b>Department of Health and Human Services Division of Health Care Financing and Policy</b>
Address:	<b>1100 E. William St., Suite 101</b>
City, State, Zip Code:	<b>Carson City, NV 89701</b>
Contact:	<b>Lisa Tuttle, Contract Manager</b>
Phone:	<b>775-684-3676 (main)</b>
Fax:	
Email:	<a href="mailto:dhcfppcu@dhcfp.nv.gov"><b>dhcfppcu@dhcfp.nv.gov</b></a>

Public Entity #2:	<b>Clark County on behalf of its Department of Family Services</b>
Address:	<b>500 Grand Central Parkway</b>
City, State, Zip Code:	<b>Las Vegas, NV 89155</b>
Contact:	<b>Jessica Colvin, Chief Financial Officer</b>
Phone:	<b>702-455-3324</b>
Fax:	<b>702-379-9724</b>
Email:	<a href="mailto:Jessica.Colvin@clarkcountynv.gov"><b>Jessica.Colvin@clarkcountynv.gov</b></a>

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**

<b>TERM</b>	<b>DEFINITION</b>
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 <sup>st</sup> and ending June 30 <sup>th</sup> 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, 2022	To:	June 30, 2026
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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
<b>ATTACHMENT B:</b>	<b>BUSINESS ASSOCIATE ADDENDUM</b>

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:

\$500,000.00 (FY23); \$525,000.00 (FY24); \$551,250.00 (FY25); \$578,813.00 (FY26)	per	Each State Fiscal Year
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Total Contract or installments payable at:	As Invoiced per Attachment A and approved by the State
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Total Contract Not to Exceed:	\$2,155,063.00
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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.

**CLARK COUNTY ON BEHALF OF ITS  
DEPARTMENT OF FAMILY SERVICES**

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Jim Gibson

Date

Chair, Board of County Commissioners  
Title

ATTESTED BY:

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Clark County Clerk

Date

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)  
DIVISION OF HEALTH CARE FINANCING AND POLICY (DHCFP)**

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Suzanne Bierman, JD, MPH

Date

Administrator, DHCFP  
Title

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Signature – Board of Examiners

On:

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Date

**APPROVED BY BOARD OF EXAMINERS**

Approved as to form by:

On:

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Deputy Attorney General for Attorney General

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Date

## **ATTACHMENT A** **SCOPE OF WORK**

### **TARGETED CASE MANAGEMENT AND ADMINISTRATIVE SERVICES**

This Interlocal Agreement outlines the responsibilities between the Division of Health Care Financing and Policy (DHCFP) and Clark County on behalf of its Department of Family 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 DHCFP.
  - 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 DHCFP. 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 DHCFP.
  - D. Provide a report of services and a cost report annually to DHCFP for TCM services in the format approved by DHCFP, 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 DHCFP on a case by case basis. The County must provide an electronic version of their claims for submission before DHCFP will consider that it has received the official version of the claims for the cost settlement process.
  - E. Provide DHCFP 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 DHCFP with the documentation that the rate for eligible services is based upon the approved methodology of DHCFP, as defined in the Nevada Medicaid State Plan, Attachment 4.19-B CPE, before any payment for those services is made by DHCFP. 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 DHCFP upon services rendered which are allowable based upon DHCFP 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 DHCFP'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 DHCFP of such obligation.
- J. Provide the required State matching share for Federal Medicaid funds paid for children covered under the TCM program. This contract certifies 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. DHCFP 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 DHCFP. 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 DHCFP for reconciliation and cost settlement. DHCFP 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, DHCFP will recoup the federal share of the overpayment. If the actual, certified costs exceed the interim Medicaid payments, DHCFP will pay the federal share of the difference to the provider in accordance with the final actual certification agreement. DHCFP 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 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 DHCFP. 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 DHCFP.
- C. Provide an electronic version of a report of Administrative services and invoice costs to DHCFP quarterly in the format approved by DHCFP, 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 DHCFP 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 DHCFP 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 DHCFP of such obligation, any Title XIX funds received by the County in the event that a Federal audit or audit by a contractor of DHCFP results in a determination that such costs were not reimbursable under the Title XIX program.

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 provided to DHCFP within (60) days of written request.

II. DHCFP 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. DHCFP 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 DHCFP 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 DHCFP within 60 days of receipt of the audit report.

## ~~ATTACHMENT B~~

STATE OF NEVADA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ~~BUSINESS ASSOCIATE ADDENDUM~~

~~BETWEEN~~

~~The Division of Health Care Financing and Policy~~  
Herein after referred to as the "Covered Entity"

~~and~~

~~Clark County on behalf of its Department of Family Services~~  
Herein after referred to as the "Business Associate"

~~PURPOSE.~~ In order to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, Public Law 111-5 this Addendum is hereby added and made part of the Contract between the Covered Entity and the Business Associate. This Addendum establishes the obligations of the Business Associate and the Covered Entity as well as the permitted uses and disclosures by the Business Associate of protected health information it may possess by reason of the Contract. The Covered Entity and the Business Associate shall protect the privacy and provide for the security of protected health information disclosed to the Business Associate pursuant to the Contract and in compliance with HIPAA, the HITECH Act, and regulation promulgated there under by the U.S. Department of Health and Human Services ("HIPAA Regulations") and other applicable laws.

~~WHEREAS,~~ the Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, the Business Associate is considered a business associate of the Covered Entity as defined in HIPAA Regulations; and

~~WHEREAS,~~ the Business Associate may have access to and/or create, receive, maintain or transmit certain protected health information from or on behalf of the Covered Entity, in fulfilling its responsibilities under such arrangement; and

~~WHEREAS,~~ HIPAA Regulations require the Covered Entity to enter into a Contract containing specific requirements of the Business Associate prior to the disclosure of protected health information; and

~~THEREFORE,~~ in consideration of the mutual obligations below and the exchange of information pursuant to this Addendum and to protect the interests of both Parties, the Parties agree to all provisions of this Addendum.

- ~~I.~~ **DEFINITIONS.** The following terms in this Addendum shall have the same meaning as those terms in the HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
  - 1.** **Business Associate** shall mean the name of the organization or entity listed above and shall have the meaning given to the term under the Privacy and Security Rule and the HITECH Act. For full definition refer to 45 CFR 160.103.
  - 2.** **Contract** shall refer to this Addendum and that particular contract to which this Addendum is made a part.
  - 3.** **Covered Entity** shall mean the name of the Division listed above and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to 45 CFR 160.103.

4. ~~Parties~~ shall mean the Business Associate and the Covered Entity.

## ~~II. OBLIGATIONS OF THE BUSINESS ASSOCIATE~~

1. **~~Access to Protected Health Information.~~** The Business Associate will provide, as directed by the Covered Entity or an individual, access to inspect or obtain a copy of protected health information about the individual that is maintained in a designated record set by the Business Associate or its agents or subcontractors, in order to meet the requirements of HIPAA Regulations. If the Business Associate maintains an electronic health record, the Business Associate, its agents or subcontractors shall provide such information in electronic format to enable the Covered Entity to fulfill its obligations under HIPAA Regulations.
2. **~~Access to Records.~~** The Business Associate shall make its internal practices, books and records relating to the use and disclosure of protected health information available to the Covered Entity and to the Secretary for purposes of determining Business Associate's compliance with HIPAA Regulations.
3. **~~Accounting of Disclosures.~~** Upon request, the Business Associate and its agents or subcontractors shall make available to the Covered Entity or the individual information required to provide an accounting of disclosures in accordance with HIPAA Regulations.
4. **~~Agents and Subcontractors.~~** The Business Associate must ensure all agents and subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to such information. The Business Associate must implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation as outlined under HIPAA Regulations.
5. **~~Amendment of Protected Health Information.~~** The Business Associate will make available protected health information for amendment and incorporate any amendments in the designated record set maintained by the Business Associate or its agents or subcontractors, as directed by the Covered Entity or an individual, in order to meet the requirements of HIPAA Regulations.
6. **~~Audits, Investigations, and Enforcement.~~** If the data provided or created through the execution of the Contract becomes the subject of an audit, compliance review, or complaint investigation by the Office of Civil Rights or any other federal or state oversight agency, the Business Associate shall notify the Covered Entity immediately and provide the Covered Entity with a copy of any protected health information that the Business Associate provides to the Secretary or other federal or state oversight agency concurrently, to the extent that it is permitted to do so by law. The Business Associate and individuals associated with the Business Associate are solely responsible for all civil and criminal penalties assessed as a result of an audit, breach or violation of HIPAA Regulations.
7. **~~Breach or Other Improper Access, Use or Disclosure Reporting.~~** The Business Associate must report to the Covered Entity, in writing, any access, use or disclosure of protected health information not permitted by the Contract, Addendum or HIPAA Regulations by Business Associate or its agents or subcontractors. The Covered Entity must be notified immediately upon discovery or the first day such breach or suspected breach is known to the Business Associate or by exercising reasonable diligence would have been known by the Business Associate in accordance with HIPAA Regulations. In the event of a breach or suspected breach of protected health information, the report to the Covered Entity 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 protected health information that was involved in the incident; the number of individuals whose protected health information was involved in the incident; and the steps the Business Associate or its agent or subcontractor is taking to investigate the incident and to protect against further incidents. The Covered Entity will determine if a breach of unsecured protected health information has occurred and will notify the Business Associate of the determination. If a breach of unsecured protected health information is determined, the Business Associate must take prompt corrective action to cure any such deficiencies and mitigate any significant harm that may have occurred to individual(s) whose information was disclosed inappropriately.

8. **Breach Notification Requirements.** If the Covered Entity determines a breach of unsecured protected health information by the Business Associate, or its agents or subcontractors has occurred, the Business Associate will be responsible for notifying the individuals whose unsecured protected health information was breached in accordance with HIPAA Regulations. The Business Associate must provide evidence to the Covered Entity that appropriate notifications to individuals and/or media, when necessary, as specified in HIPAA Regulations has occurred. The Business Associate is responsible for all costs associated with notification to individuals, the media or others as well as costs associated with mitigating future breaches. The Business Associate must notify the Secretary of all breaches in accordance with HIPAA Regulations and must provide the Covered Entity with a copy of all notifications made to the Secretary.
9. **Data Ownership.** The Business Associate acknowledges that the Business Associate or its agents or subcontractors have no ownership rights with respect to the protected health information it creates, receives or maintains, or otherwise holds, transmits, uses or discloses.
10. **Litigation or Administrative Proceedings.** The Business Associate shall make itself, any subcontractors, employees, or agents assisting the Business Associate in the performance of its obligations under the Contract or Addendum, available to the 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 the Covered Entity, its administrators or workforce members upon a claimed violation by Business Associate of HIPAA Regulations or other laws relating to security and privacy.
11. **Minimum Necessary.** The Business Associate and its agents and subcontractors shall request, use and disclose only the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA Regulations.
12. **Policies and Procedures.** The Business Associate must adopt written privacy and security policies and procedures and documentation standards to meet the requirements of HIPAA Regulations.
13. **Privacy and Security Officer(s).** The Business Associate must appoint Privacy and Security Officer(s) whose responsibilities shall include: monitoring the Privacy and Security compliance of the Business Associate; development and implementation of the 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 the Business Associate sustains a breach or suspected breach of protected health information.
14. **Safeguards.** The Business Associate must implement safeguards as necessary to protect the confidentiality, integrity and availability of the protected health information the Business Associate creates, receives, maintains, or otherwise holds, transmits, uses or discloses on behalf of the Covered Entity. Safeguards must include administrative safeguards (e.g., risk analysis and designation of security official), physical safeguards (e.g., facility access controls and workstation security), and technical safeguards (e.g., access controls and audit controls) to the confidentiality, integrity and availability of the protected health information, in accordance with HIPAA Regulations. Technical safeguards must meet the standards set forth by the guidelines of the National Institute of Standards and Technology (NIST). The Business Associate agrees to only use or disclose protected health information as provided for by the Contract and Addendum and to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate, of a use or disclosure, in violation of the requirements of this Addendum as outlined in HIPAA Regulations.
15. **Training.** The Business Associate must train all members of its workforce on the policies and procedures associated with safeguarding protected health information. 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 Regulations; and training that emphasizes the criminal and civil penalties related to HIPAA breaches or inappropriate uses or disclosures of protected health information. Workforce training of new employees must be completed within 30 days of the date of hire and all employees must be trained at least annually. 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.

16. **Use and Disclosure of Protected Health Information.** The Business Associate must not use or further disclose protected health information other than as permitted or required by the Contract or as required by law. The Business Associate must not use or further disclose protected health information in a manner that would violate the requirements of HIPAA Regulations.

### **III. PERMITTED AND PROHIBITED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE**

The Business Associate agrees to these general use and disclosure provisions:

1. **Permitted Uses and Disclosures:**
  - a. Except as otherwise limited in this Addendum, the Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate HIPAA Regulations, if done by the Covered Entity.
  - b. Except as otherwise limited in this Addendum, the Business Associate may use or disclose protected health information received by the Business Associate in its capacity as a Business Associate of the Covered Entity, as necessary, for the proper management and administration of the Business Associate, to carry out the legal responsibilities of the Business Associate, as required by law or for data aggregation purposes in accordance with HIPAA Regulations.
  - c. Except as otherwise limited by this Addendum, if the Business Associate discloses protected health information to a third party, the Business Associate must obtain, prior to making such disclosure, reasonable written assurances from the third party that such protected health information will be held confidential pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to the third party. The written agreement from the third party must include requirements to immediately notify the Business Associate of any breaches of confidentiality of protected health information to the extent it has obtained knowledge of such breach.
  - d. The Business Associate may use or disclose protected health information to report violations of law to appropriate federal and state authorities, consistent with HIPAA Regulations.
2. **Prohibited Uses and Disclosures:**
  - a. Except as otherwise limited in this Addendum, the Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the patient 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 HIPAA Regulations.
  - b. The Business Associate shall not directly or indirectly receive remuneration in exchange for any protected health information, unless the Covered Entity obtained a valid authorization, in accordance with HIPAA Regulations that includes a specification that protected health information can be exchanged for remuneration.

### **IV. OBLIGATIONS OF THE COVERED ENTITY**

1. The Covered Entity will inform the Business Associate of any limitations in the Covered Entity's Notice of Privacy Practices in accordance with HIPAA Regulations, to the extent that such limitation may affect the Business Associate's use or disclosure of protected health information.
2. The Covered Entity will inform the Business Associate of any changes in, or revocation of, permission by an individual to use or disclose protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of protected health information.

3. The Covered Entity will inform the Business Associate of any restriction to the use or disclosure of protected health information that the Covered Entity has agreed to in accordance with HIPAA Regulations, to the extent that such restriction may affect the Business Associate's use or disclosure of protected health information.
4. Except in the event of lawful data aggregation or management and administrative activities, the Covered Entity shall not request the Business Associate to use or disclose protected health information in any manner that would not be permissible under HIPAA Regulations, if done by the Covered Entity.

#### V. TERM AND TERMINATION

1. **Effect of Termination:**
  - a. Except as provided in paragraph (b) of this section, upon termination of this Addendum, for any reason, the Business Associate will return or destroy all protected health information received from the Covered Entity or created, maintained, or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and the Business Associate will retain no copies of such information.
  - b. If the Business Associate determines that returning or destroying the protected health information is not feasible, the Business Associate will provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon a mutual determination that return or destruction of protected health information is infeasible, the Business Associate shall extend the protections of this Addendum to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make return or destruction infeasible, for so long as the Business Associate maintains such protected health information.
  - c. These termination provisions will apply to protected health information that is in the possession of subcontractors, agents or employees of the Business Associate.
2. **Term.** The Term of this Addendum shall commence as of the effective date of this Addendum herein and shall extend beyond the termination of the contract and shall terminate when all the protected health information provided by the Covered Entity to the Business Associate, or accessed, maintained, created, retained, modified, recorded, stored or otherwise held, transmitted, used or disclosed by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or if it is not feasible to return or destroy the protected health information, protections are extended to such information, in accordance with the termination.
3. **Termination for Breach of Contract.** The Business Associate agrees that the Covered Entity may immediately terminate the Contract if the Covered Entity determines that the Business Associate has violated a material part of this Addendum.

#### VI. MISCELLANEOUS

1. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time for the Covered Entity to comply with all the requirements of HIPAA Regulations.
2. **Clarification.** This Addendum references the requirements of HIPAA Regulations, as well as amendments and/or provisions that are currently in place and any that may be forthcoming.
3. **Indemnification.** Each party will indemnify and hold harmless the other party to this Addendum from and against all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:
  - a. Any misrepresentation, breach of warranty or non fulfillment of any undertaking on the part of the party under this Addendum; and
  - b. Any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Addendum.

4. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that any conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved to permit the Covered Entity and the Business Associate to comply with HIPAA Regulations.
5. **Regulatory Reference.** A reference in this Addendum to HIPAA Regulations means the sections as in effect or as amended.
6. **Survival.** The respective rights and obligations of Business Associate under Effect of Termination of this Addendum shall survive the termination of this Addendum.