

# Business Associate and Data Use Agreement



This Business Associate and Data Use Agreement (the “Agreement”) is entered into by and between \_\_\_\_\_ (“Covered Entity”) and *HealthIE Nevada* (“Business Associate”).

## WITNESSETH:

WHEREAS, the Covered Entity and Business Associate have entered into a Participation Agreement under which the Business Associate provides certain services to the Covered Entity;

WHEREAS, the Covered Entity will or may disclose certain information to the Business Associate during the course of the latter’s provision of such services, some of which may constitute “protected health information” or “electronic protected health information,” as those terms are defined in federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), specifically 45 C.F.R. Parts 160 and 164 (the “Privacy Rule” and “Security Rule”);

WHEREAS, the Business Associate will or may provide the Covered Entity access to the Health Information Exchange (“HIE”) managed and administered by the Business Associate, along with the PHI and ePHI therein; and

WHEREAS, the Business Associate acknowledges that it must comply directly with provisions of the Privacy Rule and Security Rule, as both have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”);

WHEREAS, the parties to this Agreement acknowledge that they must comply directly with the provisions of Nevada state law governing Health Information Exchanges (the “HIE Statute”); and

WHEREAS, both the Business Associate and the Covered Entity intend to comply with HIPAA, the HITECH Act, the HIE Statute, and any other applicable state or federal law in order to protect the privacy and to provide for the security of PHI and ePHI disclosed to the Business Associate;

WHEREAS, both the Business Associate and the Covered Entity wish to set forth the terms and the conditions pursuant to which PHI and ePHI received by the Business Associate in the performance of services for the Covered Entity will be handled between themselves and with third parties in compliance with HIPAA, the HITECH Act, the HIE Statute, and any other applicable state or federal law;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions contained herein, and intending to be legally bound, the Business Associate and the Covered Entity agree as follows:

### 1. Definitions.

The following terms shall be defined as set forth below. Terms used but not defined in this Agreement shall be defined as set forth in the Privacy Rule, Security Rule, and HIE Statute, as applicable.

(a) For purposes of this Agreement, “Business Associate” shall mean the named Business Associate hereinabove.

(b) For purposes of this Agreement, “Covered Entity” shall include the named Covered Entity hereinabove, as well as any other entity specifically identified in any joint notice of privacy practices utilized pursuant to the Privacy Rule.

(c) “Electronic Protected Health Information” or “ePHI” shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, limited to the information received by the Business Associate from or on behalf of the Covered Entity.

(d) “Health Information Exchange” or “HIE” shall have the same meaning as that term is defined in Nev. Rev. Stat. § 439.584.

(e) “HIE Statute” shall mean Nev. Rev. Stat. §§ 439.581-439.595 and any and all regulations promulgated thereunder.

(f) “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, together with any and all regulations promulgated thereunder.

(g) “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, together with any and all regulations promulgated thereunder.

(h) “Individual” shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative of an Individual in accordance with 45 C.F.R. § 164.502(g).

(i) “Limited Data Set” shall have the same meaning as that term is defined at 45 C.F.R. § 164.514(e).

(j) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information promulgated at 45 C.F.R. Part 160 and Part 164, Subparts A, D, and E, and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

(k) “Protected Health Information” or “PHI” shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, limited to the information received or created by the Business Associate from or on behalf of the Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use or disclosure of PHI shall apply equally to ePHI.

(l) “Required By Law” shall have the same meaning as that term is defined at 45 C.F.R. § 164.103.

(m) “Secretary” shall mean the Secretary of the Department of Health and Human Services, or his or her designee.

(n) “Security Breach” shall have the same meaning as the term “Breach” is defined at 45 C.F.R. § 164.402, and shall mean the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under the Privacy Rule and which compromises the security or privacy of the PHI or ePHI, subject to the exceptions to the definition of “breach” contained in 45 C.F.R. § 164.402.

(o) “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 C.F.R. § 164.304.

(p) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information promulgated at 45 C.F.R. Part 160 and Part 164, Subpart C, and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

(q) “Unsecured PHI” shall mean PHI or ePHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued pursuant to § 13402 of the HITECH Act, as provided in 45 C.F.R. § 164.402.

## 2. Background of the Agreement.

The Business Associate and the Covered Entity have entered into an agreement for services. In the performance of these services, the Covered Entity may disclose PHI to the Business Associate, who may then need to use or disclose such PHI on behalf of the Covered Entity. The Business Associate acknowledges that certain sections of the Privacy Rule and the Security Rule, as well as the HITECH Act, apply directly to the Business Associate as they apply to the Covered Entity. Both parties are committed to complying with the Privacy Rule and Security Rule under HIPAA, as amended by the HITECH Act, and accordingly, have entered into this Agreement to set forth the terms and conditions of how such PHI shall be handled between the Business Associate, the Covered Entity, and third parties.

In addition, the Business Associate may provide to the Covered Entity access to the HIE managed and administered by the Business Associate. Both parties acknowledge that access to the HIE is governed by the HIE Statute, and both parties are committed to complying with the HIE Statute in the course of their dealings regarding the HIE. The parties have entered into this Agreement in order to set forth the terms and conditions for access to the HIE and use of the PHI and ePHI contained therein.

## 3. Permitted Uses and Disclosures by the Business Associate.

(a) Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI on behalf of the Covered Entity for purposes of providing the services described hereinabove and described in any written agreement between the parties, provided that such use or disclosure shall not violate HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or the HIE Statute if done by the Covered Entity, including, but not limited to, the minimum necessary to accomplish the purpose of the use or disclosure. The Business Associate agrees to comply with the Secretary’s guidance issued pursuant to the HITECH Act as to what constitutes “minimum necessary.”

(b) Except as otherwise limited in this Agreement, the Business Associate may use PHI for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, the Business Associate may disclose PHI to a third person for the proper management and administration of the Business Associate, provided that such disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and may only be used or further disclosed as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been the subject of a Security Breach.

(d) The Business Associate may use PHI to report violations of law to appropriate federal and state authorities in accordance with 45 C.F.R. § 164.502(j)(1).

(e) The Business Associate may use and disclose PHI only if each such use and disclosure is in compliance with each applicable requirement of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and the HIE Statute, including but not limited to 45 C.F.R. § 164.504(e).

(f) The Business Associate may de-identify any and all PHI that it obtains from the Covered Entity, provided such de-identification is accomplished in accordance with the requirements of 45 C.F.R. § 164.514(a) and (b).

(g) Except as otherwise limited in this Agreement, the Business Associate may use PHI to provide data aggregation services related to the Covered Entity's health care operations.

(h) Except as otherwise limited in this Agreement, the Business Associate may use PHI provided by the Covered Entity to create a Limited Data Set. The Business Associate may use the Limited Data Set only for the purposes of research, public health, or health care operations. The Business Associate shall not use or further disclose the information in the Limited Data Set other than as permitted by this Agreement or as otherwise required by law. The Business Associate shall use appropriate safeguards to prevent use or disclosure of the information in the Limited Data Set other than as provided for by this Agreement and shall report to the Covered Entity any use or disclosure of the information not provided for by this Agreement of which it becomes aware. The Business Associate shall not identify the information in the Limited Data Set or contact the Individuals who are the subjects of the information, and shall ensure that any agents to whom it provides the limited data set agree to the same restrictions and conditions that apply to the Business Associate under this Agreement with respect to such information.

#### 4. Obligations of the Business Associate.

(a) The Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) The Business Associate agrees to use appropriate safeguards to prevent disclosure of the PHI other than as provided for by this Agreement, and to implement administrative, physical, and technical safeguards as required by 45 C.F.R. §§ 164.306, 164.308, 164.310, 164.312, 164.314, and 164.316, as applicable to business associates, in order to protect the confidentiality, integrity, and availability of PHI that the Business Associate receives, maintains or transmits. The Business Associate shall undertake such actions in a manner that is consistent with any guidance issued by the Secretary pursuant to the HITECH Act.

(c) The Business Associate agrees to report to the Covered Entity within three (3) business days any use or disclosure of PHI not provided for by this Agreement of which it becomes aware. In addition, the Business Associate shall notify the Covered Entity of any Security Incident or Security Breach involving Unsecured PHI within three (3) business days of becoming aware of the Security Incident or Security Breach. This notice shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been accessed, acquired, or disclosed during the Security Breach. The Business Associate agrees to cooperate with the Covered Entity in mitigating any harmful effect that is known to exist as a result of such unauthorized use or disclosure of PHI, such Security Incident, or Security Breach. The Business Associate further agrees to cooperate with the Covered Entity in complying with all state and federal public notification requirements arising therefrom.

(d) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from or received by the Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply in this Agreement to the Business Associate with respect to such information, including but not limited to the requirement that such agent or subcontractor implement reasonable and appropriate safeguards to protect such information.

(e) The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from or received by the Business Associate on behalf of the Covered Entity available to the Secretary, upon request, for purposes of determining the Covered Entity's compliance with HIPAA, the HITECH Act, the Privacy Rule, or the Security Rule.

(f) The Business Associate shall maintain sufficient records of its disclosures of PHI to allow the Covered Entity to comply with any and all requests for accounting made pursuant to 45 C.F.R. § 164.528.

(g) In the event that an individual makes a request to the Covered Entity for an accounting in accordance with 45 C.F.R. § 164.528 and Section 13405 of the HITECH Act, the Business Associate shall, within thirty (30) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is required to permit the Covered Entity to properly respond to the request for accounting. In the event that an individual makes a request for an accounting to the Business Associate, the Business Associate shall, within five (5) days of the request, refer the request to the Covered Entity. The Business Associate shall then promptly provide to Covered Entity any information it possesses that is responsive to the request for accounting so that the Covered Entity may provide the requested accounting on behalf of both itself and Business Associate.

(h) In the event that an individual makes a request to the Business Associate for amendment of that individual's PHI under 45 C.F.R. § 164.526, the Business Associate shall, within five (5) days of receiving the request, refer it to the Covered Entity so that the Covered Entity may make the requested amendment on behalf of both itself and the Business Associate.

(i) In the event that an individual makes a request to the Business Associate for disclosure of that individual's PHI under 45 C.F.R. § 164.524, the Business Associate shall, within five (5) days of receiving the request, transmit it to the Covered Entity for review so that the Covered Entity may provide access directly to the requesting Individual on behalf of both itself and the Business Associate.

(j) Unless otherwise specifically authorized in writing by the Covered Entity, the Business Associate shall not sell any PHI.

(k) The Business Associate shall only request, use, or disclose the minimum amount of PHI necessary to accomplish the intended purpose of the request, use, or disclosure. The Business Associate agrees to comply with the Secretary's guidance issued pursuant to the HITECH Act as to what constitutes "minimum necessary."

(l) If and to the extent that the Business Associate is carrying out an obligation of the Covered Entity under the Privacy Rule or Security Rule, the Business Associate shall comply with the requirements that apply to the Covered Entity in the performance of that obligation.

## 5. Obligations of the Covered Entity.

(a) The Covered Entity shall notify the Business Associate of any limitations in the Notice of Privacy Practices maintained by the Covered Entity to the extent that such limitations may affect the Business Associate's use or disclosure of the PHI.

(b) The Covered Entity shall immediately notify the Business Associate of any changes in, or revocation of, permission granted by an Individual under 45 C.F.R. § 164.506 or § 164.508 to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.

(c) The Covered Entity shall immediately notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

(d) The Covered Entity shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, Security Rule, or HIE Statute if done by the Covered Entity.

(e) If the Business Associate provides the Covered Entity with access to the HIE, the Covered Entity shall, prior to accessing the HIE, obtain all necessary consents from the individual who is the subject of the PHI being accessed, as required by the Business Associate and under the HIE Statute or any other applicable law.

(f) If the Business Associate provides the Covered Entity with access to the HIE, the Covered Entity shall use any PHI obtained through the HIE only for the purpose of caring for and treating a patient. The Covered Entity shall not disclose any PHI obtained through the HIE to any person unless such disclosure is necessary to facilitate the care and treatment of a patient. In its use and disclosure of any PHI obtained through the HIE, the Covered Entity shall comply with all applicable laws, including, without limitation, HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and the HIE Statute. The Covered Entity shall put in place reasonable training procedures to inform its employees, agents, and subcontractors of the restrictions on use and disclosure of PHI obtained through the HIE and shall not permit any employee, agent, or subcontractor to access the HIE unless such person commits in writing to abide by the restrictions in this Agreement regarding use or disclosure of PHI obtained through the HIE. The Covered Entity shall report any unauthorized use or disclosure of PHI obtained through the HIE to the Business Associate within three (3) days of the time at which it becomes aware, or in the exercise of reasonable care should have been aware, of the unauthorized use or disclosure.

## 6. Term.

The term of this Agreement shall remain in force and effect until terminated pursuant to Section 7 herein below.

## 7. Termination.

(a) If the Covered Entity determines that the Business Associate has breached a material term of this Agreement, the Covered Entity shall provide written notice of the material breach to the Business Associate, after which the Business Associate shall have thirty (30) days to take reasonable steps to cure the breach. If the Business Associate does not cure the breach within the 30-day period, the Covered Entity may terminate this Agreement.

(b) The Business Associate may terminate this Agreement for any reason upon thirty (30) days' notice to the Covered Entity.

(c) Either party may terminate this Agreement when all of the PHI received from or received by the Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy the PHI, the protections are extended to such information in accordance with the provisions of Section 7(c) and (d) herein below.

(d) Subject to the provisions of Section 7(d) herein below, upon termination of this Agreement for any reason, the Business Associate shall return or destroy all PHI received from, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate and the Business Associate shall so

notify its subcontractors or agents of these obligations. The Business Associate and its subcontractors or agents shall retain no copies of the PHI.

(e) In the event that the Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or destruction of such information infeasible. Upon such notification, the Business Associate shall extend the protections of this Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In the event that it is infeasible for the Business Associate to obtain from a subcontractor or agent of the Business Associate any PHI in the possession of the subcontractor or agent, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction of such information from the subcontractor or agent infeasible. Upon such notification, the Business Associate shall require the subcontractor or agent to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the subcontractor or agent maintains such PHI.

(f) This Agreement will automatically terminate without any further action of the parties upon the termination of all other agreements between the parties.

8. Regulatory References.

Any reference in this Agreement to a provision of HIPAA, the HITECH Act, the Privacy Rule, Security Rule, or HIE Statute shall mean the section as in effect or as amended.

9. Survival.

The respective rights and obligations of the Business Associate under Section 7(d) and (e) of this Agreement shall survive the termination of this Agreement.

10. 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 and assigns, any rights, remedies, obligations, or liabilities whatsoever.

11. Disputes.

If any dispute or claim arises between the parties with respect to this Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties that they reasonably cooperate with each other in the performance of the mutual obligations under this Agreement.

12. Amendment.

The parties agree to take such action as is necessary to amend this Agreement from time to time in order for the Covered Entity to comply with the requirements of HIPAA, the HITECH Act, and the HIE Statute, as those statutes and their implementing regulations may be amended from time to time. No amendment to this Agreement shall be effective until reduced to writing and duly signed by the authorized representatives of the parties.

13. Non-Waiver.

A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.

14. Assignment.

Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

15. Nature of Agreement.

Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.

16. Entire Agreement.

This Agreement constitutes the entire agreement between the Business Associate and the Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

17. Severability.

Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

18. Notices.

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing, and shall be effective upon receipt. Such notice may be made by personal delivery, by facsimile or electronic mail with return facsimile or electronic mail acknowledging receipt, by overnight delivery service with proof of delivery, or by certified or registered United States mail, return receipt requested. All such communications shall be sent to the known addresses of the other party. Neither party shall refuse delivery of any notice hereunder.

Notices shall be sent to the following persons:

For Covered Entity:

Name:

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Title:

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Address:

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City/State/ZIP:

For Business Associate:

Daniel E. Memmott

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Subcontractor Financial Director

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Email:

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19. Interpretation.

Any ambiguity in this Agreement shall be resolved to permit the parties to comply with HIPAA and the HITECH Act, as those statutes and their implementing regulations may be amended from time to time. The provisions of this Agreement shall prevail over any provision of any other agreement between the Business Associate and the Covered Entity that may conflict or be inconsistent with any provision in this Agreement.

20. Governing Law, Jurisdiction, and Venue.

This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the State of Nevada, without regard to any choice-of-law provisions, and the United States of America. The parties agree that any action to enforce or interpret this Agreement shall be brought in the Eighth Judicial District Court of Clark County, Nevada, and the parties expressly agree to submit to the jurisdiction of this court.

21. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

The parties have executed this Agreement as of the date signed below.

For Covered Entity:

For Business Associate:



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Printed Name and Title:

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Printed Name and Title:

Daniel E. Memmott, Subcontractor Financial Director

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Date:

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Date:

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