



---

**PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**ENROLLMENT-RELATED SERVICES FOR THE MEDI-CAL  
POPULATION**

**BETWEEN**

**INLAND EMPIRE HEALTH PLAN**

**AND**

**SAN BERNARDINO COUNTY (ARROWHEAD  
REGIONAL MEDICAL CENTER)**

---



**PROFESSIONAL SERVICES AGREEMENT  
INLAND EMPIRE HEALTH PLAN**

This Professional Services Agreement (“Agreement”) is made and entered into by and between Inland Empire Health Plan (“IEHP”), a local public entity of the State of California, and San Bernardino County on behalf of Arrowhead Regional Medical Center (“CONTRACTOR”), with reference to the following facts:

**RECITALS**

WHEREAS, IEHP is in need of the professional services offered by CONTRACTOR;  
and

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement may be presented to the Governing Board of IEHP for approval and is effective only upon the authorization of the Governing Board of IEHP and the Governing Board of CONTRACTOR;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, and in the following exhibits or attachments attached hereto and incorporated herein by this reference:

- ATTACHMENT A – SCOPE OF SERVICES
- ATTACHMENT B – SCHEDULE OF FEES
- ATTACHMENT C – OWNERSHIP INFORMATION
- ATTACHMENT D – BUSINESS ASSOCIATE AGREEMENT
- ATTACHMENT E – PLAN LICENSING/STATE REQUIREMENTS
- ATTACHMENT F – MEDICARE ADDENDUM

The Parties hereto mutually agree as follows:

**1. SERVICES**

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR shall provide the services necessary to perform in a complete, skillful and professional manner all those services described in Attachment A. CONTRACTOR agrees to maintain any applicable professional license(s) as required by law at all times while performing services under this Agreement.



- B. Other than as specifically indicated in Attachment A, CONTRACTOR will not utilize the services of any subcontractors in providing the services required hereunder without IEHP's prior written approval. CONTRACTOR shall request approval by submitting a written description of the services to be subcontracted. If approved by IEHP, CONTRACTOR shall remain the prime contractor for the services and be responsible for the conduct and performance of each approved subcontractor. All references to CONTRACTOR in this Agreement in the context of providing services, where applicable, will also include CONTRACTOR's approved subcontractors.
- C. CONTRACTOR, or its agents or subcontractors, shall not perform any services outside the United States of America without IEHP's prior written consent. In the event CONTRACTOR is in breach of this Section, IEHP shall have, in its sole discretion, the right to immediately terminate this Agreement.

**2. COMPENSATION**

- A. IEHP shall compensate CONTRACTOR for the services set forth in Attachment A, upon approval of a properly presented invoice for services. Payment shall be made "net-30" terms from the date of receipt of a complete invoice.
- B. IEHP shall make payments to CONTRACTOR as outlined in Attachment B. CONTRACTOR shall submit invoices to IEHP for authorized services within thirty (30) days of the month of the rendered service. Invoices from CONTRACTOR must be received by IEHP no later than ninety (90) days from the month wherein the services were rendered; invoices submitted after ninety (90) days from the month of services are not eligible for reimbursement.
- C. Other than as stated on Attachment B, price increases will not be permitted during the Agreement term. If applicable, annual increases shall not exceed the Consumer Price Index- All Consumers, All Items – Riverside, San Bernardino and Ontario areas and be subject to satisfactory performance review by IEHP and approved (if needed) for budget funding by the Governing Board.
- D. The total compensation payable under this Agreement shall not exceed Four Hundred Sixty-Eight Thousand Two Hundred Forty Dollars (\$468,240). In no event shall compensation exceed this amount without a written amendment to this Agreement authorizing such increase in total compensation payable to CONTRACTOR. CONTRACTOR agrees to monitor its costs at all times and provide IEHP forty-five (45) days' written notice if CONTRACTOR becomes aware that it may exceed the total compensation authorized pursuant to this Section.



- E. It is expressly agreed between the parties that payment to CONTRACTOR does not constitute or imply acceptance by IEHP of any portion of the CONTRACTOR's work.
- F. It is mutually agreed and understood that the obligations of IEHP are contingent upon the availability of state and federal funds. In the event that such funds are not forthcoming for any reason, this Agreement is rendered null and void, and IEHP shall immediately notify CONTRACTOR in writing. This Agreement shall be deemed terminated and of no further force and effect immediately on IEHP's notification to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of costs for services rendered in accordance with this agreement up through the date of termination.

### 3. **DISALLOWANCE**

In the event CONTRACTOR receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall refund the disallowed amount to IEHP within sixty (60) days of IEHP's written request or upon sixty (60) days after resolution of any dispute on such items (if applicable). IEHP retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement, or under any other contract or agreement between CONTRACTOR and IEHP.

### 4. **TERM AND TERMINATION**

- A. Term of Agreement. This Agreement shall be effective as of February 8, 2022 or upon the start date of the two full-time employees (FTEs), whichever is sooner, ("Effective Date") and shall continue in effect through December 31, 2024 ("Initial Term") unless earlier terminated in accordance with the provisions of this Agreement. At the end of the Initial Term, this Agreement may be extended only upon a written agreement signed by both parties.
- B. Termination.
  - 1) Termination for Convenience. Either party may terminate this Agreement, for convenience, upon sixty (60) days' written notice in accordance with Section 18 (NOTICES).
  - 2) Termination for Cause. Should either party determine that there is a basis for termination for cause based on a breach of a material term in this Agreement, other than as set forth in Section 4(B)(3) below that allows for immediate termination, the non-breaching party may terminate this Agreement upon notice to the breaching party if such material breach is not cured to the reasonable satisfaction of the non-breaching party after 30 days notice of the material breach by the non-breaching party to the breaching party in accordance with Section 18 (NOTICES).



3) Immediate Termination. Immediate termination shall be available to the non-defaulting party, as specified below, by providing written notice in accordance with Section 18 (NOTICES).

- i. Either party may immediately terminate this Agreement upon the party's determination that the other party has engaged in a fraudulent activity as it relates to the scope of activities under this Agreement.
- ii. If CONTRACTOR is excluded, terminated, or suspended from participation in any state or federal health care program, including, without limitation, appearing on the federal List of Excluded Individuals/Entities (LEIE), the Medi-Cal Suspended and Ineligible Provider List (SIPL), or the System for Award Management (SAM). CONTRACTOR understands that IEHP is prohibited from paying CONTRACTOR for any services rendered on or after the date of exclusion.
- iii. Pursuant to any provision of this Agreement which expressly authorizes immediate termination.

4) Effect of Termination.

- i. If, for any reason, this Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to IEHP all documents related to services rendered under this Agreement, including without limitation, copies of work papers, schedules or other work products related to this Agreement as reasonably requested by IEHP.
- ii. Unless otherwise provided herein, the rights and obligations of any party which by their nature extend beyond the expiration or termination of this Agreement, shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. This includes, without limitation, the following provisions: DISALLOWANCE, INDEMNIFICATION, LIMITATION OF LIABILITY, WORK PRODUCT AND INTELLECTUAL PROPERTY, CONFIDENTIALITY, and GOVERNING LAW; VENUE.



**5. INDEMNIFICATION**

A. CONTRACTOR shall defend, indemnify, and hold harmless IEHP, its Governing Board, directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as “Indemnitees”) from liability, loss, settlement, claim, demand, and expense of any kind, arising out of the performance of services or the omission of any required act under the Agreement (and as noted in Attachment A), of the CONTRACTOR, its officers, employees, subcontractors, agents or representatives. CONTRACTOR shall defend the Indemnitees in any claim or action based upon any such alleged acts or omissions, at its sole expense, which shall include all costs and fees, including, but not limited to, attorney fees, cost of investigation, defense, and settlement or awards.

It is not the intent of the parties that the provisions of this Section and the provisions of the Indemnification provision in Attachment D shall be in conflict. In the event of any conflict, the Indemnification provisions in Attachment D shall be interpreted to relate only to matters within the scope of the HIPAA Business Associates Agreement.

- B. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of IEHP; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR’s indemnification to Indemnitees as set forth herein.
- C. CONTRACTOR’s obligation hereunder shall be satisfied when CONTRACTOR has provided to IEHP the appropriate form of dismissal relieving IEHP from any liability for the action or claim involved.
- D. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR’s obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**6. LIMITATION OF LIABILITY**

Without affecting the indemnification obligations set forth in this Agreement, in no event shall either party be liable for consequential, indirect, or incidental damages, including, without limitation, lost profits, arising out of the services provided under this Agreement.



## 7. INSURANCE

Without limiting or diminishing the indemnifying party's obligation to indemnify or hold the Indemnitees harmless, each party shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage, or a program of self-insurance during the term of this Agreement.

- A. Workers' Compensation - covering all of CONTRACTOR's personnel performing services under this Agreement as prescribed by the laws of the jurisdiction where work is performed. Policy shall include Employers' Liability including Occupational Disease with limits not less than \$1,000,000 per person per accident.
- B. Commercial General Liability - including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, with a general aggregate limit of no less than two (2) times the occurrence limit.
- C. Vehicle Liability - all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit, with a general aggregate limit of no less than two (2) times the occurrence limit.
- D. Professional Liability - a limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. CONTRACTOR shall ensure continuous coverage for such length of time as necessary to cover any and all claims (i.e. appropriate Tail Coverage for coverage written on a claims made basis, etc.).
- E. Cyber and Privacy Liability - covering claims involving privacy violations, information theft, damage to or destruction of electronic information, negligent, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The below referenced coverage is required only if any products and/or services related to professional services or information technology (including hardware and/or software) are provided to IEHP under this Agreement for such length of time as necessary to cover any and all claims.
  - 1) Privacy & Network Liability: \$1,000,000
  - 2) Internet Media Liability: \$1,000,000
  - 3) Business Interruption & Expense: \$1,000,000
  - 4) Data Extortion: \$1,000,000
  - 5) Regulatory proceeding: \$1,000,000
  - 6) Data Breach Notification & Credit Monitoring: \$1,000,000



In the event of a breach, it is the breaching party's obligation to notify the non-breaching party. In the instance of CONTRACTOR's breach of the insurance obligations set forth herein, it is CONTRACTOR's obligation to notify IEHP's Compliance department immediately, but no later than 24 hours via telephone to the Compliance Hotline (866) 355-9038 and via email to the Compliance Mailbox [compliance@iehp.org](mailto:compliance@iehp.org).

F. General Insurance Provisions – All lines.

- 1) Unless self-insured, insurance to be placed with insurers with a current A. M. BEST rating of not less than A: VIII (A:8) unless otherwise acceptable to the parties.
- 2) CONTRACTOR must declare any deductibles or self-insured retentions ("SIRs") for insurance coverage required to be approved by IEHP. Should any deductibles or SIRs be unacceptable to IEHP, IEHP may require CONTRACTOR to: 1) reduce or eliminate such deductibles or SIRs; 2) provide proof of ability to pay such required fees/expenses within the retention or deductible; and 3) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 3) Upon request, CONTRACTOR shall furnish IEHP with either 1) Certificate(s) of Insurance or amendatory endorsements effecting coverage as required herein, or 2) if requested, provide certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, CONTRACTOR shall provide no less than thirty (30) days' written notice to IEHP prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In such event, this Agreement shall terminate forthwith, unless IEHP receives, prior to such effective date, another properly executed Certificate of Insurance, including all endorsements, evidencing the coverage set forth herein are in full force and effect. CONTRACTOR shall not commence operations until IEHP has been furnished Certificate(s) of Insurance and endorsements.
- 4) CONTRACTOR's insurance shall be construed as primary insurance, and IEHP's insurance shall not be construed as contributory. Additionally, the above-referenced policies shall be endorsed to waive subrogation in favor of IEHP and name IEHP as an Additional Insured, where applicable.
- 5) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to IEHP.





- 7) CONTRACTOR agrees to notify IEHP of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**8. WORK PRODUCT AND INTELLECTUAL PROPERTY**

- A. CONTRACTOR work product, including without limitation, all reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement on behalf of IEHP, becomes the property of IEHP and shall be transmitted to IEHP at the termination of this Agreement (the “Deliverables”).
- B. To the extent that any CONTRACTOR Information (as defined below) is contained in any of the Deliverables, CONTRACTOR hereby grants to IEHP a paid-up, royalty-free, nonexclusive, perpetual license to use and reproduce such CONTRACTOR Information solely for IEHP’s internal business operations.
- C. CONTRACTOR Information is defined as information created, acquired or otherwise to which CONTRACTOR has rights in (or may otherwise obtain rights in), including methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; and data, documentation, and proprietary information and processes.

**9. OFFICERS, OWNERS, STOCKHOLDERS AND CREDITORS**

On an annual basis, CONTRACTOR shall identify the names of the following persons and update such names by providing IEHP with thirty (30) days written notice of any changes in the information of such persons by listing them on Attachment C:

- A. CONTRACTOR officers and owners who own greater than 5% of the CONTRACTOR;
- B. Stockholders owning greater than 5% of any stock issued by CONTRACTOR;
- C. Major creditors holding more than 5% of any debts owed by CONTRACTOR;

**10. NONDISCRIMINATION**

This Agreement hereby incorporates by reference the provisions of *Title 2, CCR, Sections 11105 et seq.*, as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of *Title 2, CCR, Sections 11105 et seq.*, and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.



**11. CONFLICT OF INTEREST**

CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

**12. PROTECTED HEALTH INFORMATION (“PHI”)**

In the event that there is PHI shared between IEHP and CONTRACTOR pursuant to this Agreement, IEHP and CONTRACTOR are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified at Title 45, C.F.R., Parts 160 and 164, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 (HITECH), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent hereto and as amended, for purposes of services rendered pursuant to the Agreement. The Parties agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under HIPAA and HITECH. The Parties further agree that it shall be in compliance with the requirements of HIPAA, HITECH, and the laws and regulations promulgated subsequent hereto and as amended. CONTRACTOR further agrees to the provisions of the HIPAA Business Associate Agreement, attached hereto in Attachment D, and incorporated herein by this reference.

**13. CONFIDENTIALITY**

- A. Each Party receiving Confidential Information (a “Receiving Party”) hereunder, as defined below, shall hold the Confidential Information in strict confidence and use and access the Confidential Information only as is necessary for the performance of this Agreement. Each Receiving Party may only disclose Confidential Information to its employees and third party consultants who have a bona fide need to know and who are made aware of the obligation to maintain such information as confidential. Receiving Party shall not otherwise disclose Confidential Information without the prior written consent of the other party (the “Disclosing Party”) or as otherwise required by law.
- B. Confidential Information means any technical, financial, trade secrets, or any information the Disclosing Party has received from others, including personal information, which it is obligated to treat as confidential or proprietary, including without limitation, any and all ideas, techniques, processes, methods, systems, cost data, computer programs, formulas, work in progress, customers/members, business plans, and other business information. Confidential Information shall not include any information that:



- 1) Is or becomes available to the public (other than through any act or omission of Receiving Party);
- 2) Is required to be disclosed pursuant to an applicable law, subpoena, or court order, provided that the Receiving Party notifies the Disclosing Party to allow Disclosing Party to protect its interests, if desired;
- 3) Is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party;
- 4) Is lawfully known by the Receiving Party at the time of disclosure or otherwise lawfully obtained by a third party with no obligation of confidentiality.

**14. PUBLIC ENTITY STATUS; BROWN ACT/PUBLIC RECORDS ACT**

The parties hereby acknowledge and agree that both parties are local public entities of the State of California subject to the Brown Act, *California Government Code Sections 54950 et seq.*, and the Public Records Act, *California Government Code Sections 6250 et seq.*

**15. COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS**

- A. General. The parties shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect, subsequently amended or hereafter enacted. The parties shall further observe and comply with all applicable executive orders, directives, requirements (including state and/or federal contract requirements), and standards by any organization having jurisdiction over IEHP to regulate the delivery of health care services. This shall include applicable accrediting organizations. All the aforementioned items are hereby made a part hereof and incorporated herein by reference.
- B. Plan Licensing/State Requirements. CONTRACTOR understands that IEHP is a Medi-Cal Managed Care Health Plan and subject to the requirements under applicable laws (including but not limited to the Knox-Keene Health Care Service Plan Act and the Waxman-Duffy Prepaid Health Plan Act), contractual obligations set forth under the contract between IEHP and the California Department of Health Care Services (“DHCS”), and regulations promulgated by the California Department of Managed Health Care (“DMHC”) and DHCS. CONTRACTOR understands that specified requirements of the DHCS and DMHC may apply to CONTRACTOR as a contractor of IEHP.



## 16. **AUDIT RIGHTS**

- A. CONTRACTOR understands that IEHP is a health plan regulated by entities, including without limitation, DMHC, DHCS, and the Centers for Medicare and Medicaid Services. To the extent CONTRACTOR is identified as a subcontractor for which IEHP is required to do oversight due to its legal and/or contractual obligations to such regulatory agencies, the following provisions shall apply:
- 1) **Maintenance of Records.** CONTRACTOR will maintain complete and accurate books, records and documentation, including audited financial statements prepared in accordance with generally accepted accounting procedures and practices, to sufficiently and properly reflect the services provided and CONTRACTOR's direct and indirect costs invoiced in the performance of the Agreement. The retention period for such books and records shall be for a period of ten (10) years or as otherwise stated in the Attachments to this Agreement.
  - 2) **Records Subject to Inspection.** All books, records, documents, and other materials maintained by CONTRACTOR and relating to the Agreement will be subject, at reasonable times during regular business hours and upon thirty (30) days prior written notice, to examination, inspection, copying, or audit by authorized IEHP personnel. The parties agree that books, records, documents, and other evidence of accounting procedures and practices related to CONTRACTOR's cost structure, including overhead, general and administrative expenses, and profit factors will be excluded from IEHP's review. Notwithstanding the foregoing, to the extent CONTRACTOR does not maintain audited financial statements, IEHP shall maintain the right to conduct a financial audit to confirm CONTRACTOR's financial viability in connection with demonstrating CONTRACTOR's ability to continue providing services in accordance with the standards outlined under this Agreement.
  - 3) **Subcontracts.** CONTRACTOR will incorporate into any subcontracts the records retention and review requirements of this Section.

## 17. **EXCLUSION/DEBARMENT LISTS**

- A. Each party represents that it, and the employees and consultants engaged under this Agreement, are not excluded, debarred, or suspended individuals/entities under any exclusion or debarment list relating to state or federal health care programs, including the Federal List of Excluded Individuals/Entities, System for Award Management, and the Suspended and Ineligible Provider List. Each party warrants that such status shall be maintained throughout the term of this Agreement.



B. Each party understands that appearing on any such list requires the other party to terminate this Agreement immediately, and prohibits IEHP from paying CONTRACTOR for any services rendered on or after the date of exclusion. Should CONTRACTOR be in receipt of payment for services rendered after the exclusion date, CONTRACTOR agrees to submit a refund of such fees upon written notice by IEHP. IEHP expressly reserves its right to recoup payment of such fees under Section 3 (DISALLOWANCE).

**18. NOTICES**

Other than correspondences for which email communication is expressly reserved pursuant to the terms of this Agreement, all notices required or contemplated by this Agreement shall be delivered to the respective parties in the manner and at the addresses set forth below or to such other address(es) as the parties may hereafter designate, in writing. Such notices will be deemed given if sent by certified United States mail or commercial courier, at the time of receipt confirmed by corresponding documentation.

IEHP:

Jarrold McNaughton, MBA, FACHE  
Chief Executive Officer  
IEHP  
Rancho Cucamonga, CA 91730  
(909) 890-2000  
cc: Purchasing Department  
[Purchasing@iehp.org](mailto:Purchasing@iehp.org)

CONTRACTOR:

William L. Gilbert  
Hospital Director  
Arrowhead Regional Medical Center  
400 N. Pepper Avenue,  
Colton, California 92324  
(909) 580-1000

Notice shall be deemed communicated two (2) County working days from time of mailing if mailed as provided in this provision.

**19. SEVERABILITY**

In the event any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect.

**20. WAIVER**

A waiver by a party of any breach of any one (1) or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.



**21. INDEPENDENT CONTRACTOR**

It is understood and agreed that the relationship between the parties is an independent contractor relationship. Neither party, including its officers, agents, employees or subcontractors, shall be considered to be employees of the other, nor entitled to any benefits payable to such employees, including Workers' Compensation Benefits. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.

**22. GOVERNING LAW; VENUE**

- A. The provisions of this Agreement shall be construed in accordance with the laws of the State of California, excluding its conflicts of law provisions.
- B. The provisions of the Government Claims Act (*California Government Code Sections 900 et seq.*) must be followed for any disputes under this Agreement.
- C. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the San Bernardino County Superior Court, San Bernardino District.

**23. FORCE MAJEURE**

Each party shall be excused from performing hereunder to the extent that it is prevented from performing as a result of any act or event which occurs and is beyond the reasonable control of such party, including, without limitation, acts of God, war, or action of a governmental entity; provided that the affected party provides the other party with prompt written notice thereof and uses all reasonable efforts to remove or avoid such causes.

**24. ASSIGNMENT**

A party may not sell, assign, transfer, or otherwise convey this Agreement without the prior express written consent of the other party. Any attempted assignment of this Agreement not in accordance with this Section shall be null and void.



**25. CHANGE IN CONTROL**

CONTRACTOR must obtain IEHP's written consent prior to CONTRACTOR entering into (i) any transaction or series of related transactions (including, but not limited to, any reorganization, merger, or consolidation) that results in the transfer of 50% or more of the outstanding voting power; or (ii) sale of all or substantially all of the assets of the CONTRACTOR to another person or entity. In the event CONTRACTOR fails to obtain IEHP's prior written consent, IEHP shall have the option to terminate this Agreement immediately.

**26. ALTERATION AND/OR AMENDMENT**

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Governing Board of IEHP or designee may authorize any alteration or revision of this Agreement on behalf of IEHP. Notwithstanding the foregoing, amendments required due to legislative, regulatory or other legal authority do not require the prior approval of CONTRACTOR and shall be deemed effective immediately (or such other time frame as required by law or regulation) upon CONTRACTOR's receipt of notice. Notice of amendments required by law, regulation or other legal authority may be given to CONTRACTOR via regular mail at the address provided in Section 18. NOTICES.

**27. ENTIRE AGREEMENT**

This Agreement, including all attachments, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

**28. COUNTERPARTS: SIGNATURES**

This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. The parties' faxed signatures, and/or signatures scanned into PDF format, shall be effective to bind them to this Agreement.

(SIGNATURE PAGE TO FOLLOW)



IN WITNESS WHEREOF, the parties hereto certify that the individuals signing below have authority to execute this Agreement on behalf of their respective organizations and may legally bind them to the terms and conditions of this Agreement, and any attachments hereto. The parties have signed this Professional Services Agreement as set forth below.

**SAN BERNARDINO COUNTY ON BEHALF OF ARROWHEAD REGIONAL MEDICAL CENTER:**

**INLAND EMPIRE HEALTH PLAN:**

By: \_\_\_\_\_  
Curt Hagman  
Chair, Board of Supervisors

Keenan  
Freeman, CFO  
for: \_\_\_\_\_  
Jarrod McNaughton, MBA, FACHE  
Chief Executive Officer

DocuSigned by:  
*Keenan Freeman*  
C4A35E87BBA7401...

Date: \_\_\_\_\_

Date: 1/20/2022

By: \_\_\_\_\_  
Chair, IEHP Governing Board

DocuSigned by:  
Signature on Behalf of IEHP Governing Board  
Approved in Minute Order 16-64  
(Contracts Under \$200,000)  
EB1E4AD25DD84F8...

Date: 1/20/2022

Attest: \_\_\_\_\_  
Secretary, IEHP Governing Board

DocuSigned by:  
*Annette M. Sayle*  
EB1E4AD25DD84F8...

Date: 1/20/2022

Approved as to Form:

By: \_\_\_\_\_  
Anna W. Wang  
General Counsel  
Inland Empire Health Plan

DS  
*mp*

Date: 1/19/2022

1/19/2022





## ATTACHMENT A

### SCOPE OF SERVICES

San Bernardino County (Arrowhead Regional Medical Center [“ARMC”])

#### 1. ARMC shall perform the services as described below:

- A. ARMC shall assign two full-time equivalent enrollment workers (“FTEs”), employed by and under the supervision of ARMC, to exclusively complete a full Medi-Cal application for uninsured individuals who use care services from ARMC.
- B. ARMC shall begin outbound calls to complete the full Medi-Cal application within one (1) business day of receiving customer information from using care at ARMC or ARMC affiliated clinics. If the first outreach effort is not successful, an additional two (2) attempts must be completed within five (5) business days.
- C. ARMC shall successfully complete full Medi-Cal applications for at least 75% of the uninsured leads per month with a target of 320 per month.
- D. ARMC shall provide IEHP a bi-weekly performance report for the performance of the previous weeks that includes the results of outreach and application completion efforts in the form of summary/aggregate data. The report will be specific to the work processed by the aforementioned FTEs. The following summary/aggregate data elements shall be included:
  - a. Total of uninsured leads
  - b. Total outreach attempts
  - c. Total customers contacted
  - d. Total full Medi-Cal applications completed (processed)
  - e. Total full Medi-Cal Applications approved
- E. ARMC performance reports and files shall be saved in Excel format.
- F. Files shall be named as follows: with an underscore ( \_ ) between each word, dates in the format MMDDYYYY, and no backslashes ( / ). For example, the data provided on July 15, 2021 would be named: “IEHP\_ARMCApps\_07052021.xlsx”.
- G. Each file provided will be separated by Excel tab for each case scenario.
- H. Except as otherwise indicated in the Agreement, ARMC shall provide (at ARMC’s expense) all equipment, tools, and other materials necessary to provide the services hereunder, including workspace in ARMC facilities for the FTEs.



## ATTACHMENT B

### SCHEDULE OF FEES

San Bernardino County (Arrowhead Regional Medical Center)

1. CONTRACTOR shall invoice IEHP electronically for Enrollment-related services for the Medi-Cal Population fees to IEHP's Accounts Payable Office at [apinvoices@iehp.org](mailto:apinvoices@iehp.org). Each invoice shall cite the CONTRACTOR's name, address, and remit to address, description of the work performed, the time period covered by the invoice, and the amount of payment requested.
  - A. Invoices shall be paid electronically by IEHP to the banking institution/account numbers provided by the CONTRACTOR. In the event of a change in banking institution and/or account numbers, CONTRACTOR shall provide IEHP thirty (30) days prior written notice. IEHP will assume no liability for payments made to banking institutions and/or accounts that are due to CONTRACTOR'S failure to provide the correct information.
2. CONTRACTOR requests for payments and reimbursements must comply with the requirements set forth in Attachment A.
3. Within thirty (30) days of the end of each fiscal quarter ARMC will prepare and submit to IEHP Accounting staff, a reimbursement "at cost" claim for services and expenditures performed and incurred during the quarter. Upon review and approval of the claim, IEHP shall provide payment within ten (30) business days.
4. IEHP is responsible for payment of invoices for services performed by ARMC for the period beginning February 8, 2022 or upon the start date of the full-time employees (FTEs), whichever is sooner, and continuing through the end of the Agreement as set forth in Section 2 (PERIOD OF PERFORMANCE).
5. Requests for services shall be on an as needed basis. CONTRACTOR's fees are as follows:

Year 1	\$ 150,000.00	February 8, 2022 – December 31, 2022
Year 2	\$ 156,000.00	January 1, 2023 – December 31, 2023
Year 3	\$ 162,240.00	January 1, 2024 – December 31, 2024



**ATTACHMENT C**

**OWNERSHIP INFORMATION**

**Contractor's Name:** \_\_\_\_\_

**Tax Identification Number (TIN):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**President:** \_\_\_\_\_ **Contact Person:** \_\_\_\_\_

**Person Signing Contract:** \_\_\_\_\_

**Broker Representative:** \_\_\_\_\_

Please circle below how your organization is legally organized:

- **Sole Proprietorship**
- **Partnership (LLC, etc.)**
- **Corporation**
  - **Privately Held Company\***
  - **Publicly Traded Company**
  - **Non-Profit Entity**
- **Government Agency**
- **Other (please indicate):** \_\_\_\_\_

\*If Privately Held Company, please indicate the below information of the owners, officers, stockholders, and creditors if such interest is over 5%.

<u><b>Name</b></u>	<u><b>Ownership/Creditorship % (If greater than 5% interest)</b></u>
--------------------	--

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



## ATTACHMENT D

### **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (the “Agreement”) is an Attachment to the Professional Services Agreement (the “Underlying Agreement”) between the Inland Empire Health Plan (“IEHP”) and San Bernardino County on behalf of Arrowhead Regional Medical Center (“Business Associate”) as of the “Effective Date,” of the Underlying Agreement.

#### **RECITALS**

WHEREAS, IEHP and Business Associate entered into the Underlying Agreement pursuant to which Business Associate provides services to IEHP, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and/or certain electronic Protected Health Information (“ePHI”) may be made available to Business Associate for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), more specifically the regulations found in Title 45, C.F.R., Parts 160 and 164, Subparts A and E (the “Privacy Rule”) and/or 45 C.F.R. Part 164, Subpart C (the “Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure or use of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, the provisions of Subtitle D entitled “Privacy” of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the implementing regulations adopted thereunder, as may be amended from time to time, impose certain requirements on business associates; and

WHEREAS, IEHP is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Business Associate, when on behalf of IEHP, creates, receives, maintains or transmits PHI and/or ePHI, is a business associate as defined in the Privacy Rule; and,

WHEREAS, the parties intend to enter into this Agreement to address the requirements of HIPAA, HITECH, Privacy Rule, and Security Rule as they apply to Business Associate as a business associate of IEHP, including the establishment of permitted and required uses and disclosures (and appropriate limitations and conditions on such uses and disclosures) of PHI and/or ePHI by Business Associate that is created or received in the course of performing services on behalf of IEHP, and to incorporate the business associate obligations set forth in HITECH; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, HITECH, or other applicable law;

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



**1. DEFINITIONS**

- A. Unless otherwise provided in this Agreement, or specifically defined in Paragraph B of this Section 1, the capitalized terms shall have the same meanings as set forth in the Privacy Rule, Security Rule, and/or HITECH, as may be amended from time to time.
  
- B. Specific Definitions:
  - 1) “Breach,” when used in connection with Unsecured PHI, means, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule (45 C.F.R. Part 164, Subpart E), which compromises the security or privacy of the PHI. Except as otherwise excluded under 45 C.F.R. § 164.402, such acquisition, access, use or disclosure is presumed to be a Breach unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
    - i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - ii. The unauthorized person who used the PHI or to whom the disclosure was made;
    - iii. Whether the PHI was actually acquired or viewed; and
    - iv. The extent to which the risk to PHI has been mitigated.
  
  - 2) “Discovered” means the first day on which such Breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the Breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
  
  - 3) “Electronic Protected Health Information” (“ePHI”) means, as defined in 45 C.F.R. § 160.103, PHI transmitted by or maintained in electronic media, and for purposes of this Agreement, is limited to the ePHI that Business Associate creates, receives, maintains or transmits on behalf of IEHP.
  
  - 4) “Protected Health Information” (“PHI”) shall generally have the meaning given such term in 45 C.F.R. § 160.103, which includes ePHI, and for purposes of this Agreement, is limited to PHI, including ePHI, that



Business Associate creates, receives, maintains or transmits on behalf of IEHP.

- 5) “Secretary” means the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- 6) “Subcontractor” means a person to whom a business associate delegates a function, activity, or service other than in the capacity of a member of the workforce of such business associate.
- 7) “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).

**2. SCOPE OF USE AND DISCLOSURE BY BUSINESS ASSOCIATE OF PHI AND/OR EPHI**

- A. Business Associate shall be permitted to use PHI and/or ePHI disclosed to it by IEHP:
  - 1) On behalf of IEHP, or to provide services to IEHP for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule, Security Rule, and/or HITECH.
  - 2) As necessary to perform any and all of its obligations under the Underlying Agreement.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this Agreement or required by law, Business Associate may:
  - 1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - 2) Disclose the PHI and/or ePHI 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, only if:
    - i. The disclosure is required by law; or



- ii. Business Associate obtains written assurances from any person or organization to which Business Associate will disclose such PHI and/or ePHI that the person or organization will:
  - a) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Business Associate disclosed it to the third party, or as required by law; and
  - b) Notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- 3) Use the PHI and/or ePHI to provide Data Aggregation services relating to the Health Care Operations of IEHP if authorized by the Underlying Agreement or pursuant to the written request of IEHP.
- 4) De-identify any and all PHI and/or ePHI of IEHP received by Business Associate under this Agreement provided that the De-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.

C. Business Associate shall not:

- 1) Use or disclose PHI and/or ePHI it receives from IEHP, nor from another business associate of IEHP, pursuant to this Agreement or the Underlying Agreement except as permitted or required by this Agreement, or as required by law.
- 2) Perform any services (including any and all subcontracted services), which involves creating, receiving, maintaining or transmitting PHI and/or ePHI outside the United States of America.
- 3) Disclose PHI and/or ePHI received not authorized by the Underlying Agreement or this Agreement without patient authorization or De-identification of the PHI and/or ePHI as authorized in writing by IEHP.
- 4) Make any disclosure of PHI and/or ePHI that IEHP would be prohibited from making.
- 5) Use or disclose PHI for fundraising or marketing purposes.
- 6) Disclose PHI, except as otherwise required by law, to a health plan for payment or healthcare operations purposes if the individual has requested this restriction, and the PHI solely relates to a health care item or service



that is paid in full by the individual or person (other than the health plan) on behalf of the individual (45 C.F.R. § 164.522(a)(1)(vi)).

- 7) Directly or indirectly receive remuneration in exchange for PHI nor engage in any acts that would constitute a Sale of PHI, as defined in 45 C.F.R. § 164.502(a)(5)(ii), except with the prior written consent of IEHP and as permitted by and in compliance with 45 C.F.R. § 164.508(a)(4); however, this prohibition shall not affect payment by IEHP to Business Associate for services provided pursuant to the Underlying Agreement.
  - 8) Use or disclose PHI that is Genetic Information for Underwriting Purposes, as those terms are defined in 45 C.F.R. §§ 160.103 and 164.502(a)(5)(i), respectively.
- D. Business Associate agrees that in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA and/or HITECH (including but not limited to prohibiting the disclosure of mental health, and/or substance abuse records), the more stringent laws and/or regulations shall control the disclosure of PHI.

### 3. **OBLIGATIONS OF IEHP**

- A. Notification of Restrictions to Use or Disclosure of PHI. IEHP agrees that it will make its best efforts to promptly notify Business Associate in writing of any restrictions, limitations, or changes on the use, access and disclosure of PHI and/or ePHI agreed to by IEHP in accordance with 42 U.S.C. § 17935(a), that may affect Business Associate's ability to perform its obligations under the Underlying Agreement, or this Agreement.
- B. Proper Use of PHI. IEHP shall not request Business Associate to use, access, or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule, Security Rule, and/or HITECH.
- C. Authorizations. IEHP will obtain any authorizations necessary for the use, access, or disclosure of PHI and/or ePHI, so that Business Associate can perform its obligations under this Agreement and/or the Underlying Agreement.
- D. Actions in Response to Business Associate Breach. IEHP shall complete the following in the event that IEHP has determined that Business Associate has a Breach:
  - 1) Determine appropriate method of notification to the patient/client(s) regarding a Breach as outlined in 45 C.F.R. § 164.404(d).





- 2) Send notification to the patient/client(s) without unreasonable delay but in no case later than sixty (60) days of Discovery of the Breach with at least the minimal required elements as follows:
  - i. Brief description of what happened, including the date of the Breach and the date of Discovery;
  - ii. Description of the types of Unsecured PHI involved in the Breach (such as name, date of birth, home address, Social Security number, medical insurance, etc.);
  - iii. Steps patient/client(s) should take to protect themselves from potential harm resulting from the Breach;
  - iv. Brief description of what is being done to investigate the Breach, to mitigate harm to patient/client(s) and to protect against any further Breaches; and
  - v. Contact procedures for patient/client(s) to ask questions or learn additional information, which must include a toll-free telephone number, an E-Mail address, website or postal address.
- 3) Determine if notice is required to the Secretary.
- 4) If required, submit Breach information to the Secretary within the required timeframe, in accordance with 45 C.F.R. § 164.408(b).

E. Contract Violations by Business Associate. Pursuant to 45 C.F.R. § 164.504(e)(1)(ii), if IEHP knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under this Agreement, IEHP must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, IEHP shall terminate the Agreement, if feasible.

#### **4. OBLIGATIONS OF BUSINESS ASSOCIATE**

A. Minimum Necessary. Business Associate shall request, use, access or disclose only the minimum amount of PHI and/or ePHI as permitted or required by this Agreement and as necessary to accomplish the intended purpose of the request, use, access or disclosure in accordance with the Privacy Rule (45 C.F.R. § 164.502(b)(1)).



- B. Appropriate Safeguards. Business Associate shall use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical and technical safeguards in accordance with the Security Rule under 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316:
- 1) Business Associate shall issue and change procedures from time to time to improve electronic data and file security as needed to comply with the measures that may be required by the Privacy Rule or the Security Rule, as applicable, and at all times use an NIST-Approved Technology for all PHI and/or ePHI that is in motion, stored or to be destroyed.
  - 2) Business Associate shall extend such policies and procedures, if applicable, for the protection of physical PHI to prevent, detect, contain and correct security violations, as well as to limit unauthorized physical access to the facility or facilities in which the PHI is housed.
- C. Mitigation. Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI and/or ePHI by Business Associate in violation of this Agreement.
- D. Access to Records. Business Associate shall make internal practices, books, and records including policies and procedures, relating to the use, access, disclosure, and privacy protection of PHI received from IEHP, or created or received by Business Associate on behalf of IEHP, available to the Secretary, for purposes of determining, investigating or auditing Business Associate's and/or IEHP's compliance with the Privacy and Security Rules and/or HITECH, subject to any applicable legal restrictions. Business Associate shall also cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.
- E. Carrying Out IEHP's Obligations. To the extent Business Associate is to carry out one or more of IEHP's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that applies to IEHP in the performance of such obligations.
- F. Subcontractors. In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall require Subcontractors that create, receive, maintain or transmit PHI and/or ePHI on behalf of Business Associate, to agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to the PHI and/or ePHI, including the restrictions, conditions and requirements set forth in this Agreement.



- G. Contract Violations by Subcontractors. Pursuant to 45 C.F.R. § 164.504(e)(1)(iii), if Business Associate knows of a pattern of activity or practice of the Subcontractor that constitutes a material breach or violation of the Subcontractor’s obligations under the business associate contract between Business Associate and Subcontractor, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate shall terminate the business associate contract with the Subcontractor if feasible.
- H. Workforce Training. Business Associate warrants that all employees who use, access or disclose PHI and/or ePHI shall be properly trained to comply with Privacy Rule, Security Rule, HITECH, or other such applicable law.
- I. Patient Confidentiality Laws and Regulations. Business Associate agrees to obtain and maintain knowledge of the applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- J. Reporting of Improper Access, Use or Disclosure Breach. Business Associate shall report to IEHP any unauthorized use, access or disclosure of Unsecured PHI and/or ePHI or any other Security Incident with respect to PHI no later than fifteen (15) days after Discovery of the potential Breach (“Notice Date”). With respect to PHI involving Medi-Cal beneficiaries, however, Business Associate shall report to IEHP any Breach or Security Incident of which Business Associate becomes aware, within 24 hours of discovery. Business Associate shall notify IEHP through the IEHP Compliance Department via telephone to the Compliance Hotline (866) 355-9038, via email to the Compliance Mailbox [compliance@iehp.org](mailto:compliance@iehp.org), or via facsimile to the Compliance Fax (909) 477-8536. Upon Discovery of the potential Breach, Business Associate shall complete the following actions:
- 1) Provide IEHP’s Compliance Department with the information required by 45 C.F.R. §§164.410 and 164.404, which shall include, but not be limited to:
    - i. The identification of each individual (IEHP Members) whose Unsecured PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used or disclosed;
    - ii. Date(s) of Breach: MM/DD/YYYY;
    - iii. Date(s) of Discovery of Breach: MM/DD/YYYY;
    - iv. Approximate number of individuals (IEHP Members) affected by the Breach;



- v. Type of Breach, i.e., theft, loss, improper disposal, unauthorized access, hacking/IT incident (for additional selections, see U.S. Department of Health & Human Services, Health Information Privacy);
  - vi. Location of breached information, i.e., laptop, desktop computer, network server, E-Mail, other portable electronic device (see U.S. Department of Health & Human Services, Health Information Privacy);
  - vii. Type of PHI involved in the Breach, i.e., demographic information, financial information, clinical information (see U.S. Department of Health & Human Services, Health Information Privacy);
  - viii. Safeguards in place prior to Breach, i.e., firewalls, packet filtering (router-based), encrypted wireless (see U.S. Department of Health & Human Services, Health Information Privacy);
  - ix. Actions taken in response to Breach, i.e., mitigation, protection against any further Breaches, policies and procedures (see U.S. Department of Health & Human Services, Health Information Privacy); and
  - x. Any steps individuals should take to protect themselves from potential harm resulting from the Breach.
- 2) Conduct and document a risk assessment by investigating, without reasonable delay and in no case later than twenty (20) calendar days of Discovery, the potential Breach to determine the following:
- i. Whether there has been an impermissible use, acquisition, access or disclosure of PHI and/or ePHI under the Privacy Rule;
  - ii. Whether an impermissible use or disclosure compromises the security or privacy of the PHI and/or ePHI, including whether it can be demonstrated that there is a low probability that PHI and/or ePHI has been compromised based on a risk assessment of at least four (4) factors specified in Section 1.B(1) defining Breach; and
  - iii. Whether the incident falls under one of the Breach exceptions.



- 3) Provide the completed risk assessment and investigation documentation to IEHP’s Compliance Department within twenty-five (25) calendar days of Discovery of the potential Breach, and collaborate with IEHP on making a decision on whether a Breach has occurred.
  - i. If a Breach has not occurred, notification to patient/client(s) is not required;
  - ii. If a Breach has occurred, notification to the patient/client(s) is required and Business Associate must provide IEHP with affected patient/client(s) names and contact information so that IEHP can provide notification.
- 4) For Breaches or Security Incidents involving Medi-Cal PHI, Business Associate shall commence investigations immediately and work with IEHP to submit a “DHCS Privacy Incident Report” within 72 hours of discovery with the information known at the time. Within ten (10) working days of the discovery of the Breach or unauthorized use or disclosure, Business Associate shall work with IEHP to provide a complete report of the investigation to DHCS, which shall include (i) an assessment of all known factors relevant to a determination of whether a Breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law; and (ii) a corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests additional information to that listed on the “DHCS Privacy Incident Report” form, Business Associate shall make reasonable efforts to provide DHCS with such information.
- 5) Make available to governing State and Federal agencies in a time and manner designated by such agencies, any policies, procedures, internal practices and records relating to a potential Breach for the purposes of audit; cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.
- 6) Should the Breach of Unsecured PHI be caused solely by Business Associate’s failure to comply with one or more of its obligations under this BAA, Privacy Rule, Security Rule and/or HITECH Provisions, Business Associate shall pay for any and all costs associated with providing all legally required notifications to individuals, media outlets and the Secretary.
- 7) Should the Breach of Unsecured PHI involve more than 500 residents of a single State or jurisdiction, Business Associate shall provide to IEHP, no later than the Notice Date, the information necessary for IEHP to prepare the notice to media outlets as set forth in 45 C.F.R. § 164.406.



- 8) Should the Breach of Unsecured PHI involve 500 or more individuals, Business Associate shall provide to IEHP, no later than the Notice Date, the information necessary for IEHP to prepare the notice to the Secretary as set forth in 45 C.F.R. § 164.408.
- 9) Should the Breach of Unsecured PHI involve less than 500 individuals, Business Associate shall maintain a log of such Breaches and provide such log to IEHP, for submission to the Secretary, on an annual basis and not later than forty-five (45) days after the end of each calendar year.

**5. ACCESS TO PHI, AMENDMENT AND DISCLOSURE ACCOUNTING**

Business Associate agrees to:

- A. Provide access, at the request of IEHP, within five (5) days, to PHI, including ePHI if maintained electronically, in a Designated Record Set, to IEHP, or to an individual or individual's designee as directed by IEHP, as necessary for IEHP to satisfy its obligations under 45 C.F.R. § 164.524.
- B. Make any amendment(s) to PHI in a Designated Record Set that IEHP directs or agrees to, at the request of IEHP or an individual, pursuant to 45 C.F.R. § 164.526, within thirty (30) days of the request of IEHP.
- C. Assist IEHP in meeting its disclosure accounting under HIPAA:
  - 1) Business Associate agrees to document such disclosures of PHI and information related to such disclosures, as would be required for IEHP to respond to a request by an individual for an accounting of disclosures of PHI.
  - 2) Business Associate agrees to provide to IEHP, within thirty (30) days, information collected in accordance with this Section to permit IEHP to make an accounting of disclosures of PHI by Business Associate in accordance with 45 C.F.R. § 164.528 and HITECH.
  - 3) Business Associate shall have available for IEHP the information required by this Section for the six (6) years preceding IEHP's request for information.



## 6. TERM AND TERMINATION

- A. Term. This Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement.
- B. Termination for Cause. IEHP may terminate the Underlying Agreement, effective immediately, if IEHP, in its sole discretion, determines that Business Associate has breached a material provision of this Agreement relating to the privacy and/or security of the PHI. Alternatively, IEHP may choose to provide Business Associate with notice of the existence of an alleged material breach and afford Business Associate with an opportunity to cure the alleged material breach. In the event Business Associate fails to cure the breach to the satisfaction of IEHP in a timely manner, IEHP reserves the right to immediately terminate the Underlying Agreement.
- 1) Effect of Termination. Upon termination of the Underlying Agreement, for any reason, Business Associate shall return or destroy all PHI and/or ePHI received from IEHP, or created or received by Business Associate on behalf of IEHP, no later than sixty (60) days after the date of termination. Business Associate shall certify such destruction, in writing, to IEHP. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI and/or ePHI.
  - 2) Destruction not Feasible. In the event that Business Associate determines that returning or destroying the PHI and/or ePHI is not feasible, Business Associate shall provide written notification to IEHP of the conditions which make such return or destruction not feasible. Upon reasonable determination by Business Associate that return or destruction of PHI and/or ePHI is not feasible, Business Associate shall extend the protections, limitations, and restrictions of this Agreement to such PHI and/or ePHI retained by Business Associate, its subcontractors, employees or agents, and to limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as such PHI and/or ePHI is maintained.



## 7. **HOLD HARMLESS/INDEMNIFICATION**

With respect to the subject matter in this Agreement, the following shall be applicable:

Business Associate shall indemnify and hold harmless IEHP, its respective directors, officers, Governing Board, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Business Associate, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Business Associate, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. Business Associate shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards IEHP, its respective directors, officers, Governing Board, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Business Associate, Business Associate shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of IEHP, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of IEHP; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Business Associate's indemnification to IEHP as set forth herein. Business Associate's obligation to defend, indemnify and hold harmless IEHP shall be subject to IEHP having given Business Associate written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Business Associate's expense, for the defense or settlement thereof. Business Associate's obligation hereunder shall be satisfied when Business Associate has provided to IEHP the appropriate form of dismissal relieving IEHP from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement shall in no way limit or circumscribe Business Associate's obligations to indemnify and hold harmless IEHP herein from third party claims arising from the issues of this Agreement.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement, this indemnification shall only apply to the subject issues included within this Agreement.





## 8. **GENERAL PROVISIONS**

- A. **Medi-Cal Requirements.** As a condition of obtaining access to PHI of IEHP relating to Medi-Cal Members, Business Associate acknowledges receipt of a copy of Exhibit G of the contract between IEHP and DHCS (which can also be found at: <https://www.dhcs.ca.gov/provgovpart/Documents/Two-PlanCCIFinalRuleBoilerplate.pdf>), and agrees to the terms and conditions therein with respect to such PHI.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- C. **Survival.** Notwithstanding Section 6.A of this Agreement, the respective rights and obligations of this Agreement shall survive the termination or expiration of this Agreement.
- D. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, Security Rule, and/or HITECH means the section(s) as in effect or as amended.
- E. **Interpretation.** This Attachment shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA and HITECH. Any ambiguity in this Agreement and the Underlying Agreement shall be resolved to permit IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- F. **Remedies.** Business Associate agrees that IEHP shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which IEHP may have at law or in equity in the event of an unauthorized use, access, or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.
- G. **Ownership.** The PHI shall be and remain the property of IEHP. Business Associate agrees that it acquires no title or rights to the PHI.
- H. **Headings.** Paragraph headings contained in this Agreement are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this Agreement.



## ATTACHMENT E

### PLAN LICENSING / STATE REQUIREMENTS

San Bernardino County (Arrowhead Regional Medical Center)

This Professional Services Agreement has been identified as a contract for marketing, administrative, management or consulting services related to health plan activities and/or specifically related to fulfilling IEHP's obligations to the California Department of Health Care Services ("DHCS") under the terms of the DHCS contract and/or the functions relating to activities regulated by the Department of Managed Health Care ("DMHC"). Accordingly, the following shall apply to CONTRACTOR:

- A. CONTRACTOR shall keep all books and records, including applicable subcontracts, pertaining to the goods and/or services furnished under this Agreement for a minimum of ten (10) years from the close of the current fiscal year in which the Agreement was in effect. CONTRACTOR shall provide for the accessibility, inspection, examination, or copying of such books and records to the DMHC, as well as DHCS, the Department of Health and Human Services, and the Department of Justice, within five days after being requested for access. Such access shall be allowed at all reasonable times at the CONTRACTOR's place of business or at such other mutually agreeable location in California.
- B. Prior to any material revision to this Agreement or to any subcontract of CONTRACTOR relating to this Agreement, IEHP and CONTRACTOR shall notify and obtain prior approval from DMHC.
- C. CONTRACTOR shall allow DMHC on-site access to its facility where services for IEHP are performed and to its administrative and financial records relating to the goods and/or services furnished under the terms of this Agreement. DMHC shall be allowed to inspect all records, books, and papers of CONTRACTOR relating to this Agreement during normal business hours.
- D. Pursuant to California Health & Safety Code Section 1381, all of CONTRACTOR's records, books, and papers related to this Agreement shall be located in this state to the extent feasible. If outside the state, DMHC may, upon reasonable notice, require that such records, books and papers, or a specified portion, be made available for examination in this state, or that a true and accurate copy of such records, books and papers, or a specified portion, be furnished to DMHC.



- E. In order to monitor the proper performance of CONTRACTOR, IEHP shall have the right to:
  - 1) Request, in writing, internal audits and/or inspections by CONTRACTOR. CONTRACTOR shall provide a written report to IEHP of the results and any findings within 60 days of such written request by IEHP. If such functions are delegated to a third party, CONTRACTOR shall obtain prior approval by IEHP and CONTRACTOR shall directly supervise and be responsible for the engagement.
  - 2) Conduct an annual inspection of CONTRACTOR, and to further require corrective action if the results of such inspection indicate any deficiencies.
- F. CONTRACTOR agrees to hold harmless both the State of California and IEHP members in the event IEHP cannot or will not pay for services performed by the CONTRACTOR pursuant to this Agreement.
- G. CONTRACTOR agrees to comply with all applicable requirements of the DHCS Medi-Cal Managed Care Program.



## ATTACHMENT F

### MEDICARE ADVANTAGE PROGRAM ADDENDUM

San Bernardino County (Arrowhead Regional Medical Center)

#### DEFINITIONS

This Medicare Advantage Program Addendum (“Addendum”) is attached to the Professional Services Agreement between IEHP and Contractor (“Underlying Agreement”) and intended to add language required by the Centers for Medicare and Medicaid Services.

For purposes of this Addendum, the following definitions shall apply; other capitalized terms that are not defined herein shall have the definitions ascribed to it in the Underlying Agreement. All regulatory references in the brackets are to sections contained in 42 CFR Part 422, unless otherwise indicated.

- A. **Downstream Entity** means all entities or individuals, below the level of the First Tier Entity, that have entered into a written arrangement involving a Medicare Advantage benefit and/or service, and continues down to the ultimate provider of administrative services.
- B. **First Tier Entity** means the first level of contractor that has a direct contract with the MAO to provide administrative services for a Medicare eligible individual under the Medicare Advantage program.
- C. **Centers for Medicare and Medicaid Services (CMS)** means the agency within the Department of Health and Human Services that administers the Medicare program.
- D. **CMS Agreement** means the Medicare Advantage contract between CMS and the MAO.
- E. **Dual Eligible Beneficiary** means an individual 21 years of age or older who is enrolled for benefits under Medicare Part A (*42 U.S.C. § 1395c et seq.*) and Medicare Part B (*42 U.S.C. § 1395j et seq.*) and is eligible for medical assistance under the Medi-Cal State Plan.
- F. **Medicare Advantage** means the benefit package that offers a specific set of health benefits at a uniform premium and uniform level of cost-sharing to all people with Medicare who live in the service area covered by the MAO (this is offered by private or public plans as an alternative to the traditional Medicare program, under which eligible beneficiaries receive benefits directly from the Medicare program).



- G. **Medicare Advantage Organization (MAO)** refers to the Inland Empire Health Plan in this Attachment, and is defined as the health plan or provider sponsored organization that has entered into an agreement with the CMS to provide Medicare beneficiaries with health care options.
- H. **Member** means an individual who has enrolled in or elected coverage through the MAO.
- I. **Contractor** refers to County of San Bernardino (Arrowhead Regional Medical Center) and is a First Tier Entity of the MAO.

## REQUIRED PROVISIONS

Contractor agrees to the following:

- A. To comply with applicable State and Federal laws and regulations, including all applicable Medicare laws, regulations, and CMS instructions. [422.504(i)(4)(v)]
- B. To give the Department of Health and Human Services (HHS), CMS and the Comptroller General or their designees the right to audit, evaluate, and inspect any pertinent information related to the contract during the contract term, including without limitation, books, contracts, computer or other electronic systems, medical records, patient care documentation, and other records of Contractor, its subcontractors, or related entities for the later of ten (10) years, or for periods exceeding ten (10) years, for reasons specified in the federal regulation. [422.504(e)(2), (3), and (4); 422.504(i)(2)(ii)]
- C. To comply with all State and Federal confidentiality requirements, including the requirements established by the MAO and CMS, to safeguard the privacy and confidentiality of any information that identifies a particular Member, by:
  - 1) Abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information. [422.118(a); 422.504(a)(13)]
  - 2) Maintaining the records and information of Members in an accurate and timely manner. [422.118(c); 422.504(a)(13)]
  - 3) Ensuring that medical information pertaining to Members is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas. [422.118(b); 422.504(a)(13)]
  - 4) Ensuring timely access by Members to the records and information that pertain to them. [422.118(d); 422.504(a)(13)]



- A. That MAO has the right to revoke the Underlying Agreement if Contractor does not perform satisfactorily, including but not limited to the failure by the Contractor and/or delegated parties to fully comply in a timely manner the requisite reporting and disclosure requirements.
- B. To ensure that Contractor, its employees, or any subcontractors performing work on the Underlying Agreement have not been excluded, debarred, or suspended under the OIG List of Excluded Individuals/Entities (LEIE) or the System for Award Management exclusion list (SAM) from participation in any federal or state health care program. Contractor agrees to review the OIG and SAM upon initial hiring and monthly thereafter of its employees and subcontractors, and to retain documentation to evidence its compliance with these requirements. Should any appear on a list, Contractor will (i) promptly remove such employee or subcontractor from performing any services for IEHP, and (ii) immediately notify IEHP of such action. Contractor shall take additional appropriate corrective actions as directed by IEHP or CMS. Contractor represents and warrants that it has processes and procedures in place to comply with these requirements.
- C. If Contractor delegates any activities or responsibilities to a Downstream Entity, Contractor agrees:
- 1) To perform and maintain delegated functions consistent with MAO's contractual obligations under the CMS Agreement. [422.504(i)(3)(iii)]
  - 2) That each and every contract shall [422.504(i)(4)(i)-(iv)]:
    - i. Specify delegated activities and reporting responsibilities;
    - ii. Allow revocation of the delegation activities and reporting requirements or specify other remedies in instances where CMS or the MAO determine that such parties have not performed satisfactorily;
    - iii. Specify that the performance of Contractor and/or delegated parties shall be monitored by MAO on an ongoing basis; and
    - iv. Specify that the credentials of medical professionals affiliated with Contractor and/or delegated parties will be either reviewed by MAO or the credentialing process will be reviewed and approved by MAO, and MAO shall audit the credentialing process on an ongoing basis.
  - 1) That if MAO delegates selection of providers, contractors, or subcontractors to Contractor or another organization, MAO retains the right to approve, suspend, or terminate any such arrangement. [422.504(i)(5)]



- 2) That if MAO delegates credentialing activities to Contractor, Contractor shall comply with all applicable Medicare credentialing requirements.
- 3) That if a function is only partially delegated to Contractor, the written arrangement shall clearly delineate which responsibilities have been delegated and which remain with the MAO.

Except as provided in this Addendum, all other provisions of the Underlying Agreement between MAO and Contractor not inconsistent herein shall remain in full force and effect. This Addendum shall remain in force as a separate but integral addition to the Underlying Agreement to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Underlying Agreement. In the event of a conflict between the terms and conditions in this Addendum and the terms of the Underlying Agreement, the terms of this Addendum control.