

**MEMORANDUM OF UNDERSTANDING
BETWEEN
SAN BERNARDINO COUNTY
DEPARTMENT OF AGING AND ADULT SERVICES – PUBLIC
GUARDIAN
MULTIPURPOSE SENIOR SERVICES PROGRAM
AND
INLAND EMPIRE HEALTH PLAN**

Revenue Agreement between PLAN and MSSP PROVIDER

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https://aging.ca.gov/Providers_and_Partners/Multipurpose_Senior_Services_Program/Site_Manual/

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Attachment 3 – MSSP Catchment Areas, City and Zip Codes

AGREEMENT

This Agreement is entered into by and between Inland Empire Health Plan ("IEHP" or "PLAN") and San Bernardino County Multipurpose Senior Services Program (MSSP) (MSSP PROVIDER/ Contractor), as of January 1, 2026 and will expire no sooner than December 31, 2030, subject to Article VI below (TERMINATION OF AGREEMENT). This agreement covers the following zip codes: 91701, 91709, 91710, 91730, 91737, 91739, 91743, 91759, 91761, 91762, 91763, 91764, 91766, 91784, 91786, 92252, 92256, 92284, 92285, 92286, 92301, 92307, 92308, 92310, 92311, 92312, 92314, 92316, 92318, 92322, 92324, 92325, 92334, 92335, 92336, 92337, 92341, 92342, 92344, 92345, 92346, 92352, 92354, 92359, 92368, 92369, 92371, 92372, 92373, 92374, 92375, 92376, 92377, 92382, 92391, 92392, 92393, 92394, 92395, 92397, 92399, 92401, 92402, 92403, 92404, 92405, 92406, 92407, 92408, 92410, and 92411.

This Agreement incorporates in its entirety California's Home and Community Based Services Waiver 'MSSP Waiver' pursuant to section 1915(c) of Title XIX of the Social Security Act, a copy of which can be found at <https://www.dhcs.ca.gov/services/medi-cal/Pages/MSSPMedi-CalWaiver.aspx>. This Agreement and performance hereunder cannot conflict with the MSSP Waiver. Where a conflict exists between the MSSP Waiver and this Agreement or performance hereunder, the provisions of the MSSP Waiver govern.

RECITALS

- A. WHEREAS, PLAN is an independent organization contracted directly with the California Department of Health Care Services (DHCS). PLAN is to organize providers to provide Medi-Cal covered benefits to Medi-Cal beneficiaries who are enrolled with the PLAN;
- B. WHEREAS, MSSP PROVIDER is an entity contracted with the California Department of Aging (CDA) for designated slots to provide MSSP Waiver services to eligible Medi-Cal beneficiaries on behalf of DHCS pursuant to an Interagency Agreement between DHCS and CDA to provide the MSSP;
- C. WHEREAS, in accordance with the requirements of the Centers for Medicare and Medicaid Services (CMS), Welfare and Institutions Code Section 14132.275, PLAN is required to contract with MSSP PROVIDERS for the provision of MSSP Waiver Services to PLAN Members who are eligible and choose to participate in the MSSP Program;
- D. WHEREAS, the parties hereto desire to enter in this Agreement to provide a statement of their respective rights and responsibilities in connection with the provision of MSSP Waiver Medi-Cal benefits to San Bernardino County by MSSP PROVIDER during the term hereof;
- E. NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained the parties agree as follows:

ARTICLE I

DEFINITIONS

A. **Assessment:** The health, social and psychosocial evaluation of a potential or existing MSSP Waiver Participant's ability to function within his or her home environment. An assessment is performed by a team of qualified professionals using the following standard tools:

1. **Initial Health Assessment Tool:** Used to gather basic and measurable information regarding the MSSP Applicant or MSSP Waiver Participant's health status and ability to perform basic activities; and

2. **Initial Psychosocial Assessment Tool:** Used to gather objective measurable information about the MSSP Applicant or MSSP Waiver Participant's cognitive, physical and psychological functioning, spiritual beliefs, social support systems and environment.

B. **Care Management:** The coordination of existing community resources and Purchased Waiver Services required to enable MSSP Participants to continue living safely at home. Care Management includes establishing and implementing a written care plan and assisting MSSP Participants to access services authorized under the care plan. Care Management generally includes, among other tasks, referral to, and coordination of, other necessary medical, social, psychosocial and other services identified in the care plan.

C. **Care Management Support:** Administrative and operating expenses that pay for Care Management functions.

D. **Certifiable for Placement:** The MSSP Provider has determined that the MSSP Applicant or MSSP Waiver Participant has either a level of functional impairment or a medical condition that warrants nursing facility placement.

E. **Encounter:** Any authorized service consistent with any of the three (3) MSSP service categories (Care Management, Care Management Support or Purchased Waiver Services) provided by or purchased by MSSP PROVIDER for an enrolled PLAN Member during a given month. Each PLAN Member incurs one (1) encounter per month for care management and care management support. However, each MSSP Provider may submit more than one encounter to the PLAN for Purchased Waiver Services (PWS) because each unit of PWS is counted as a separate encounter.

F. **Eligibility Determination:** A process by which the MSSP PROVIDER determines whether a MSSP Applicant or MSSP Waiver Participant meets eligibility criteria to participate in MSSP and receive MSSP Waiver Services.

G. **Abuse and Fraud:**

1. Abuse is practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the federal Medicaid and Medicare programs, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or

financed in whole or in part, by the federal government or a state or local agency in this state or another state and/or practices that are inconsistent with sound medical practices and result in reimbursement by the federal Medicaid and Medicare programs, the Medical program or other health care programs operated, or financed in whole or in part, by the federal government or a state or local agency in this state or another state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

2. Fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

H. **Level of Care (LOC) Certification:** A clinical certification by MSSP PROVIDER that the MSSP Applicant or MSSP Waiver Participant meets the requirement for a nursing facility placement.

I. **Medicare:** The federally administered health insurance program, begun in 1965, which covers basic medical and hospital services, excluding long-term institutional care, for older persons and persons with disabilities.

J. **Member:** Any person who is enrolled with the PLAN and receives benefits from the PLAN.

K. **Multipurpose Senior Services Program (MSSP or MSSP Program):** A program approved under the Federal Medicaid Home and Community-Based Services, 1915(c) Waiver designed to prevent premature institutionalization through provision of comprehensive social and health care management, and when necessary, certain supportive services, to assist frail elder persons, who are certifiable for placement in a nursing facility, to remain at home at a cost lower than nursing facility care.

L. **MSSP Applicant:** A Member who has submitted an application to the MSSP PROVIDER to receive MSSP Waiver Services.

M. **MSSP Catchment Area:** The geographic area including particular zip codes to be served by the MSSP PROVIDER.

N. **MSSP Care Plan:** A document developed annually, at a minimum, by MSSP PROVIDER in partnership with each MSSP Participant, which identifies the needs, goals and all services necessary to maintain the MSSP Participant in the community.

O. **MSSP Care Management Team:** An interdisciplinary team of health care professionals that meet the professional qualifications specified in the MSSP Waiver.

P. **MSSP Provider:** An entity contracted with the CDA to participate as a provider of MSSP services in the MSSP Waiver program.

- Q. **MSSP Waiver Participant** (or a “Participant”): Any Member who has met MSSP eligibility requirements and has been enrolled in the MSSP.
- R. **MSSP Waiver or Waiver:** The Section 1915(c) Multipurpose Senior Services Program Home and Community Based Services Waiver, approved by CMS (Title XIX of the Social Security Act). This Waiver authorizes the State to administer the MSSP.
- S. **MSSP Waiver Services:** Comprehensive Care Management, Care Management Support and Purchased Waiver Services as approved by CMS in the Waiver.
- T. **MSSP Waiver Slot:** A Waiver position authorized in the Waiver, whether vacant or filled, which is funded according to an MSSP PROVIDER site budget and allocated for a Participant during a given month.
- U. **PLAN:** A health care plan organized under DHCS’ Two-Plan, County Organized Health System, or Geographical Managed Care models and contracted with DHCS to participate in the CCI.
- V. **Purchased Waiver Services:** Goods and services approved for purchase under the Waiver. The list of MSSP Purchased Waiver Services is included in Attachment 1.
- W. **Reassessment:** An annual evaluation of an existing MSSP Waiver Participant’s functional level(s) and support systems, or as needed due to MSSP Waiver Participant’s change in condition.
- X. **Subcontractor/Vendor:** The legal entity contracted by the MSSP PROVIDER to provide Purchased Waiver Services to MSSP Waiver Participants.
- Y. **Waiver Participant Count:** The total number of PLAN Members who are MSSP Waiver Participants at the time MSSP PROVIDER submits claim to PLAN.
- Z. **Wait List:** A list of potential MSSP Participants, established and maintained by the MSSP PROVIDER, when the MSSP PROVIDER has reached its capacity. The MSSP PROVIDER determines the priority of enrollment into the MSSP in accordance with CDA and CMS requirements.

ARTICLE II

DUTIES OF THE PLAN

- A. **Referrals** – PLAN shall inform its Members about the MSSP Program and establish a mechanism to refer Members who are enrolled in the Medi-Cal plan and are potentially eligible for the MSSP Program to MSSP PROVIDER for eligibility determination.
- B. **Care Coordination** – PLAN will coordinate and work collaboratively with MSSP PROVIDER on care coordination activities surrounding the MSSP Waiver Participant including, but not limited to: coordination of benefits between PLAN and MSSP PROVIDER to avoid

duplication of services and coordinate Care Management activities particularly at the point of discharge from the MSSP.

C. **Orientation** - PLAN shall provide orientation of PLAN benefits and procedures to staff of MSSP PROVIDER upon request.

D. **Confidentiality and Privacy of Member Information** – Any disclosure of confidential Member information between MSSP PROVIDER and PLAN shall be for the purposes of coordinating Member health care services administered by the MSSP PROVIDER. MSSP PROVIDER and PLAN agree to abide by PLAN policies regarding Protected Health Information (PHI), the Health Insurance Portability and Accountability Act (HIPAA), the Health Information for Economic and Clinical Health Act (HITECH), the California Confidentiality of Medical Information Act (CMIA), and any other applicable state and/or federal privacy law and/or regulation. MSSP PROVIDER and PLAN shall meet at agreed upon intervals to evaluate the effectiveness of the exchange of such confidential information and to comply with the terms of Attachment 2, “The Business Associate Agreement.”

E. **Wait List** – PLAN will review MSSP wait list every month and will contact their PLAN clientele on the MSSP wait list to offer PLAN services to their clientele while on the MSSP wait list.

ARTICLE III

DUTIES OF THE MSSP PROVIDER

A. **Referrals** – MSSP PROVIDER shall accept referrals of PLAN Members from PLAN and non-PLAN sources.

B. **Care Coordination** – MSSP PROVIDER shall:

1. Coordinate and work collaboratively with the PLAN on care coordination activities relating to the benefits and services of the MSSP Waiver Participant in order to avoid duplication of benefits and/or services.

2. Coordinate with PLAN regarding available care options prior to MSSP PROVIDER making a final determination to disenrollment of a MSSP Waiver Participant from the MSSP Program when the disenrollment is a result of:

- a. Ineligibility for the MSSP Waiver.
- b. Cost of providing MSSP Waiver Services to an MSSP Waiver Participant being beyond the cost parameters established for the MSSP Program.
- c. Proposed institutionalization.
- d. Inability or unwillingness of MSSP Waiver Participant to follow the care plan.
- e. Refusal of service by MSSP Waiver Participant or referred PLAN Member.
- f. Violence or aggression on the part of the Participant.

3. Coordinate with PLAN to ensure transition of care for PLAN Members after termination of this Agreement.

C. **Wait List** – When MSSP PROVIDER has reached its capacity, MSSP PROVIDER shall establish and maintain a wait list of individuals referred to the MSSP. The wait list and priority of admission into MSSP shall be determined by the MSSP PROVIDER in accordance with CDA and CMS requirements. On a monthly basis, no later than the fifth (5th) day of each month, MSSP PROVIDER shall provide the PLAN with a list of PLAN Members on the waitlist.

D. **Eligibility Determination** – MSSP PROVIDER shall conduct initial determination and ongoing verification of eligibility for participation in the MSSP Waiver.

E. **MSSP Enrollment** – MSSP PROVIDER shall enroll a MSSP Applicant into the MSSP if:

1. The MSSP Applicant is eligible for MSSP Waiver Services.
2. The MSSP Applicant chooses to enroll in MSSP with MSSP PROVIDER.
3. MSSP PROVIDER has a vacant, funded MSSP Waiver Slot.

F. **Care** – MSSP PROVIDER shall provide MSSP Waiver services approved in the Waiver.

G. **Compliance** – MSSP PROVIDER shall comply with all MSSP Waiver requirements. In addition, MSSP PROVIDER must ensure that MSSP Waiver Participants receive the services identified in the MSSP care plan. In addition to the requirements set forth in the Business Associate Agreement (Attachment 2), MSSP PROVIDER shall provide IEHP, upon request and at least annually, with evidence of completed privacy and security training for all staff and subcontractors with access to PHI, as well as the results of any security risk assessments or audits. MSSP PROVIDER shall cooperate fully with IEHP in any investigation or mitigation efforts related to a suspected or actual breach of PHI.

H. **Organization** – MSSP PROVIDER shall maintain and have on file a written description and an organizational chart that outlines the structure of authority, responsibility, and accountability within MSSP PROVIDER, and within the parent organization for MSSP PROVIDER, if any.

I. **Care Management Team** – MSSP PROVIDER shall employ a Care Management Team that consists of a social worker and a registered nurse. Members of the Care Management Team shall meet the qualifications set forth in the MSSP Waiver and shall be staffed in sufficient numbers to meet MSSP Waiver requirements. The Care Management Team shall:

1. Determine MSSP Waiver Participant eligibility and assure that appropriate services are provided to the MSSP Waiver Participant.
2. Work with the Participant throughout the Care Management process (e.g., assessment, care plan development, service coordination, service delivery and ongoing monitoring).
3. Provide information, education, counseling, and advocacy to the MSSP Waiver Participant and family, and identify resources to help assure the timely, effective,

and efficient mobilization and allocation of all services, regardless of the source, to meet the MSSP Waiver Participant's care plan goals.

4. If necessary and under special circumstances or severe changes to the care plan, Plan can verbally request or provide written request for the MSSP Participant's assessment, reassessments, and care plan from the MSSP PROVIDER.

J. **Care Plan** – MSSP PROVIDER's Care Management Team shall perform the MSSP Waiver Participant's assessments and work with the MSSP Waiver Participant, family, PLAN, and others to develop a care plan covering the full range of required psychosocial and health services. The Care Management Team shall continue to work with the MSSP Waiver Participant to assure that she/he is receiving and benefiting from the services and to determine if modification of the care plan is required.

K. **Purchased Waiver Services** – MSSP PROVIDER may purchase MSSP Waiver Services when necessary to support the well-being of a MSSP Waiver Participant.

1. Prior to purchasing services, MSSP PROVIDER shall verify that alternative resources are not available and document its verification efforts (e.g. attempt to have services provided by family, friends, and other community resources). Approved Purchased Waiver Services are listed and defined in the MSSP Provider Site Manual located in Attachment 1.

2. MSSP PROVIDER may either enter into a contract with Subcontractors/Vendors to provide Purchased Waiver Services or directly purchase items using a purchase order.

3. MSSP PROVIDER shall maintain written Subcontractor/Vendor agreements for the following minimum array of Purchased Waiver Services at all times during the term of this Agreement as defined in Attachment 1:

- a. Adult Day Care (ADC),
- b. Housing Assistance,
- c. Supplemental Personal Care Services,
- d. Care Management,
- e. Respite Care,
- f. Transportation,
- g. Meal Services,
- h. Protective Services, and
- i. Special Communications.

4. Such MSSP Subcontractor/Vendor agreements shall specify terms and conditions and payment amount and shall assure that Subcontractors/Vendors shall not seek additional or outstanding unpaid amounts from the MSSP Participant or the PLAN. Such MSSP Subcontractor/Vendor agreements shall be made available to PLAN upon request.

5. MSSP Providers shall assure that its Subcontractors/Vendors have the license,

credentials, qualifications, or experience to provide services to the MSSP Participant, and shall provide the PLAN with proof of those licenses, credentials, qualifications, or experience upon PLAN request.

6. MSSP PROVIDER shall be responsible for coordinating and tracking MSSP Purchased Waiver Services for a MSSP Waiver Participant.

L. **Case Files** – MSSP PROVIDER shall maintain an up-to-date, centralized, and secure case file record for each MSSP Waiver Participant. Case files shall consist of, at a minimum, the following:

1. Application form,
2. MSSP Authorization for Use and Disclosure of Protected Health Information form,
3. Client Enrollment/Termination Information form,
4. Certification/Recertification (LOC) form,
5. Initial health and psychosocial assessments and reassessments and most recent reassessment,
6. Summaries, Care Plan, and Service Planning and Utilization Summary (SPUS), client progress notes and other client related information (e.g., correspondence, medical/psychological/social records),
7. Denial or discontinuance letters (Notice of Action),
8. Termination forms, and
9. Fair Hearing documentation.

M. **Notice Requirements** – MSSP PROVIDER shall provide notice as follows:

1. On a monthly basis, written notice to PLAN of active client list and monthly wait list. PLAN shall coordinate with MSSP PROVIDER for any clarification, as needed.
2. Provide written notice to the PLAN thirty-five (35) days prior to any relocation of an MSSP site.
3. Provide written notice to DHCS and CDA one hundred eighty (180) days prior to termination of MSSP Provider contract with State.
4. Provide written notice to State thirty (30) days prior to termination of this Agreement with PLAN.

O. **Transition** – In case of termination of this Agreement, MSSP PROVIDER shall work collaboratively with PLAN to develop and implement a transition plan to ensure continuity of care for all affected Members, including the transfer of all relevant records and information, and shall continue to provide services until such transition is complete, as reasonably determined by IEHP..

P. **Enrollment Verification** – MSSP PROVIDER shall verify, monthly, the MSSP Waiver

Participant eligibility for Medi-Cal and in which managed care plan the MSSP Waiver Participant is enrolled. PLAN enrollment can be validated through the Medi-Cal Eligibility Determination System (MEDS) and/or directly with PLAN.

1. Unencrypted member Electronic Protected Health Information (ePHI) sent to entities outside of PLAN using internet based services must be secured using virtual private networks (VPN), secure socket layer (SSL), transmission layer security (TLS), secure file transport protocol (SFTP), or other method that can encrypt communications over the public internet; and
2. Removable storage devices used to store ePHI must be encrypted before being sent to entities outside of PLAN.

Q. **Orientation** – MSSP PROVIDER shall provide orientation of MSSP Waiver Services to staff of PLAN upon request.

R. **Fraud, Waste and Abuse** – MSSP PROVIDER agrees to immediately notify PLAN if any Fraud, Waste, or Abuse is identified in providing the MSSP Waiver Services under this Agreement.

ARTICLE IV

RECORDS AND REPORTS

A. **Records** – MSSP PROVIDER shall maintain complete records pertaining to services rendered under the terms of this Agreement (subject to patient confidentiality requirements). Such records, whether in hard copy or in electronic format, shall include but not be limited to, financial records; administrative records; and medical/non-medical services records for MSSP Waiver Participants related to MSSP Waiver Services provided under this Agreement.

Said records shall be maintained in accordance with the Generally Accepted Accounting Principles (GAAP), and in accordance with applicable State and Federal requirements. Records shall be legible, current, organized, accurate, comprehensive, and kept in a secure location.

B. **Access/Inspection** – MSSP PROVIDER agrees to provide the PLAN or its duly authorized representatives with access to all records pertaining to the services rendered under the terms of this Agreement (subject to patient confidentiality requirements) for the purposes of inspection, examination, or copying. PLAN shall provide to MSSP PROVIDER a minimum of ten (10) business days written notice prior to access/inspection, or immediately in the event of a regulatory investigation, audit, or suspected breach. MSSP PROVIDER shall promptly address any deficiencies identified by IEHP and provide written evidence of corrective actions taken. This Agreement shall not affect any rights of DHCS and CDA to access records and documents held by the MSSP Provider.

C. **Record Retention** – Records shall be retained for a term of seven **(7) years** by the MSSP PROVIDER AND PLAN from the close of the State's fiscal year in which this Agreement was in effect. The requirement to maintain records shall remain in effect even upon the termination of this Agreement pursuant to Article V.

D. **Subcontractor/Vendor Agreements** – All agreements between MSSP PROVIDER and any Subcontractor/Vendor shall require Subcontractor/Vendor to make all records related to the MSSP subcontract/vender agreement available at all times for inspection, examination or copying by PLAN or its duly authorized representatives. Said agreement shall require the Subcontractor/Vendor to retain such records for a term of ten (10) years from the close of the State fiscal year in which the Subcontract/Vendor is in effect. All records, paper and electronic, shall be provided to the PLAN upon MSSP Site closure. If beneficiary does not belong to PLAN, MSSP Site shall provide all records to CDA.

1. **Reporting** – Upon request, MSSP PROVIDER agrees to furnish PLAN with the Waiver Participant Count.

ARTICLE V

TERMINATION OF THE AGREEMENT

A. Termination of Agreement by Either Party

1. Either party to this Agreement shall have the right to terminate this Agreement for cause, if either party:

- a. Takes any action that threatens the life, health or safety of any MSSP Waiver Participant or Participants.
- b. Violates the law or fails to comply with any material term of this Agreement.
- c. Terminates the contract with the State of California.
- d. Is debarred, excluded, suspended, or otherwise disqualified from Federal Financial Participation or Medi-Cal participation.
- e. Endangers the performance of this Agreement due to an unsatisfactory financial condition, including loss of funding source, bankruptcy, or delinquent payment of taxes.
- f. Engages in a fraudulent activity against the other party or members.

2. The complaining party shall provide the responding party thirty (30) days written notice of termination for cause ("Notice of Termination"), specifying the applicable termination provision(s), underlying facts leading to the termination, and the effective date of termination. The responding party shall have twenty (20) days after receipt of such notice to remedy the breach. If the complaining party accepts the remedy, the Notice of Termination will be rescinded and this Agreement will remain in effect for the remaining term.

3. Notwithstanding the foregoing, either party to this Agreement shall have the right to terminate this Agreement for convenience.

4. Both parties shall notify the State of California, in writing, thirty (30) days prior to termination of this Agreement.

B. Effect of Termination

1. As of the date of termination pursuant to any provision of this Agreement, this Agreement shall be of no further force or effect, and each of the parties shall be relieved and discharged from performance, except as specified in Paragraphs 2 and 3 of this Section B.
2. PLAN shall remain liable for payment of all MSSP services rendered to PLAN's Member up to the termination of this Agreement.
3. MSSP Provider shall continue to be responsible for record retention as set forth above.

ARTICLE VI

DISPUTE RESOLUTION

A. **Dispute Resolution Process** – PLAN and MSSP PROVIDER agree to meet and confer in good faith to resolve any disputes that may arise under or in connection with this Agreement.

B. **Limitations** – The time limits for presenting claims and commencing any proceeding shall be as provided by applicable law and shall not be shortened by this Agreement. For claims subject to the California Government Claims Act, the Parties shall comply with that Act. Any mandatory dispute-resolution steps under this Article shall toll the applicable statute of limitations from written notice of the dispute until completion of those steps, subject to applicable law..

ARTICLE VII

INSURANCE

Throughout the term of this Agreement MSSP PROVIDER agrees to maintain, at its sole cost and expense, professional general liability in the minimum amount of One Million Dollars (\$1,000,000) combined single limited coverage; and One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate per year for professional liability for providing MSSP Waiver Services to Members on behalf of MSSP PROVIDER. MSSP PROVIDER employees may be covered by employer policies of insurance or by employer self-insurance programs. In the event MSSP PROVIDER procures a claim made policy as distinguished from an occurrence policy, MSSP PROVIDER shall procure and maintain prior to termination of such insurance, continuing "tail" coverage, unless successor policy coverage provides such "tail" protection. Evidence of insurance coverage for PROVIDER shall be provided to PLAN each year. MSSP PROVIDER shall provide PLAN with written notification thirty (30) days prior to any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section.

ARTICLE VIII

INDEMNITY

A. **MSSP PROVIDER Indemnification** – MSSP PROVIDER agrees to indemnify, defend and hold harmless PLAN, its agents, Governing Board, officers and employees from and against any and all liability, expense, including reasonable attorneys' fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising out of or related to act or omission of any act or omission of MSSP PROVIDER or its subcontractors, including but not limited to any breach of confidentiality, privacy, or security obligations. This indemnification obligation shall survive the termination or expiration of this Agreement. This provision is not intended to, nor shall it be construed to, require MSSP PROVIDER to indemnify PLAN for any PLAN liability independent of that of MSSP PROVIDER, nor to cause MSSP PROVIDER to be subject to any liability to any third party (either directly or as an indemnitor of PLAN or its agents, officers and employees) in any case where MSSP PROVIDER liability would not otherwise exist. Rather, the purpose of this provision is to assure that PLAN and its agents, officers, and employees, will be provided with indemnification for and a defense to any vicarious or other indirect liability or claim against PLAN or such agents, officers, or employees resulting from the actions or other omissions of MSSP PROVIDER, its affiliates, Subcontractors/Vendors and their respective employees and agents in connection with their operations and services relating to this Agreement.

B. **PLAN Indemnification** – PLAN agrees to indemnify, defend and hold harmless MSSP PROVIDER, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with any negligence in connection with PLAN's operations or its services hereunder including the operations and services of PLAN's affiliates, Subcontractors/Vendors and their respective agents. This provision is not intended to, nor shall it be construed to, require PLAN to indemnify MSSP PROVIDER for any MSSP PROVIDER liability independent of that of PLAN, nor to cause PLAN to be subject to any liability to any third party (either directly or as an indemnitor of MSSP PROVIDER or its agents, officers employees) in any case where PLAN liability would not otherwise exist. Rather, the purpose of this provision is to assure that MSSP PROVIDER and its agents, officers, and employees, will be provided with indemnification for and a defense to any vicarious or other indirect liability or claim against MSSP PROVIDER or such agents, officers, or employees resulting from the actions or other omission of PLAN, its affiliates, subcontractors/vendors and their respective employees and agents in connection with their operations and services relating to this Agreement.

C. **Third Party Liability** – In the event that MSSP PROVIDER renders services to MSSP Waiver Participants for injuries or other conditions resulting from the acts of other parties, the PLAN will have the right to recover from any settlement, award or recovery from any responsible third party the value of all services which have been rendered by MSSP PROVIDER pursuant to the terms of this Agreement.

ARTICLE IX

MISCELLANEOUS

A. **Subcontract** – All subcontracts between MSSP PROVIDER and MSSP PROVIDER's Subcontractors shall be in writing, and entered into in accordance with the requirements of California Welfare and Institutions Code Sections 14200 et seq. Sections 14200 et seq.; California Code of Regulations, Title 22, Section 53000 et seq.; California Health and Safety Code Sections 1340 et seq.; California Code of Regulations, Title 10, Sections 1300 et seq., and all other applicable Federal and State laws and regulations. MSSP PROVIDER shall pay claims from qualified Subcontractors/Vendors for MSSP Waiver Services rendered to MSSP Waiver Participants in conformance with the Member's care plan and the terms of the MSSP Waiver.

B. **Entire Agreement** – This Agreement (together with all Attachments hereto) contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. It is the express intention of the MSSP PROVIDER and the PLAN that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period governed by this Agreement which are not expressly set forth herein, including the terms of the MSSP Waiver incorporated by reference, shall be of no further force, effect or legal consequence after the Effective Date hereunder.

C. **Amendments** – This Agreement and any Attachments hereto can only be amended by an instrument in writing, duly executed by both parties in accordance with applicable provisions of State and Federal law and regulations.

D. **Notices** – Any notice required to be given pursuant to the terms and provisions of this Agreement, unless otherwise indicated in this Agreement, shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, or courier service (Federal Express, United Parcel Service (UPS), etc.) or other means which can provide written proof of delivery, to PLAN at:

Inland Empire Health Plan
10801 6th Street, Suite 120
Rancho Cucamonga, CA 91730

and MSSP PROVIDER at:

San Bernardino County Multipurpose Senior Services Program (MSSP) Site 17
686 E. Mill Street, Second Floor
San Bernardino, CA 92415

E. **Waiver of Obligations** – No obligation under this Agreement or an Attachment hereto may be waived by any party except by an instrument in writing, duly executed by the party waiving such obligations. All waivers shall specify the provisions being waived, and no waiver

of any provision of this Agreement extends or implies the extension of the waiver to any other provisions of this Agreement unless so specified in writing.

F. Counterparts –

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

G. Headings – The headings or titles of articles and sections contained in this Agreement are intended solely for the purpose of facilitating reference, are not a part of the Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

H. Governing Law – This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of law principles applied therein. Any suit or proceeding relating to this Agreement shall be brought only in the state court located in San Bernardino, California, and federal court located in Riverside, California, and all Parties hereby submit to the personal jurisdiction and venue of such courts.

I. Offshoring – MSSP PROVIDER shall not perform the MSSP Waiver Services or any portion thereof, nor send or make available any Confidential Information (defined below) of PLAN or any protected health information (as that term is defined by the Health Insurance Privacy and Portability Act) of any Member or MSSP Applicant outside the United States.

J. Confidentiality – For the purposes of this Agreement, “Confidential Information” means any software, data, business, financial, operational, customer, MSSP PROVIDER or other information disclosed by one party to the other and not generally known by or disclosed to the public. Confidential Information shall include any and all Personal Information, defined as any information that is or includes personally identifiable information. Personal Information includes, but is not limited to, name, address and any unique personal identification number. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (a) already known to or otherwise in the possession of a party at the time of receipt from the other party, provided such knowledge or possession was not the result of a violation of any obligation of confidentiality; (b) publicly available or otherwise in the public domain prior to disclosure by a party; (c) rightfully obtained by a party from any third party having a right to disclose such information without breach of any confidentiality obligation by such third party; or (d) developed by a party independent of any disclosure hereunder, as evidenced by written records. Each party shall maintain all of the other party’s Confidential Information in strict confidence and will protect such information with the same degree of care that such party exercises with its own Confidential Information, but in no event less than a reasonable degree of care. If a party suffers any unauthorized disclosure, loss of, or inability to account for the Confidential Information of the other party, then the party to whom such Confidential Information was disclosed shall promptly notify and cooperate with the disclosing party and take such actions as may be necessary or reasonably requested by the disclosing

party to minimize the damage that may result therefrom. Except as provided in this Agreement, a party shall not use or disclose (or allow the use or disclosure of) any Confidential Information of the other party without the express prior written consent of such party. If a party is legally required to disclose the Confidential Information of the other party, the party required to disclose will, as soon as reasonably practicable, provide the other party with written notice of the applicable order or subpoena creating the obligation to disclose so that such other party may seek a protective order or other appropriate remedy. In any event, the party subject to such disclosure obligation will only disclose that Confidential Information which the party is advised by counsel as legally required to be disclosed. In addition, such party will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. Access to and use of any Confidential Information shall be restricted to those employees and persons within a party's organization who have a need to use the information to perform such party's obligations under this Agreement or, in the case of PLAN, to make use of the services, and are subject to a contractual or other obligation to keep such information confidential. A party's consultants and subcontractors may be included within the meaning of "persons within a party's organization," provided that such consultants and subcontractors have executed confidentiality agreement with provisions no less stringent than those contained in this section. Such signed agreements shall be made available to the other party upon its request. Additionally, PLAN, may, in response to a request, disclose MSSP PROVIDER's Confidential Information to a regulator or other governmental entity with oversight authority over PLAN, provided PLAN (i) first informs MSSP PROVIDER of the request, and (ii) requests the recipient to keep such information confidential. All of a party's Confidential Information disclosed to the other party, and all copies thereof, are and shall remain the property of the disclosing party. All such Confidential Information and any and all copies and reproductions thereof shall, upon request of the disclosing party or the expiration or termination of this Agreement, be promptly returned to the disclosing party or destroyed (and removed from the party's computer systems and electronic media) at the disclosing party's direction, except that to the extent any Confidential Information is contained in a party's backup media, databases and email systems, then such party shall continue to maintain the confidentiality of such information and shall destroy it as soon as practicable and, in any event, no later than required by such party's record retention policy. In the event of any destruction hereunder, the party who destroyed such Confidential Information shall provide to the other party written certification of compliance therewith within fifteen (15) days after destruction.

K. **Publicity and Public Statements.** Without IEHP's prior written consent, Contractor shall not: (i) issue any press release, public announcement, marketing, promotional, or social media communication; (ii) publish, present, disseminate, or otherwise publicly disclose any information concerning this MOU, the parties' relationship, the Services, any data shared or compiled under this MOU, or any analyses, results, or outcomes generated hereunder (including pilot, proof-of-concept, or evaluation results); or (iii) use or display IEHP's name, trade name, trademarks, service marks, logos, or other identifiers, or refer to IEHP as a client, partner, or reference. Any permitted disclosure must be submitted to IEHP for review and written approval at least thirty (30) days in advance, and IEHP may require edits, redactions, or disclaimers as a condition of approval. If Contractor is legally required to make a public disclosure, it shall, to the extent lawful, provide IEHP with prompt prior written notice and cooperate to limit the disclosure and obtain confidential treatment. Contractor may disclose on a need-to-know basis to its affiliates, professional advisors, and potential investors, lenders, or acquirers under written confidentiality obligations no less protective than those in Section IX.J. This Section

supplements the parties' confidentiality obligations, creates no license or publicity rights, and survives expiration or termination. IEHP is entitled to injunctive relief for any actual or threatened breach of this Section.

L. **Work Product and Intellectual Property.** All work product—including reports, findings, data compilations, and documents—compiled, assembled, or created by Contractor under this MOU on behalf of IEHP (excluding Contractor's pre-existing materials and intellectual property, and excluding any PHI or Confidential Information of Contractor or third parties) shall be IEHP's property and shall be transmitted to IEHP upon expiration or termination, if applicable. To the extent any Contractor Information—meaning information to which Contractor has or may obtain rights, including methods, methodologies, procedures, processes, know-how, techniques (including function, process, system, and data models), templates, data, documentation, and proprietary information and processes—is included in any work product or information shared or compiled under this MOU, Contractor grants IEHP a paid-up, royalty-free, nonexclusive, perpetual license to use and reproduce such Contractor Information solely for IEHP's internal business operations. Contractor shall not make any public statement, disclosure, or publication regarding any data, information, or work product shared or compiled under this MOU without IEHP's prior written consent, and nothing herein grants Contractor any license, right, or interest in IEHP's name, trademarks, or other intellectual property. The obligations in this Section survive expiration or termination.

M. **Relationship to BAA; PHI Ownership.** For the avoidance of doubt, nothing in this Section IX. limits or modifies the parties' obligations under Attachment 2 (Business Associate Agreement) or any applicable law. Ownership and handling of PHI shall be as provided in Attachment 2 and applicable law; where this Section addresses work product or Contractor Information, it does not transfer ownership of PHI or other Confidential Information of the disclosing party.

N. **Public Records and Open Meetings.** Contractor acknowledges that IEHP may be a public entity subject to the California Public Records Act (CPRA) and the Ralph M. Brown Act as referenced in Section IX.N. If Contractor or IEHP determines that a disclosure may be required under CPRA or the Brown Act, the receiving party shall, to the extent lawful and practicable, provide prompt prior written notice to the other party, cooperate to limit the disclosure and seek confidential treatment or applicable exemptions, and disclose only what is legally required.

O. **Conflicts of Interest** – MSSP PROVIDER shall ensure that its personnel do not have any conflicts of interest with respect to PLAN and the MSSP Waiver Services. "Conflict of Interest" includes activities or relationships with other persons or entities that may result in a person or entity being unable or potentially unable to render impartial assistance or advice to PLAN or any member or MSSP Applicant, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

P. **Inurement** – This Agreement shall be binding upon all assignees, heirs and successors-in-interest of either party.

Q. **Assignment** – Neither PLAN nor MSSP PROVIDER or its Subcontractors/Vendors shall assign this Agreement without the written consent of the other party.

R. **Compliance with Laws** – Parties agree to comply with all applicable state and federal laws, regulations, and directives by regulatory agencies. It is understood and acknowledged by MSSP PROVIDER that PLAN may be a public entity and subject to all applicable open meeting and record laws, including but not limited to the California Public Records Act and the Ralph M. Brown Act.

On March 4, 2022, California Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs all California state agencies and departments to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. All contractors and grantees are obligated to comply with the Economic Sanctions. Accordingly, should the State of California (the State) or IEHP determine MSSP PROVIDER is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. MSSP PROVIDER shall be provided with advance written notice of such termination, allowing MSSP PROVIDER at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the State or IEHP.

S. **Independent Contractor** – The relationship between PLAN and MSSP PROVIDER is an independent contractor relationship. Neither MSSP PROVIDER nor its employee(s) and/or agent(s) shall be considered to be an employee(s) and/or agent(s) of PLAN, and neither PLAN nor any employee(s) and/or agent(s) of PLAN shall be considered to be an employee(s) and/or agent(s) of PROVIDER. 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.

T. **Invalidity and Severability** – In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

By signing below, I affirm that I am the duly authorized representative of the signing party and have authority to execute and bind the party for which I affix my signature.

PLAN

INLAND EMPIRE HEALTH PLAN:

By: _____
Edward Juhn, MD, MBA, MPH,
Chief Medical Officer for:
Jarrod McNaughton, MBA, FACHE
Chief Executive Officer

Date: _____

By: _____
Chair, IEHP Governing Board

Date: _____

Attest: _____
Secretary, IEHP Governing Board

Date: _____

Approved as to Form:

By: _____
Anna W. Wang
Vice President, General Counsel
Inland Empire Health Plan

Date: _____

MSSP PROVIDER

San Bernardino County

By its Director

Sharon Nevins, Director

Dated: _____

MSSP Site Manual List of Waiver Services Located at:

https://aging.ca.gov/Providers_and_Partners/Multipurpose_Senior_Services_Program/Site_Manual/

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the County of San Bernardino Multipurpose Senior Services Program and Inland Empire Health Plan (IEHP) (each a “Party” and collectively, the “Parties”). For purposes of this Agreement, each Party may act as a Covered Entity and/or a Business Associate, as applicable, when performing functions or activities on behalf of the other Party that involve the use or disclosure of Protected Health Information (“PHI”). This Agreement is intended to be reciprocal and applies symmetrically to each Party when acting as a Business Associate. This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, each Covered Entity (each, a “CE”) wishes to disclose certain information to the other other Party as a Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, each CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require a CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

WHEREAS, the Parties acknowledge that, in connection with the services provided under the Contract, each Party may, at times, act as a Business Associate to the other Party, and may receive, create, maintain, or transmit PHI on behalf of the other Party in accordance with HIPAA and applicable state law;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. Breach shall have the same meaning given to such term under the HIPAA Regulations [45

C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.

- b. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103. For purposes of this Agreement, each Party may act as a Business Associate to the other Party when performing functions or activities on behalf of the other Party that involve PHI, except when each Party is acting as a Covered Entity for its own purposes.
- c. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103. For purposes of this Agreement, each Party may act as a Covered Entity with respect to PHI it provides to the other Party.
- d. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
- f. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
- g. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

II. Obligations and Activities of the Parties as Business Associates

Whenever a Party is acting as a Business Associate to the other Party under this Agreement, the following obligations and activities shall apply to that Party ("Business Associate") with respect to the other Party ("Covered Entity"). The obligations below are reciprocal and apply symmetrically.

a. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes

for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

b. Prohibited Uses and Disclosures

i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

ii. BA shall not use or disclose PHI for fundraising or marketing purposes.

iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)

iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

c. Appropriate Safeguards

i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]

ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.

iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

e. Reporting of Improper Access, Use or Disclosure or Breach

Each Party, when acting as BA, shall report to the other Party, acting as a CE, every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 1. Date the Breach or suspected Breach occurred;
 2. Date the Breach or suspected Breach was discovered;
 3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 4. Number of potentially affected Individual(s) with contact information; and
 5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 2. The unauthorized person who had access to the PHI;
 3. Whether the PHI was actually acquired or viewed; and
 4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a

request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Termination

Either Party may immediately terminate this agreement, and any related agreements, if it determines that the other Party, when acting as a Business Associate, has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

l. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if a Party, when acting as BA, becomes

aware of any activity or practice by the other Party, acting as a CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

Each party, when acting as a BA, agrees to indemnify, defend and hold harmless the other Party, when acting as CE, and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

Either Party, as CE, may terminate the Contract, effective immediately, if the other Party, when acting as a BA, (i) is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

r. Insurance

Each party, when acting as a BA shall, in addition to any general and/or professional liability insurance coverage required under the Contract for services, provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

Each party, when acting as a BA, shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to the other Party, as CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

III. **Obligations of CE**

a. Each Party, when acting as CE, shall notify the other Party, when acting as BA, of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:

- i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
- ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
- iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

IV. **General Provisions**

a. Remedies

The non-breaching Party shall be entitled to seek immediate injunctive relief and exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by the breaching Party, when acting as BA, or any agent or subcontractor.

b. Ownership

As between the Parties, PHI shall be and remain the property of the Party acting as Covered Entity that originated or provided such PHI to the other Party. The Party acting as Business Associate agrees that it acquires no title or rights to CE's PHI.

c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

e. Amendment

The Parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The Parties further acknowledge that, as both are Covered Entities, their respective obligations under HIPAA and applicable state law remain in effect regardless of their status as Business Associate under this Agreement. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

MSSP Catchment Areas, City and Zip Codes

91701 – RC & Alta Loma	91766* – Pomona	92354 – Loma Linda
91709 – Chino Hills	91784 – Upland	92359 – Mentone
91710 – Chino	91786 – Upland	92369 – Patton
91730 – Rancho Cucamonga (RC)	92314 – Big Bear City	92373-75 – Redlands
91737 – RC & Alta Loma	92316 – Bloomington	92376-77 – Rialto
91739 – RC & Etiwanda	92318 – Bryn Mawr	92382 – Running Springs
91743 – Guasti	92322 – Cedarpines Park	92391 – Twin Peaks
91759 – Mt. Baldy	92324 – Colton	92399 – Yucaipa
91761 – Ontario	92325 – Crestline	92401-08 – San Bernardino
91762 – Ontario	92334-37 – Fontana	92410-11 – San Bernardino
91763 – Montclair	92341 – Green Valley Lake	
91764 – Ontario	92346 – Highland	
	92352 – Lake Arrowhead	

(*within San Bernardino Co.)

VICTOR VALLEY REGION

92301	Adelanto and El Mirage
92307	Apple Valley
92308	Apple Valley
92310	Barstow
92311	Barstow
92312	Barstow
92342	Helendale
92344	Oak Hills
92345	Hesperia
92368	Oro Grande
92371	Phelan
92372	Pinon Hills
92392	Victorville
92393	Victorville
92394	Victorville
92395	Victorville
92397	Wrightwood
92256	Yucca Valley
92252	Yucca Valley
92286	Yucca Valley
92285	Yucca Valley
92284	Yucca Valley