

INLAND EMPIRE HEALTH INFORMATION ORGANIZATION
MANIFEST MEDEX
PARTICIPATION AGREEMENT

This Participation Agreement, (the “**Agreement**”) by and between Inland Empire Health Information Organization, a California nonprofit public benefit corporation (“**HIO**”), Manifest Medex, a California nonprofit public benefit corporation (“**MX**”), and San Bernardino County Department of Public Health (“**Participant**”), is entered into as of the date that the last Party executes the Agreement (the “**Effective Date**”). MX, HIO, and Participant are each a “Party” or collectively the “Parties.”

WHEREAS, MX is organized to facilitate health information aggregation and sharing in a manner that complies with Law;

WHEREAS, MX operates a health information exchange (the “**HIE**”) that will enable its participants to electronically provide and receive health information regarding their patients; and

WHEREAS, Participant is a county government contracting on behalf of itself and its various departments and Participant Affiliates (defined below). Each individual department or Participant Affiliate will be assigned an entity type in Exhibit 3 for purposes of determining data contribution requirements. Participant and Participant Affiliates will both provide data to and receive data from the HIE.

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS.

- a. “**Administrator**” means one (1) or more individuals designated by Participant to: (a) designate Participant’s Authorized Users; and (b) fulfill other responsibilities specified in the Agreement on behalf of Participant.
- b. “**API**” means application programming interface.
- c. “**Authorized User**” means an individual: (i) designated and authorized by an Administrator, in accordance with the procedures set forth in the Agreement, to access and/or use the System and Services on behalf of a Participant; and (ii) who is permitted under applicable Law to access and/or use the System and Services.
- d. “**Business Associate Agreement**” or “**BAA**” means the business associate agreement that is executed by the Parties and attached to the Agreement.
- e. “**Calendar Quarter**” means the three months following the first day of January, April, July and October.
- f. “**Confidential Information**” means (a) all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives and agreements, whether written or verbal, that are confidential in nature and pertains to or is related to the Agreement, (b) all electronic or physical security profiles, security assessments and security audit reports of MX, Participant or an NP Participant and (c) all software, solutions, services and API keys of MX Vendor to which Participant gains access by being a Party; provided, however, that Confidential Information shall not include information that:
 1. is publicly known at the time of disclosure;

2. is already known or obtained by any other Party other than in the course of the other Party's performance pursuant to its "participation agreement", and without breach of any confidentiality, nondisclosure or other agreement by that other Party or in violation of applicable Law;
 3. is independently developed by any other Party;
 4. becomes known from an independent source having the right to disclose that information and without similar restrictions as to disclosure and use and without breach of these Agreement, or any other confidentiality or nondisclosure agreement by that other Party; or
 5. is Patient Data.
- g. **"Data Contributor"** means a Person, including, but not limited to, Participant, NP Participants, Vendors, and other entities, that has entered into a written agreement with MX, either directly or indirectly, to provide Patient Data to MX.
 - h. **"Data Submission Guidelines"** or **"DSG"** means the guidelines for Participant to submit Patient Data to MX, as provided by MX to Participant from time to time.
 - i. **"De-Identified Data"** means data that satisfies the requirements of 45 C.F.R. § 164.514(b).
 - j. **"Fees"** means, collectively, the Subscription Fees, Implementation Fees, and any other fees paid pursuant to this Agreement as set forth in Exhibit 1.
 - k. **"Go-Live Date"** means earlier of: (1) the date on which MX first notifies Participant that Participant and/or that one or more of the Participant Affiliates has access to use the System, or (2) one hundred eighty days (180) from the Effective Date.
 - l. **"Healthcare Provider"** means Participant or an NP Participant that either: (a) meets the definition of provider in HIPAA; or (b) is a medical group (e.g., independent practice association) providing core administrative services to a provider that meets the HIPAA definition.
 - m. **"Health Plan"** means a Person that either: (a) meets the definition of health plan in HIPAA; or (b) provides core health plan administrative services (at a minimum: medical claims processing services and provider network management services) to a health plan that meets the HIPAA definition.
 - n. **"Healthcare Data"** means Patient Data and/or De-Identified Data that is collected, created, maintained or disclosed by MX.
 - o. **"Law"** means any federal or state law, statute, ordinance, rule, legally binding administrative interpretation, regulation, order, judgment, or decree that is applicable to a Party or to another Person identified in the Agreement. Law shall include, but is not limited to, Health Insurance Portability and Accountability Act ("**HIPAA**") and related regulations; the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") and related regulations; and the California Confidentiality of Medical Information Act ("**CMIA**") and related regulations.
 - p. **"Material Service Change"** means either: (a) a material cessation or reduction in the functionality or interfaces of the System; or (b) a reduction in the level of Services provided by MX.
 - q. **"MX Vendor"** means a Person with which MX has entered into a written agreement to provide technology or other services in connection with providing Services or the System.
 - r. **"NP Participant"** means a Person that has either (1) entered into a "participation agreement" with MX to act as a Data Contributor and/or receive Patient Data from MX but is not a Party to this Agreement or (2) entered into an agreement with a health information network or similar entity (such as eHealthExchange) that permits data exchange with MX.

- s. **“Participant Affiliate”** means the entities identified in Exhibit 3. Exhibit 3 may be amended by mutual written agreement, which shall include email, of Participant and MX without the need for a formal amendment. Participant shall ensure that Participant Affiliates comply with the terms of this Agreement applicable to Participant, including the Policies, except that only Participant will be obligated to pay Fees or perform other duties specified herein which, by their context, clearly apply only to Participant.
- t. **“Patient”** means an individual whose Patient Data is contributed to MX by a Data Contributor.
- u. **“Patient Data”** means health information that: (a) is created or received by a Healthcare Provider or Health Plan; (b) relates to: (i) past, present or future physical or mental health of a Patient, or (ii) the provision of health care to a Patient; (c) identifies the Patient, or there is a reasonable basis to believe the information can be used to identify the Patient (including Protected Health Information, as that term is defined in HIPAA, and Medical Information, as that term is defined in the CMIA); and (d) is made available to the System by a Data Contributor pursuant to the Agreement or an NP Participant’s participation agreement.
- v. **“Person”** means an individual person, an entity, or a governmental organization or agency, including health information exchanges, researchers, Participants, NP Participants and/or an individual(s) who does not participate in MX’s HIE.
- w. **“Personnel”** means a Person’s employees, Authorized Users, accountants, attorneys, consultants, directors, agents, representatives, subcontractors and subcontractors’ employees that provide, access, receive or use any part of the System or the Services.
- x. **“Policies”** mean the privacy policies, security policies and/or procedural requirements adopted by MX and made available to Participant at, as amended by MX from time to time. The current version of the Policies can be found at <https://www.manifestmedex.org/resources/>.
- y. **“Protected Health Information”** or **“PHI”** has the meaning ascribed in 45 C.F.R. § 164.103.
- z. **“Services”** means all services provided by MX pursuant to the Agreement.
- aa. **“System”** means the HIE and its related technology and Services.

II. SERVICES.

- a. Services. MX shall provide the System and Services as set forth in Exhibit 1. Fees, if applicable, for such services are set forth in Exhibit 1 and payable in accordance with Section VI of this Agreement.
- b. HITRUST. MX will use commercially reasonable efforts to maintain (i) its HITRUST CSF Certification in accordance with HITRUST standards, and/or (ii) other industry-standard security certification as may be appropriate at a future date.

III. MUTUAL RIGHTS AND RESPONSIBILITIES; RELATIONSHIP BETWEEN THE PARTIES

- a. Compliance with Law and Safety. Each Party and its Personnel shall perform their duties and exercise their rights under the Agreement in compliance with Law. Each Party and its Personnel shall always consider Patient safety in taking any action under the Agreement.
- b. Policies. MX and Participant and their respective Personnel shall each comply with the Policies, which is incorporated into and is part of the Agreement.
- c. Independent Contractors. Each Party is and shall at all times be an independent contractor of the other, and not an employee, agent, partner of, or joint venture with the other. Except as specifically allowed by the Agreement, neither Party has any right or authority to assume or create any obligation of any kind, express or implied, on behalf of the other Party.

IV. PARTICIPANT RIGHTS AND RESPONSIBILITIES.

- a. Policies. Participant, including, Personnel and Authorized Users, shall at all times comply with the Policies.
- b. Restricted Use, Security, and Access.
 - 1. Participant shall:
 - i. Restrict access to and use of the System and Services to Participant and its Authorized Users;
 - ii. Only permit Authorized Users to access or use the System and the passwords and/or the user names applicable to the System;
 - iii. Prevent all Persons (other than Authorized Users) from accessing and/or using the System;
 - iv. Implement security measures with respect to the System and safeguard Patient Data as required by the Agreement;
 - v. Together with its Authorized Users, use reasonable professional judgment in its use of the Healthcare Data and its application of the Healthcare Data to make clinical decisions;
 - vi. Develop, maintain and comply with written requirements that govern Participant's and Authorized Users' access to Systems and use of protected health information. Those written requirements must be consistent with the Agreement and shall be provided to MX upon request; and
 - vii. Notify MX immediately of any suspected or actual access to or use of the System or Patient Data other than as permitted by this Agreement.
 - 2. Participant shall not inhibit an NP Participant's access to the System or Patient Data.
- c. Training. Participant shall, to the reasonable satisfaction of MX, educate and train its Authorized Users regarding the requirements of the Agreement, including the Policies and privacy and security protocols.
- d. Participant Expenses. Participant is solely responsible for all charges and expenses Participant incurs to (1) access and use the System and Services and/or (2) meet data contribution requirements.
- e. Trademarks. Participant and its Personnel shall: (i) maintain MX's and MX Vendor's trademarks, service marks, and copyright legends; and (ii) not violate MX's and/or MX Vendor's trademarks, service marks, copyright legends and/or any other intellectual property rights. Participant will be liable for the acts of third-party service providers engaged by Participant who violate these proprietary rights or applicable Law.

V. DATA.

- a. Data Contribution. Participant shall (1) contribute Patient Data to MX regularly and promptly, and consistent with the Data Submission Guidelines, after receiving such Patient Data from Participant's sources and (2) maintain its connection to the System and facilitate access to the Patient Data, each as required by Exhibit 2 "Data Contribution Requirements," the Policies, and this Agreement.
- b. Data Quality. Participant shall use reasonable and appropriate efforts to ensure that all Healthcare Data provided by Participant and/or Personnel to MX is accurate with respect to each Patient. Each Party shall use reasonable and appropriate efforts to assure that its Personnel do not inappropriately alter or corrupt the Patient Data received by or transmitted from that Party.
- c. Notice of Data Inaccuracy. Each Party shall promptly notify the other Party of any known inaccuracy in the Patient Data provided to the other Party through the System.
- d. Participant Access to System. MX grants to Participant, and Participant accepts, a non-exclusive, personal, nontransferable, limited right to access and use the System under the terms and conditions

set forth in the Agreement. Participant's right is conditioned on Participant fully complying with the Agreement. Participant does not have any other right to access the System unless otherwise expressly granted by the Agreement.

- e. Participant Use of Data. When accessing or using Patient Data pursuant to the Agreement, Participant and Authorized Users may access and/or use Patient Data to perform any activities Participant is allowed to perform under the Agreement (including the Policies). Notwithstanding any other provision of the Agreement, if Participant or an Authorized User accesses any Patient Data that it is not permitted to access under the Agreement at the time of that access, then Participant: (i) will be in breach of the Agreement, (ii) will not have or obtain any right to that Patient Data, and (iii) must immediately return or destroy that Patient Data.
- f. MX Use of Data. Subject to the limitations on use of Healthcare Data set forth in the Policies, Participant grants to MX a fully-paid, non-exclusive, non-transferable, royalty-free right and license: (a) to license and/or otherwise permit Persons to access through the System and/or to receive from the System all Healthcare Data provided by Participant; (b) to use Healthcare Data provided by Participant to perform any activities MX is allowed to perform under the Agreement (including the Policies); and (c) to use Healthcare Data provided by Participant to carry out MX's duties under the Agreement, including, but not limited to, system administration, testing and audits, provision of services, problem identification and resolution and management of the System. MX's rights under this Section V.f shall continue for as long as MX holds or controls Participant's Healthcare Data.
- g. Availability of Patient Data. MX makes no representation or warranty regarding the availability through the System of Patient Data related to or originating from any particular Data Contributor or NP Participant.
- h. Related Parties. If Participant physician practice is a member of an Accountable Care Organization ("ACO"), MSO or IPA that is an MX Participant, then physician expressly grants MX permission to receive PHI from and to send PHI to the ACO, MSO or IPA on behalf of the Participant. Participant further agrees to notify MX in writing within thirty (30) days, if the Participant terminates its relationship with the ACO, MSO or IPA.
- i. Access to Data. HIO shall not access or view any Patient Data via the System or pursuant to this Agreement, except that HIO may access or view Patient Data that it receives pursuant to a valid business associate agreement.

VI. FEES.

- a. Fees. Participant shall pay the Fees set forth in Exhibit 1 of this Agreement, subject to change as set forth in Section VI.f below.
- b. Payment Timing. Participant agrees to pay MX upon receipt of each invoice, and agrees further to pay a one-and-one-half percent (1.5%) per month service charge on all undisputed invoices that are not paid within thirty (30) days of receipt of the applicable invoice.
- c. Disputed Fees. Notwithstanding the foregoing, if Participant disputes any charges or amounts on any invoice, and such dispute cannot be resolved promptly through good faith discussions between Participant and MX, then Participant will pay upon receipt the amount of the invoice less the disputed amount, provided that Participant shall diligently proceed to work with MX to resolve any such disputed amount. Any sums withheld pursuant to this paragraph shall not accrue service charges, but if the contested invoice is later determined to be valid in amount, Participant shall pay the amount withheld plus a one-and-one-half percent (1.5%) per month service charge calculated retroactive to the date which is thirty (30) days following receipt of the invoice which was originally disputed.

- d. Taxes. All Fees will be paid exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force or enacted in the future. Participant shall pay any tax (excluding taxes on MX's net income) that MX may be required to collect or pay due to the sale or delivery of items and services provided to Participant pursuant to the Agreement. MX will not deliver the System or Services to Participant in tangible form. Notwithstanding the foregoing: (a) the Parties do not anticipate that any sales or use taxes will be payable with respect to the Services or other deliverables provided hereunder (except for any taxes that become payable as the result of any change in applicable Law); and (b) if possible, MX shall not deliver tangible copies of any software or other deliverables in a manner that would cause taxes to become payable.
- e. Effect of Failure to Pay. In the event that any invoice is not timely paid as provided herein, MX may, in addition to any other right or remedy that it may have under this Agreement or at law, suspend Participant's use of the System and/or Services if MX has not received payment in full within ten (10) days of MX's written demand therefore.
- f. Change to Subscription Fees. MX may add or change Fees charged for the Services under this Agreement by providing Participant at least ninety (90) days' prior written notice of such changes (the "Fee Notice"); provided that Participant may terminate the Agreement by providing MX written notice of such intent pursuant to Section VII.b.
- g. Invoice Submission. MX shall submit invoices to San Bernardino County Department of Public Health.

VII. **TERM, TERMINATION, AND SUSPENSION.**

- a. Term. The Agreement is effective on the Effective Date and shall continue through December 18, 2029, unless terminated early as set forth below.
- b. Termination by Participant. Participant may terminate the Agreement at any time, with or without cause, and without penalty, after delivering thirty (30) days' prior written notice to MX.
- c. Termination by MX. MX may exercise any of the following termination rights.
 - 1. Privacy and Security. MX may in its sole discretion terminate the Agreement at any time if MX determines in its sole discretion that Participant's actions and/or continued participation in MX would, or is reasonably likely to, endanger the privacy or security of Patient Data or otherwise result in a breach of the Agreement that is reasonably likely to harm MX or an NP Participant. MX shall deliver notice of this termination to Participant at least twenty-four (24) hours prior to terminating Participant's access to the System, unless MX determines in its sole discretion that Participant's access must be terminated immediately in order to protect the privacy or security of the Patient Data, in which case MX may terminate access immediately without notice.
 - 2. Uncured Breach. MX may terminate the Agreement if Participant breaches the Agreement and that breach continues uncured for a period of thirty (30) days after MX has delivered written notice of that breach to Participant. MX's notice of breach shall include a description of the breach.
 - 3. Without Cause. MX may terminate the Agreement at any time, with or without cause, and without penalty, after delivering ninety (90) days' prior written notice to Participant.
- d. Failure to Comply with Law. Either Party may terminate the Agreement by providing thirty (30) days' written notice to the other Party that: (a) identifies the Law that is (or will be) violated by the Agreement; and (b) explains why the Agreement will not comply with Law. After a Party receives that notice, both Parties shall cooperate in good faith during the next thirty (30) days to amend the Agreement so that it complies with the identified Law. If the Parties do not execute a written amendment to the Agreement within the thirty (30) days, then either Party may terminate the

Agreement by delivering a five (5) days' written termination notice to the other Party. If the Law is already in effect and violated by the Parties or the Agreement, then either Party may immediately suspend all or part of its performance under the Agreement that is illegal while the Parties attempt in good faith to modify the Agreement to cure that violation of Law.

e. Effects of Termination.

1. Patient Data. Upon any termination of the Agreement, Participant shall have no continued right to receive or duty to provide Patient Data, or to receive the Services. Upon any termination, the Parties will comply with the provisions of the BAA as it pertains to PHI. If Participant has provided Patient Data to MX, the Parties acknowledge and agree that such Patient Data has been merged with MX's and/or NP Participant's data and, accordingly, it is infeasible to destroy, delete or return that Patient Data. MX shall protect such Patient Data as it protects all other Patient Data in its possession. To the extent that either Party possesses Patient Data from the other Party, each Party shall protect that Patient Data as it protects all other Patient Data in its possession, but is not required to destroy, delete or return that Patient Data upon termination.

2. Fees. If Participant has pre-paid to MX any Subscription Fees that have not yet been earned by MX as of the date of termination, MX shall repay to Participant those unearned Fees.

f. Suspension. In the event that MX determines in good faith that Participant (or any of its Personnel or Authorized Users) ceases to be compliant with the Agreement, including the Policies, MX may, in its discretion: (i) provide written notice to Participant of such non-compliance (ii) suspend access to the System and/or Services to Participant; and/or (iii) work with Participant to bring Participant (and its Personnel and Authorized Users) back into compliance. Notwithstanding the foregoing, MX retains the right to immediately suspend access to the System and Services, in its sole discretion, in the event that MX reasonably perceives there to be (i) a patient safety concern; (ii) a violation or potential violation of Law; (iii) a risk to the privacy or security of Patient Data; or (iv) access and/or use of the System by unauthorized Persons. Participant's access to the System shall be restored when MX, in its sole discretion, determines that the initial cause for the suspension has been cured.

g. HIO Termination. HIO may terminate the Agreement at any time, with or without cause, and without penalty, after delivering thirty (30) days' prior written notice to MX. Upon any such termination by HIO, the Agreement shall continue between Participant and MX unless otherwise validly terminated by one of those two Parties.

VIII. **CONFIDENTIAL INFORMATION & COMMUNICATION.**

a. Nondisclosure. If a Party comes into possession of Confidential Information of or regarding the other Party, MX Vendor, a Party's vendor or an NP Participant, the Party shall: (a) keep and maintain in strict confidence all such Confidential Information; (b) not use, reproduce, distribute or disclose that Confidential Information except as permitted by the Agreement; and (c) prevent the Party's Personnel from making any use, reproduction, distribution, or disclosure of the Confidential Information that is not allowed by the Agreement.

b. Equitable Remedies. All Confidential Information represents a unique intellectual property of the Person who owns that Confidential Information, and such Person will be entitled to equitable relief and any other remedies available by Law.

c. Notice of Disclosure. A Party may disclose Confidential Information if that Party is legally compelled to make that disclosure; provided that the Party promptly provides the other Party with notice thereof by the earlier of: five (5) calendar days after receiving the request to disclose from a Person, or three (3) business days before that disclosure will be made by the Party.

d. Media Releases. Notwithstanding any other provision of the Agreement, MX may publicly identify Participant as a participant in MX and may include the name, address, logo, and a brief description

of Participant on its website or in any other materials developed by MX. Participant grants MX a royalty free license to use Participant's name and logo for the foregoing.

IX. REPRESENTATIONS AND WARRANTIES.

- a. Exclusion from Government Programs. Each Party represents and warrants that it and its Personnel have not: (a) been listed by any federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal and/or state programs; or (b) been convicted of any crime relating to any federal and/or state reimbursement program.
- b. Limited Warranties. Participant's access to the System, use of the Services, and receipt of Patient Data from MX are provided "as is" and "as available"; and (b) MX does not make any representation or warranty of any kind regarding the System or Services, expressed or implied, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. MX does not warrant that the System will meet Participant's requirements or that it will operate without interruption or be error free.
- c. Authorization and Compliance. Participant covenants, represents, and warrants that Participant (and each Participant Affiliate) has all necessary authority: to enter into this Agreement, to grant the rights granted herein, and to send and receive the Patient Data exchanged under this Agreement.

X. INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a. Insurance.
 1. MX Insurance Requirements. During the Term, MX shall obtain and maintain the following insurance coverage or self-insure in the following amounts:
 - i. Commercial general liability insurance in the amount of at least five million dollars (\$5,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate;
 - ii. Comprehensive professional liability (errors and omissions) insurance covering the liability for financial loss due to error, omission or negligence of MX in the amount of at least five million dollars (\$5,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate; and
 - iii. Network security liability insurance and privacy liability insurance in the amount of at least ten million dollars (\$10,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate.
 2. Participant and Business Associate Insurance Requirements. During the Term, Participant and any Business Associate of Participant that accesses the System shall each obtain and maintain the following insurance coverage or self-insure in the following amounts:
 - i. Commercial general liability insurance in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the annual aggregate; and
 - ii. Comprehensive professional liability or errors and omissions (E&O) insurance of the type and in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate.
 3. General Requirements.

- i. If either Party purchases “claims made” insurance, all acts and omissions of that Party shall be, during the Term, “continually covered” (i.e., there must be insurance coverage commencing on the Effective Date and ending no earlier than three (3) years after termination of the Agreement.
 - ii. Each Party shall purchase “tail insurance” if its coverage lapses, or “nose insurance” and/or “tail insurance” if that Party changes insurance carriers, even after termination of the Agreement.
 - iii. All insurance coverage required by this Section X shall be provided under valid and enforceable policies issued by insurance companies legally authorized to do business in California.
 - iv. Upon request of a Party, the other Party shall provide certificates of insurance evidencing the coverage that the other Party is required to obtain and maintain.
- b. Limitation of Liability.
1. Except as otherwise provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available at law or in equity. EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL, IN ANY EVENT, BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, LOST PROFITS OR SIMILAR DAMAGES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. Each Party shall use all reasonable efforts to mitigate damages for which the other Party is responsible.
 2. The aggregate personal liability of each Party (including, in the aggregate, its officers, directors and Personnel) to the other Party under this Agreement will be limited to the greater of: (i) the aggregate insurance policy limits then available to the Party with respect to such claim, or (ii) one million (\$1,000,000.) dollars.
 3. Notwithstanding anything to the contrary in the Agreement, the limitations of liability in Sections X.b.1 and X.b.2 shall not apply to any claims arising out of or relating to either Party’s: (i) grossly negligent or willful breach of the Agreement, or (b) indemnification obligations.
- c. MX Liability. Notwithstanding any other provision, MX has no responsibility for and will not be liable to Participant for: (a) the accuracy, completeness, currency, content or delivery of Healthcare Data; (b) any decision or action taken or not taken by Participant or any other Person involving patient care, utilization management, or quality management that is in any way related to the use of the System, Services, or Healthcare Data; (c) any impairment of the privacy, security, confidentiality, integrity, availability of, and/or restructured use of any Healthcare Data resulting from the acts or omissions of Participant, any NP Participant, health information organization that contracts with MX to share health data through their respective systems, or organization that represents a community of payers and/or providers for purposes of exchanging Patient Data between them; (d) unauthorized access to the Participant’s transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant’s data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method; and (e) any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunctions, or the use of third-party software. Participant and its Personnel shall have no recourse against, and each does waive any

claims against, MX for any loss, damage, claim, or cost relating to or resulting from its own use of the System, Healthcare Data and/or the Services.

- d. Reliance on Data. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System, Healthcare Data and/or other information received from MX, including inaccurate or incomplete information.
- e. Indemnification.
 1. Mutual Indemnification. Except to the extent arising from the negligence or willful misconduct of the Indemnified Party (defined below), each Party (the “**Indemnifying Party**”) shall indemnify, defend, and hold harmless the other Party (the “**Indemnified Party**”) from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgements, and costs and expenses (including but not limited to reasonable attorney’s fees and costs)(“**Claim**”) arising from, or in connection with, or based on allegations of third-party claimants of any claims for any breach of this Agreement or violation of Applicable Law by the Indemnifying Party.
 2. Indemnification Procedures. The Indemnifying Party shall be entitled, at its option, to control the defense of and settlement of any Claim on which it is liable, provided that the Indemnifying Party shall act reasonably and in good faith with respect to all matters relating to the settlement or disposition of the Claim as the disposition of the claim relates to the Indemnified Party. The Indemnified Parties will reasonably cooperate in the investigation, defense and settlement of any Claim and shall provide prompt notice of any such Claim or reasonably expected Claim to the Indemnifying Party. An Indemnified Party shall have the right to retain its own separate legal counsel at its own expense.
 3. Failure to Defend or Settle. If the Indemnifying Party fails or wrongfully refuses to defend or settle any Claims, then the Indemnified Party will, upon written notice to the Indemnifying Party, have the right to defend or settle (and control the defense of) such Claims. In such case, the Indemnifying Party will cooperate, at its own expense, with the Indemnified Party and its counsel in the defense and settlement of such Claims, and will pay, as they become due, all costs, damages, and reasonable legal fees incurred therefore.

XI. MISCELLANEOUS TERMS.

- a. Governing Law. The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of California, without reference to its conflicts of laws principles. All Disputes (defined below) not resolved pursuant to Section XI.h below will be adjudicated in the state and federal courts located in San Francisco, California and each Party hereby consents to the personal jurisdiction of such courts.
- b. Amendment and Material Service Change.
 1. Amendment. Any modification or amendment to the Agreement must be in writing and signed by the Parties, except that the Policies, DSG, Fee Schedule, and Material Service Changes may be modified as set forth in the Agreement.
 2. Material Service Change. MX may in its sole discretion implement a Material Service Change after providing at least ninety (90) days prior written notice of the change to Participant. Following a Material Service Change not acceptable to Participant, Participant may terminate the Agreement pursuant to Section VII.b.
 3. Policies and DSG Revision. MX may in its sole discretion modify or otherwise revise the Policies and/or DSG after providing at least ninety (90) days prior written notice of any material revision to Participant before the material revision is effective. If the Policy and/or DSG

revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section VII.b.

4. Required Revision. Notwithstanding any other provision in the Agreement, if a revision to the Policies, Terms and/or DSG is required, in the reasonable judgment of MX, to be made for the continued technological functioning of the HIE or for compliance with Law, MX may unilaterally implement that revision and may shorten any requirement for prior notice set forth in the Agreement to that time period which MX reasonably determines appropriate under the circumstances.
- c. Notices. Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be addressed to the appropriate Party as provided below, or at such other address as the receiving Party may designate in writing, and shall be effective: (i) on the date of delivery if given in writing and hand delivered; (ii) on the date received, if sent by overnight courier with written proof of receipt, or by First Class United States Mail with postage prepaid and return receipt received; or (iii) the date sent by electronic mail so long as the sending Party does not receive a message in return that the electronic message is undeliverable. Refusal to accept delivery will be deemed receipt. A Party may change its notice address for purposes of this Agreement by giving written notice to the other Party.

If to Participant: San Bernardino County
Attn: Department of Public Health
415 E. Vanderbilt Way
San Bernardino, CA 92408
E-Mail: karla.rosales@dph.sbcounty.gov

If to MX: Manifest MedEx
Attn: Chief Executive Officer
6001 Shellmound St., Ste. 500
Emeryville, CA 94608
Email: legal@manifestmedex.org

If to HIO: Inland Empire Health Information Organization
Attn: Board Director
3993 Jurupa Avenue
Riverside, CA 92506
Email: dgreen@rcmanet.org

- d. Assignment. Neither Party may assign the Agreement or any of the Party's rights, interests, duties or obligations under the Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent may be given, conditioned or withheld in the other Party's sole discretion, except that (a) either Party may assign the Agreement in whole or in part to an affiliate or to a successor in interest, and (b) consent shall not be necessary in the context of an acquisition, merger or change of control involving either Party. Any attempted assignment or transfer in violation of the foregoing will be null and void.
- e. Availability of Records. For four (4) years after any termination of the Agreement, the Secretary ("Secretary"), the Comptroller General of the United States ("Comptroller General") and/or their designee will have access to all books and records of MX directly pertaining to the subject matter of the Agreement, in accordance with the criteria developed by the U.S. Department of Health and Human Services as provided in Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. §1395x(v)(1)(A), *et seq.* ("ORB"). During those four years, upon request of the Secretary, the Comptroller General and/or their designee, MX shall make available (at reasonable

times) the Agreement and all books, documents and records of MX that are necessary to verify the nature and extent of the costs of Services provided by MX under the Agreement. Notwithstanding the foregoing, access to MX's books, records and documents will be discontinued and become null and void upon a finding by a court or quasi-judicial body of competent jurisdiction that the Agreement is outside the scope of the regulatory or statutory definition of those agreements included within the purview of Section 952 of ORB or the rules and regulations promulgated thereunder.

- f. Federal Reporting Requirements. For four (4) years after any termination of the Agreement, MX shall maintain its books, documents and records showing the nature and extent of the cost of Services furnished under the Agreement in compliance with Section 1861(v)(1)(I) of the Social Security Act. If requested, MX shall grant access thereto to the Secretary, the Comptroller General and/or their designee.
- g. Audit Rights. Each Party shall permit the other Party to access, inspect, and audit such data and records for the purpose of verifying fees, adherence to access requirements, or compliance with other terms and conditions of this Agreement. Any such inspection or audit may be performed following reasonable prior written notice, but not more often than once in any twelve (12) month period. The auditing party will pay all of its own expenses incurred as a result of conducting any such inspection or audit.
- h. Disputes. In the event of any Claim or disagreement related to the Agreement (a “**Dispute**”), the Parties shall:
 - 1. Dispute Notice. A Party alleging a Dispute shall send written notice of the Dispute and the Party's position regarding the Dispute (the “**Dispute Notice**”) to the other Party and any other Person that the Party believes is involved in the Dispute. The Dispute Notice shall propose a time and place for all involved Persons to meet and confer regarding the dispute.
 - 2. Meet and Confer. Within twenty (20) days of a Party sending a Dispute Notice, the Parties shall meet and confer in good faith regarding the Dispute. Other Persons interested in the Dispute shall be invited to the conference, but the conference shall be held at the earliest date on which the Parties can attend (regardless of the attendance of other interested Persons). The Meet and Confer shall be considered a settlement negotiation for the purpose of all Laws, including California Evidence Code § 1152.
 - 3. Injunction. Notwithstanding anything to the contrary, any Party may immediately file suit in any court as that Party deems necessary to protect Confidential Information or Patient Data.
- i. Representation by Counsel; Interpretation. Each Party has been represented by counsel in connection with this Agreement or has had an opportunity to be so represented. Both parties expressly waive any claim that ambiguities in this Agreement should be interpreted against the other Party due to the other Party drafting the language.
- j. Entire Agreement. The Agreement is the entire understanding of the Parties regarding its subject matter, and supersedes all prior written or oral understandings, promises, representations and discussions between them with respect the subject matter of the Agreement.
- k. Force Majeure. Neither Party shall be liable or deemed in default for failure to fulfill any obligation under this Agreement due to causes beyond its reasonable control, provided that the Party uses good faith efforts to perform its duties. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunication or internet backbone outages, failure of an internet access provider or other

similar causes beyond the Parties' control, and neither Party shall be liable for losses, expenses or damages, ordinary, special or consequential, resulting directly or indirectly from such causes.

- l. Severability. If any provision of the Agreement or the application of any provision, in whole or in part, is determined to be invalid, void, illegal or unenforceable by an arbitrator or a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from the Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of the Agreement.
- m. Survival. Provisions of the Agreement shall survive any termination or expiration of the Agreement when evident by the context of the provision and/or when specifically identified as surviving.
- n. Third-Party Beneficiary. No Person other than the Parties will have any right under or due to the Agreement, and no Person will be a third-party beneficiary of the Agreement.
- o. Waiver. No delay or omission by a Party to exercise a right or power it has under the Agreement shall be construed as a waiver of that right or power. A waiver by any Party of any breach of the Agreement shall not be construed to be consent to, waiver of, or excuse for any subsequent or different breach. All waivers must be in writing and signed by the Parties.
- p. Conflicts. If the BAA conflicts with any other part of this Agreement (including the Policies), the BAA shall prevail. If the Policies conflict with any other part of this Agreement (except the BAA), the Policies shall prevail. If the terms of any other Exhibit conflict with those of this Agreement, this Agreement shall prevail.

This Agreement 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 Agreement. The School and County shall be entitled to sign and transmit an electronic signature of this Agreement (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 Agreement upon request.

THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT INCLUDING ANY EXHIBITS, ATTACHMENTS, OR SCHEDULES HERETO ARE PART OF THIS AGREEMENT AND INCORPORATED HEREIN BY REFERENCE. BY SIGNING THIS AGREEMENT, PARTICIPANT ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, INCLUDING ALL TERMS AND CONDITIONS. PARTICIPANT AND MX ACKNOWLEDGE AND AGREE TO BE BOUND BY THE TERMS HEREOF.

Manifest MedEx

By: _____
Name: Erica Galvez
Title: Chief Executive Officer
Date: _____

San Bernardino County

By: _____
Name: Dawn Rowe
Title: Chair, Board of Supervisors
Date: _____

Inland Empire Health Information Organization

By: _____
Name: Dolores L. Green
Title: Board Director Inland Empire Health Information Organization (IEHIO)
Date: _____

EXHIBIT 1

SERVICE DESCRIPTION

This Exhibit 1 includes the various subsections of Exhibit 1 (Exhibit 1-A, Exhibit 1-B, etc.).

MX shall provide the services described herein to Participant in accordance with the terms and conditions of the Agreement and this Exhibit 1. Each Exhibit 1 subsection shall specifically identify the Participant departments and Participant Affiliates to which such subsection applies and only Authorized Users for those identified departments and Participant Affiliates are permitted to utilize the Services set forth in such subsection.

EXHIBIT 1-A

CORE SERVICES – PHYSICIAN AND AMBULATORY PRACTICES

- I. **Applicable Participant Departments and/or Affiliates.** This Exhibit 1-A applies to the following Participant departments and/or Participant Affiliates (collectively referred to as Participant). For purposes of clarity, individuals operating under other departments and/or Participant Affiliates, including but not limited to hospitals, public health officials, and social services providers, may not access the Patient Data or be Authorized Users for this Service:
 - a. Physician and ambulatory practices and clinics
- II. **Description of Services.** MX will provide to Participant the following Services:
 - a. Web-based query portal that enables Participant to look up and access an individual patient’s health information.
 - b. A notification service that alerts Participant when a Patient of Participant is: (i) seen in the emergency department of Participant or an NP Participant; or (ii) admitted to or discharged from the hospital of Participant or an NP Participant. Notifications will be based on the patient panels or eligibility files submitted by Participant.
 - c. Data services that give Participant access to health information for its patients/members such as message forwarding and bulk record download.
- III. **Training.** Each Participant must designate a training coordinator (“**Training POC**”) before Participant begins to use the System. The Training POC will be responsible for training Participant’s Authorized Users on the use of the System, and on compliance with the Policies and Agreement. MX will provide web-based and/or in-person training to Training POCs and Administrator POCs (defined below) and will provide training resources and materials that Training POCs can use to train Authorized Users. Any training requested by Participant in addition to MX’s standard training will be negotiated by the Parties and memorialized in a separate Exhibit.
- IV. **Support.**
 - a. Participant must provide a single point of contact (“**Administrator POC**”) for Tech Services before Participant begins to use the System. Administrator POCs will be responsible for: the management of Authorized Users (e.g., setting up Authorized User accounts, assigning roles and providing security credentials to Authorized Users); ensuring that Authorized Users have reviewed and agree to comply with the Policies and the Agreement prior to obtaining access to the System; and providing Level 1 help-desk support to Authorized Users, including re-setting passwords.
 - b. MX will support Participant’s performance of the above responsibilities by MX offering support for Administrator POCs, accessed through the web and/or email during Monday through Friday, 8:00 AM to 5:00 PM PST, excluding MX holidays posted on the MX website.
- V. **Availability and Network Monitoring.** Services will be monitored 24x7x365 by MX vendors. MX and its vendors will maintain hosted services agreements that guarantee at least 99.8% uptime per calendar month, not including scheduled downtime. In the event of unexpected downtime, MX will provide notifications to Participant via e-mail or other electronic method such as the MX landing page.
- VI. **Implementation.** Implementation services include assisting with VPN and other connectivity services, channel/feed development and configuration, mapping, patient or provider attribution, routing configuration, technical testing, project management, business analysis and other activities that enable Participant’s contribution of data to the MX System.
- VII. **Fees.**

- a. Subscription Fees. Unless modified pursuant to Section VI.f of the Agreement, Participant shall not pay any subscription fees for access to the Core Services.
- b. Implementation Offset. Participant acknowledges that MX incurs costs in the amount of \$35,000 as part of the onboarding and implementation process for customers. In an effort to offset those costs, Participant agrees:
 - 1. To permit MX to apply on Participant's behalf for any available state, federal, or private funding for the cost of implementation of the Services. To the extent required to successfully complete the application, Participant shall cooperate with MX and respond promptly to requests for information from MX. Additionally, MX may provide any information required by the granting entity about this Agreement or the relationship between Participant and MX as part of such application.
 - 2. At MX's request and with MX's assistance, to use Participant's best efforts to complete and directly submit any application for funding that cannot be submitted by MX on Participant's behalf.
 - 3. To the extent that any grant funds are awarded and disbursed directly to Participant for HIE onboarding and implementation costs, Participant shall pay to MX the lesser of (i) \$35,000 or (ii) the total funds received by Participant within thirty (30) days of receipt.

EXHIBIT 1-B
HIO SERVICES

- I. **Description of Services.** HIO will provide to Participant the following Services:
- a. Operate a Community of Practice (CoP) where the Participant has an opportunity to learn about how to use HIE data and service to enhance and support a range of care coordination and data-driven care delivery efforts.
 - b. Provide resources such as written examples and workflows of how other Participants have used or are using MX data/services/tools effectively.
 - c. Provide Local Data-Sharing Priorities:
 - 1. Convene regional Participants to build trust in the MX network and act as a representative of HIE Participants' combined regional interests.
 - 2. Gather and synthesize input from Participants on local priorities for data sharing, including needs arising from local patient population characteristics, provider workflows, and specific programs or initiatives.
 - 3. Provide subject matter expertise and identify relevant national and state best practices on an ongoing basis.
- II. **Participant Requirements.** Participant agrees to participate in the Annual Scope of Work with HIO, as applicable.

EXHIBIT 2

DATA CONTRIBUTION REQUIREMENTS

Participants, including each of the Participant Affiliates, will contribute Patient Data in accordance with the schedules described below, over a secure connection configured by MX and Participant, and as set forth in the Data Submission Guidelines. Participants shall adhere to the Data Submission Guidelines when submitting Patient Data to MX. The provisions in this Exhibit 2 below that are not applicable to Participant are for informational purposes as to MX's intent to obtain such data from NP Participants. Those provisions not applicable to Participant are not a guarantee or promise that MX will obtain such data from all NP Participants.

- I. **Hospitals.** Hospital Participants and Participant Affiliates shall provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data (“ADT messages”), within 90 days of the Effective Date, and regularly thereafter;
 - b. ORU messages, within 6 months of the Effective Date, and regularly thereafter;
 - c. CCDAs (discharge summaries, transition of care documents) within 6 months of the Effective Date, and regularly thereafter; and
 - d. Pharmacy Orders (RDE messages), within 6 months of MX's initial request, and regularly thereafter.
- II. **Physician and Ambulatory Practices.** Physician and ambulatory practice Participants and Participant Affiliates will provide the following Patient Data to MX:
 - a. Patient panel within 30 days of the Effective Date, and regularly thereafter;
 - b. Lab data from national reference labs and transcribed radiology reports by signing an authorization form allowing labs and other entities to send the Participant's data to MX, as of the Effective Date, and regularly thereafter. Lab and radiology authorization forms are attached and incorporated by reference herein; and
 - c. CCDAs (care summaries) within 60 days of the Effective Date, and regularly thereafter.
- III. **Health Plans.** Health Plan Participants and Participant Affiliates will provide the following Patient Data to MX:
 - a. Eligibility files for health plan enrollees (that define the identities of lives covered by the health plan) within 30 days of the Effective Date, and regularly thereafter;
 - b. Provider files for Health Plan providers within six months of the Effective Date, and regularly thereafter; and
 - c. Medical and pharmacy claims data for health plan enrollees, within 12 months of the Effective Date, and regularly thereafter.
- IV. **IPAs.** Independent Physician Association (IPAs) Participants and Participant Affiliates will provide the following Patient Data to MX: Eligibility files for IPA members (that define the identities of lives covered by the Participant), no later than within thirty (30) days of the Effective Date, and regularly thereafter.
- V. **SNFs.** Skilled Nursing Facility Participants and Participant Affiliates will provide the following Patient Data to MX:
 - a. Patient panel within 30 days of the Effective Date, and regularly thereafter;

- b. ADT messages within 6 months of the Effective Date, and regularly thereafter if available from the electronic health record system;
- c. Lab data from national reference labs and transcribed radiology reports by signing an authorization form allowing labs and other entities to send the Participant's data to MX, as of the Effective Date, and regularly thereafter. Lab and radiology Authorization forms are attached and incorporated by reference herein; and
- d. CCDAs (care summaries) within 6 months of the Effective Date, and regularly thereafter.

VI. **ACOs.** Accountable Care Organization Participants will provide to MX the following for Patients that are both attributed to the ACO and are Patients of ACO Participants (with signed MX Participation Agreements) within 6 months of the Effective Date and regularly thereafter: A Patient Panel associating each patient with the appropriate ACO Participant.

VII. **Public Health Departments.** Public Health Department Participants and Participant Affiliates will provide the following Patient Data to MX: patient panels no later than within thirty (30) days of the Effective Date, and regularly thereafter.

In addition to the requirements set forth above, as other Patient Data become relevant to the HIE, the Parties shall work together to develop a timeline for Participant to contribute such Patient Data to MX. If the Parties do not agree on a timeline within three months after MX sends the notice requesting additional Patient Data to Participant, or MX does not receive such Patient Data pursuant to the Parties' timeline, either Party may terminate this Agreement by providing thirty days' notice to the other Party.

Participant shall refrain from sending Excluded Health Information (as defined in the Policies). Participants are responsible for complying with applicable laws by filtering any information that should not be provided or disclosed to MX.

EXHIBIT 3

PARTICIPANT DEPARTMENTS AND AFFILIATES

Individually named Participant departments that are included as Participant Affiliates under this Agreement as well as address if separate from the address provided in Section XI.c “Notices” of the Agreement.

Department Name	Org Type	Address	Type 2 NPI

Individually named affiliated Hospitals, Medical Groups, Practices, Health Plans, MSOs or IPAs that are included as Participant Affiliates under this Agreement as well as name and address of clinics & affiliated sites.

Site Name	Org Type	Address	Type 2 NPI

EXHIBIT 4

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into and effective as of the effective date of the Participation Agreement (the “Effective Date”), by and between Manifest MedEx, a California nonprofit public benefit corporation (“**Business Associate**”), and San Bernardino County, Department of Public Health, on behalf of itself and its affiliates (“**Covered Entity**”). Business Associate and Covered Entity are each a “**Party**” or collectively “**Parties**.”

Covered Entity and Business Associate have entered into an agreement (the “**Participation Agreement**”) pursuant to which Business Associate provides to Covered Entity certain services that now or in the future shall include, but not be limited to, the creation, receipt, maintenance, data analysis and/or transmission of Protected Health Information (defined below) (as defined in Health Insurance Portability and Accountability Act (“**HIPAA**”) and related regulations), on behalf of Covered Entity, for a function or activity regulated by HIPAA (defined below).

In consideration of the foregoing and the promises set forth herein, the Parties agree as follows:

I. Definitions.

- a. “**Breach of Privacy or Security**” means any access, use, receipt or disclosure of PHI (including electronic PHI) that is not in compliance with Law.
- b. “**HIPAA**” means the Health Insurance Portability and Accountability Act and related regulations.
- c. “**Protected Health Information**” or “**PHI**” has the meaning as the term is defined at 45 C.F.R. § 164.103, except that as used herein, the term shall refer only to Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of or from Covered Entity.
- d. All capitalized terms used in this BAA not specifically defined otherwise below or in the Participation Agreement shall have the same definitions as given to them under HIPAA.

II. Obligations of Business Associate.

- a. Compliance with Regulatory Obligations of Business Associate. Business Associate shall perform and comply with all the applicable obligations and requirements imposed upon business associates pursuant to HIPAA.
- b. Permitted Receipt, Use and Disclosure of PHI. Business Associate may receive, Use and Disclose PHI to the minimum extent necessary to perform Business Associate’s obligations, functions, activities and/or services under the Participation Agreement, and as otherwise permitted or required by this BAA, the Participation Agreement, or Law. Business Associate shall not Use or Disclose PHI in any manner that would violate the requirements of HIPAA if done by Covered Entity.
- c. Specified Permitted Uses of PHI. Without limiting the generality of Section II.b (Permitted Use and Disclosure of PHI), Business Associate may Use PHI as follows:
 1. For the proper management and administration of Business Associate;
 2. To carry out the legal responsibilities of Business Associate;
 3. To provide Data Aggregation services relating to the Health Care Operations of Covered Entity or, if applicable, an organized health care arrangement of which the Covered Entity is a member if and to the extent provided by the Participation Agreement or other agreement; and
 4. To perform services related to the creation of De-Identified Data.

- d. Specified Permitted Disclosures of PHI. Without limiting the generality of Section II.b (Permitted Receipt, Use and Disclosure of PHI), Business Associate may Disclose PHI as follows:
1. Pursuant to the direction of the Covered Entity; and
 2. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if:
 - i. If the disclosure is required by law; or
 - ii. If Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as required by law or for the purposes for which it was Disclosed to the person, and if the person promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- e. Specified Permitted Receipt of PHI. Without limiting the generality of Section 2(b) (Permitted Receipt, Use and Disclosure of PHI), and in addition to Business Associate being permitted to disclose PHI to its Subcontractors subject to section (h) below, Business Associate may receive PHI from another business associate of Covered Entity pursuant to the direction of the Covered Entity.
- f. Safeguards. Business Associate shall Use appropriate safeguards and comply, where applicable, with 45 C.F.R. §§ 164.302 through 164.316 with respect to electronic PHI and will apply appropriate safeguards to prevent the Use or Disclosure of the PHI in any form, including electronic form other than as provided for by this BAA.
- g. Reporting Unauthorized Uses and Disclosures. Business Associate shall report to Covered Entity, without unreasonable delay, and in accordance with the deadlines provided below, any Use or Disclosure of PHI not permitted by this BAA of which Business Associate becomes aware. Without limiting the generality of the foregoing:
1. Following the discovery of (i) any access to, Use or Disclosure of PHI which is not permitted by the Participation Agreement or (ii) any Security Incident, Business Associate shall notify Covered Entity by contacting Covered Entity's designated privacy contact person without unreasonable delay, and in no case later than forty-eight (48) hours after discovery of the Breach of Privacy or Security or Security Incident; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Covered Entity by Business Associate shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of PHI. Covered Entity will advise Business Associate of any subsequent changes to the privacy contact person's contact information.
 2. In the event of a Breach of Privacy or Security, Business Associate shall without unreasonable delay carry out an investigation and shall provide reasonably frequent updates to Covered Entity as to the results of the investigation, including, as soon as reasonably possible, the identification of each Patient whose PHI has been, or is reasonably believed to have been, accessed, acquired, or Disclosed during any Breach of Privacy or Security.
 3. Business Associate shall cooperate with Covered Entity and shall provide that assistance as Covered Entity may reasonably request so that Covered Entity may comply with any obligations it may have to investigate, remediate, mitigate, report, and or otherwise notify third parties of that Breach of Privacy or Security.

- h. Arrangements with Subcontractors. Business Associate shall enter into a BAA with any Subcontractor of Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate, pursuant to which the Subcontractor shall agree to comply with the applicable requirements of HIPAA and the same (or more stringent) restrictions and conditions that apply to Business Associate with respect to that PHI pursuant to this BAA, and pursuant to which Business Associate shall obtain satisfactory assurances that the Subcontractor shall appropriately safeguard that PHI.
- i. Individuals' Access to PHI. Business Associate shall make available PHI in a designated record set as necessary to satisfy the requirements of 45 C.F.R. § 164.524.
- j. Individuals' Request for Amendments to PHI. Business Associate shall incorporate amendments to PHI as and to the extent required for compliance with 45 C.F.R. § 164.526.
- k. Individuals' Requests for Accountings of Disclosures. Business Associate shall document Disclosures of PHI and provide information sufficient to respond to a request by a Patient for an Accounting of Disclosures in compliance with 45 C.F.R. § 164.528.
- l. Other Obligations. To the extent that Business Associate is, pursuant to the Participation Agreement or this BAA, responsible to carry out an obligation of Covered Entity under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of that obligation.
- m. Books and Records. Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance under HIPAA.

III. Obligations of Covered Entity.

- a. Notice of Change in Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that that limitation may affect Business Associate's Use or Disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the change to the notice of privacy practices containing such limitation.
- b. Notice of Change in Permissions. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to Use or Disclose PHI, to the extent that that change may affect Business Associate's Use or Disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the change in permissions. Business Associate shall abide by each change in, or revocation of, permission described above in this clause (b).
- c. Notice of Change in Use. Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that that restriction may affect Business Associate's Use or Disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the restriction. Business Associate shall abide by each restriction described above in this clause (c).
- d. Appropriate Requests. Covered Entity shall not request that Business Associate Use or Disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

IV. Term and Termination.

- a. Term. Subject to the other provisions of this Section IV (Term and Termination), the term of this BAA shall be coextensive with that of the Participation Agreement.

- b. **Breach Pattern of Practice.** If party knows of a pattern of activity or practice by the other party that constitutes a material breach or violation of its obligations under HIPAA or this BAA, such party shall notify the other party of that breach. If such other party is unsuccessful in curing that breach within a reasonable time period specified by the notifying party, the notifying party may terminate this BAA and the Participation Agreement, if feasible, upon written notice to the other party.
- c. **Conduct Upon Termination.** Upon termination or expiration of this BAA, Business Associate and Covered Entity acknowledge that return or destruction of PHI is not feasible. Accordingly, Business Associate shall extend the protections of this BAA, including Section 2(e) (Safeguards), to any that PHI for so long as it is not destroyed, and limit further uses and Disclosures of that PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate or any Subcontractor of Business Associate maintains that PHI. Upon the expiration of this period of infeasibility, if any, Business Associate shall destroy all PHI that it has retained. If PHI is to be destroyed pursuant to this Section 4(c) (Conduct Upon Termination) or pursuant to the Participation Agreement, Business Associate shall certify in writing to Covered Entity that that PHI has been destroyed.

V. **Relationship to Participation Agreement.** In the event that a provision of this BAA is contrary to a provision of the Participation Agreement pertaining to Business Associate’s performance of its obligations as a business associate, the provisions of this BAA shall control.

VI. **Cooperation.** The Parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

VII. **Amendment.** The Parties agree to take that action from time to time as is necessary to amend this BAA for Covered Entity and Business Associate to comply with HIPAA or other applicable law. The Parties agree that this BAA may only be modified by mutual written amendment, signed by both Parties, effective on the date set forth in the amendment.

VIII. **Interpretation.** Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA.

In witness whereof, Covered Entity and Business Associate have entered into this BAA as of the Effective Date.

Business Associate

By: _____
 Name: _____
 Title: _____
 Date: _____

San Bernardino County

By: _____
 Name: Dawn Rowe
 Title: Chair, Board of Supervisors
 Date: _____