

FUNDING AGREEMENT

This Funding Agreement for the implementation and support of EPIC electronic health records system (the “Agreement”) is entered into as of the last date of signature (the “Effective Date”) by and between Inland Empire Health Plan, a local public entity of the State of California (“IEHP”) and San Bernardino County, a political subdivision of the State of California, on behalf of its Arrowhead Regional Medical Center (“ARMC”). For purposes of this Agreement, IEHP and ARMC may be each referred to individually as a “Party,” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, ARMC, a leading provider of healthcare services to IEHP’s Medi-Cal and MediConnect Members in San Bernardino County, intends to implement and maintain a new EPIC Electronic Health Records (“EHR”) system;

WHEREAS, with the implementation of EPIC’s EHR system, ARMC will improve the quality of services it provides to IEHP’s Medi-Cal and MediConnect Members by utilizing a fully integrated EHR system that allows clinicians to access, organize, store, and share the medical records of IEHP’s Members in a more seamless and efficient way, including reports to IEHP regarding all services provided to IEHP Members as valid encounters, meeting data quality, timeliness and completeness standards set by IEHP, promoting data sharing, transparency and reporting across healthcare systems, including Payors;

WHEREAS, ARMC wishes to accept from IEHP and IEHP wishes to extend to ARMC funding to accomplish the implementation of the EPIC EHR system to further the shared goals of total population health and a better organized and enhanced health care delivery system in the Inland Empire through timely and complete data sharing across healthcare providers and systems; and

WHEREAS, the Parties desire to enter into this Agreement in order to provide a full statement of their respective rights, responsibilities, and funding parameters on the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

1.1 Each of the recitals of this Agreement is incorporated as though fully set forth herein.

1.2 Funding Commitment. Pursuant to the terms and conditions of this Agreement, IEHP agrees to provide funding to ARMC for the EPIC EHR system in installments (each, a “Support Payment” and collectively, the “Support Payments”). The total Support Payments by IEHP pursuant to this Agreement shall not exceed Ten Million Dollars (\$10,000,000.00) (the “IEHP Support Commitment”).

1.3 Use of Funds. The Support Payments shall be made by IEHP, in its reasonable discretion, upon achievement of the deliverables/milestones and the satisfaction of such other requirements set forth on Exhibit A to this Agreement.

1.4 Timing of Support Payments. Each Support Payment shall be due and payable by IEHP to ARMC pursuant to the terms and conditions set forth on Exhibit A to this Agreement, including payment based on ARMC meeting certain development milestones.

1.5 Method of Payment. Payment by IEHP under this Agreement shall be made to ARMC by electronic funds transfer (“EFT”) or by check.

1.6 Notwithstanding any other provisions in this Agreement to the contrary, ARMC acknowledges and agrees that IEHP is a Medi-Cal Managed Care Health Plan and is subject to the requirements under applicable laws, including but not limited to the Knox-Keene Health Care Service Plan Act and regulations promulgated by the California Department of Managed Health Care (DMHC) and the California Department of Health Care Services (DHCS). Accordingly, ARMC agrees that any payment made by IEHP under this Agreement may be subject to recovery under said applicable laws, regulations or by directive or finding by DMHC, DHCS, the Centers for Medicaid and Medicare Services (CMS) or any other State or Federal agency or authority, and if so, will be subject to such deductions and recoupment as may be required to be made pursuant to such laws or regulations.

1.7 Access to Books and Records; Audit Rights.

- (A) Subject to all applicable laws, and upon request and within a reasonable amount of time, ARMC shall make available to IEHP, at IEHP’s sole cost and expense, such ARMC records as may be reasonably required by IEHP to respond to an audit by DMHC, DHCS or other regulatory agency having jurisdiction over IEHP.
- (B) Subject to all applicable laws and upon reasonable prior written notice, ARMC shall permit IEHP, or its designee, at IEHP's sole cost and expense, to audit the books and records of ARMC as they relate to receipt and use of Support Payments pursuant to this Agreement. Such audit may be conducted no more than once per year and shall be conducted during regular business hours and at a mutually agreeable date and time (which shall be within a reasonable period of time in light of the subject and scope of the requested audit). Such audit may be conducted by a third-party auditor and/or audit firm selected by IEHP. ARMC reserves that right to request that IEHP or such third-party auditor and/or audit firm execute a confidentiality agreement and/or Business Associate Agreement with ARMC pertaining to ARMC’s confidential and proprietary information prior to conducting any audit.
- (C) ARMC agrees to maintain clear and complete records, files, and documentation detailing with reasonable specificity achievement of the deliverables / milestones set forth in Exhibit A of this Agreement. Such records shall include any relevant documentation supporting the deliverable/milestone achieved, including without limitation, copies of executed contracts. Such records, files and documentation shall be retained for a period of not less than ten (10) years from the close of the fiscal year in which this Agreement was in effect.

- (D) In the event such records do not reasonably support ARMC's achievement of the deliverables/milestones set forth in Exhibit A of this Agreement, IEHP shall have the right to recoup disbursements made in connection to the deliverable/milestone at issue under this Agreement. ARMC shall provide a refund of such disbursements within sixty (60) calendar days of written notice by IEHP.
- (E) The terms of this Section shall survive the expiration or termination of this Agreement.

1.8 Term. This Agreement is effective as of the Effective Date and shall continue in effect until April 8, 2022. The term of this Agreement may be extended by written amendment, signed by all parties, only.

- (A) Termination without Cause. Either party may terminate this Agreement without cause by providing the other party thirty (30) days written notice of its intention to terminate.
- (B) Termination for Cause. This Agreement may be terminated by IEHP if ARMC is in material breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within sixty (60) days after IEHP gives ARMC written notice of such breach. Material breach shall include instances where ARMC has determined that it will be unable to fulfill its obligations under this Agreement in a timely manner or where IEHP has determined, in its reasonable discretion, that the phases and related deliverables, as set forth in Exhibit A, are not likely to be achieved. Upon termination for cause, IEHP shall pay ARMC for work performed up through the date of termination and ARMC shall return immediately to IEHP any unused portion of any payment made by IEHP under this Agreement.

1.9 Indemnification. Each party shall indemnify, defend and hold the other party harmless from loss, costs, or expenses (including, without limitation, reasonable attorney's fees) caused by acts or omissions of the indemnifying party, its officers, agents, and employees occurring in the performance of this Agreement. The party to be indemnified under this Agreement shall promptly notify the indemnifying party of any claims or demands which arise or for which indemnification is sought. The terms of this section shall survive the termination of this Agreement.

1.10 Conflict of Interest.

- (A) Except for approved eligible administrative or personnel costs, no person described in Section 1.10(B) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract,

subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. ARMC shall exercise due diligence to ensure that the prohibition in this Section 1.10(A) is followed.

- (B) The conflict of interest provisions of Section 1.10(A) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of IEHP, or any person related within the third (3rd) degree of such person.
- (C) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of ARMC, or immediate family member of any of the preceding, may make or participate in a decision, made by IEHP or an IEHP board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or ARMC. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

1.11 Miscellaneous.

- (A) Counterparts; Signatures. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. Each Party's signature, including signatures scanned into PDF format, shall be effective to bind the respective Party to this Agreement.
- (B) Authorization. Each of the Parties hereby certify the individual signing below has authority to execute this Agreement on behalf of each Party, and may legally bind each Party to the terms and conditions of this Agreement.
- (C) Non-Liability of IEHP Officials, Employees and Agents. No member, official, employee or agent of IEHP shall be personally liable to ARMC in the event of any default or breach by IEHP or for any amount which may become due to ARMC or its successor or on any obligation under the terms of this Agreement.
- (D) Entire Agreement; Amendments. This Agreement is intended by the Parties as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement shall not be amended, supplemented or modified unless such changes are reduced to writing and signed by the duly authorized representatives of the Parties hereto.

- (E) Severability. If a court of competent jurisdiction determines that a term or provision of this Agreement is illegal or invalid, such provision will be severed from this Agreement and not affect the remainder of this Agreement's validity.
- (F) Independent Contractor. The relationship between IEHP and ARMC is an independent contractor relationship. 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.
- (G) Governing Law; Venue. The laws of the State of California govern interpretation and enforcement of this Agreement without regard to conflicts of law provisions. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the San Bernardino County Superior Court, San Bernardino District.
- (H) Notices. Notices, requests, and communications required or permitted in this Agreement shall be in writing and shall be given and deemed to have been received by either personal delivery or delivery by overnight courier or, if mailed, actual receipt or seventy-two (72) hours after being placed in the United States mail, whichever occurs first. Notice by mail must be postage prepaid, registered or certified, receipt requested, and addressed to the Party at the address on the signature page of this Agreement. The Parties will provide change of address notice in writing and will be effective upon actual receipt.

If to ARMC:

Arrowhead Regional Medical Center
400 N. Pepper Ave.
Colton, CA 92324
Attention: Hospital Director

If to IEHP:

Inland Empire Health Plan
10801 Sixth Street, Suite 120
Rancho Cucamonga, CA
91730(909) 890-2000
Attention: Jarrod McNaughton, MBA, FACHE
Chief Executive Officer

With a copy to:

Inland Empire Health Plan
10801 Sixth Street, Suite 120
Rancho Cucamonga, CA 91730
Attention: Legal

- (I) Exhibits. Each of the Exhibits described in this Agreement is fully incorporated into this Agreement by reference.

- (J) Confidentiality. No Party shall disclose any of the terms of this Agreement to any person or entity, other than its attorneys and accountants, without the prior written consent of the other Parties, unless and only to the extent such disclosure is required by law.
- (K) No Assignment. This Agreement shall not be assigned by either Party, either in whole or in part, without prior written consent of the other Party, as approved and authorized by the governing board of such Party.
- (L) No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.
- (M) Waiver. No assent or waiver, express or implied, of any breach of any one or more of the terms of this Agreement shall be deemed to be a waiver of any other term or condition or assent to continuation of such breach.
- (N) This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts, and all of which taken together shall constitute this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as set forth below.

SAN BERNARDINO COUNTY:

By: _____
Curt Hagman, Chairman
Board of Supervisors
San Bernardino County

Date: _____

INLAND EMPIRE HEALTH PLAN:

By: _____
Keenan Freeman
Chief Financial Officer

Date: 8/5/2021

**APPROVED AS TO FORM:
Inland Empire Health Plan**

By: _____

Name: Anna Wang
Title: General Counsel

EXHIBIT A

SCHEDULE OF FUNDING AND DELIVERABLES

This Exhibit details the deliverables required of ARMC and the related funding commitment by IEHP to support the development of the EPIC EHR system, as described in the Agreement.

A. No later than thirty (30) days following the end of each Phase listed below, ARMC will develop and submit to IEHP a Master Work Plan that includes the following:

1. A description on how each deliverable has been attained;
2. The date of completion (if possible); and
3. The appropriate ARMC executive sponsor sign-off validating the completion of the deliverable. This sign-off may be made by the ARMC Hospital Director or its designee.

B. IEHP retains the reasonable discretion to determine if the deliverables described in this Exhibit A have been met. If IEHP reasonably believes that a deliverable described in a Master Work Plan has not been achieved to reflect the intent and vision of this Agreement, IEHP shall, within fifteen (15) days of receipt of such Work Plan, provide written notice to ARMC of the deliverable(s) in dispute and the grounds for IEHP's basis for determining that the deliverable has not been satisfied or attained. Within fifteen (15) days of receipt of such notice, the Parties shall in good faith meet and confer and attempt to resolve such dispute. Without limiting the foregoing, each Party will provide to the other Party such information and documents as the other Party shall reasonably request and as are reasonably necessary to understand and resolve the dispute. If within fifteen (15) days of the date on which the Parties first meet and confer, the Parties are unable to resolve the dispute, either Party may file a mediation demand with AAA using the AAA Mediation Procedures, with the mediation to take place in San Bernardino County, California, or other location mutually agreed upon by the parties. The Parties shall work in good faith to select a mediator who is knowledgeable and experienced in the subject matter of this Agreement. All negotiations connected with the dispute, including negotiations with a mediator, will be conducted in confidence, subject to applicable privilege, and without prejudice to the rights of the Parties in any future legal proceedings, and all parties are to bear their own attorney's fees and cost for the mediation. ARMC may not file an action at law to enforce IEHP's obligation to release a Support Payment corresponding to a disputed Master Work Plan until thirty (30) days after the commencement of the mandatory mediation proceedings described in this Section B. Any applicable statutes of limitations or claim limitations period is tolled during the time a party files a mediation demand up until the conclusion of the mediation addressed above.

C. Unless IEHP reasonably believes that a deliverable described in a Master Work Plan has not been satisfied or attained and provides notice as required by Section B, above, within thirty (30) days following receipt of each Master Work Plan, IEHP shall release to ARMC the corresponding Support Payment.

D. The deliverables and related funding schedule is as set forth below.

Phase 0: Pre-Work (1/5/2021 – 3/26/2021)

Funding: \$500,000 upon completion of Phase 0, but no earlier than ten (10) days after full execution of this Agreement. Since the funding agreement was created after the planned Phase 0: Pre-Work completion date, email confirmation is required from the Hospital Director or Chief Financial Officer that Phase 0 was attained.

- Define governance
- Key organizational scoping
- Third party contracting
- Hardware analysis
- Legacy data collection and groundwork questions (week of 3/29/2021 for four (4) days)
- Kick off integrated areas (facility structure and charging)
- Finalize end-user training numbers
- Finalize Charge Master for HB and PB

Phase 1: WFWT & Configuration (3/26/2021 – 6/04/2021)

Funding: \$0

- Deliver copy of Foundation System
- Workflow Walkthrough (WFWT) sessions
- Complete Orion configuration tasks
- Operational sessions using Epic playbooks

Phases 2 & 3: User and System Readiness (6/7/2021 – 12/3/2021)

Funding: \$2,000,000 upon completion of Phase 3

- Readiness sessions to review integrated workflows
- Content and localization configuration and review
- Integrated and revenue cycle testing integrity using Testing Toolkits
- Charge Testing
- Interface and third party testing
- End-user device deployment
- Training materials completed and reviewed by stakeholders
- End-users trained using Training Wheels

Phase 4: Training & Go-Live (12/5/2021 – 2/11/2022; Go-Live date 2/12/2022)

Funding: \$5,000,000 thirty (30) days after completion of Go-Live date

- Go-Live readiness assessments and dress rehearsals
- Physician system user settings
- Go-Live

Phase 5: Post-Live (2/13/2022 – 4/8/2022)

Funding: \$2,500,000 upon completion of Phase 5

- Revenue Cycle Reporting Sessions
- Graph Package
- Revenue Cycle Checklist completion
- New version
- Post-Live Visits
- Thrive & Ongoing Education

E. The foregoing schedule is subject to change by the parties' mutual consent, which may be set forth in a written amendment.