

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

939



FROM: DEPARTMENT OF PUBLIC SOCIAL SERVICES

SUBMITTAL DATE:
June 4, 2013

SUBJECT: Agreement with Inland Empire Health Plan (IEHP) for Managed Health Care for Foster Youth, without seeking competitive bids

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Chair of the Board to sign the attached Agreement #CS-02705 with Inland Empire Health Plan (IEHP) for the period of July 1, 2013 through June 30, 2018 for an amount not to exceed \$ 0, without seeking competitive bids.
2. Authorize the Director of the Department of Public Social Services (DPSS) to administer the contract.
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

Susan Loew

Susan Loew, Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	13-14

SOURCE OF FUNDS:				Positions To Be Deleted Per A-30	<input type="checkbox"/>
Federal Funding:	0%	State Funding:	0%;	County Funding:	0%;
Realignment Funding:	0%;	Other Funding:	0%	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Elena M. Boeva* 4-22-13
DATE: _____
ELENA M. BOEVA
Departmental Concurrence

Purchasing: *Mark Seiler* Assistant Director

Policy Policy
Consent Consent

Dept't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 3/4/08; 3.50 | District: ALL | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3-28

RE: Agreement with Inland Empire Health Plan (IEHP) for Managed Health Care for Foster Youth, without seeking competitive bids

Date

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BACKGROUND (Continued):

In 2003, the Riverside County Board of Supervisors, DPSS, and IEHP collaboratively developed the IEHP Open Access Program to provide managed health care in a centralized location for foster care youth. The current agreement expires June 30, 2013.

ABOUT IEHP

IEHP is a "Quasi" Governmental agency and a result of a Joint Powers Authority between San Bernardino and Riverside County. They provide a special provider network for foster care clients with extensive case management and are required to follow stringent Quality Assurance Standards for all providers who contract with IEHP, insuring the best medical care for foster care youth. IEHP's covered services to foster care youth are as follows:

- a. Health benefits that include doctor visits, hospitalization, immunizations, emergency services, 700 doctors, 1,300 specialists, over 50 Urgent Care Facilities, and 25 major hospitals.
- b. Pharmacy benefits, which include all medically necessary drugs, and over the counter medicines, if prescribed by a doctor.
- c. Vision care, provided by 230 vision providers, that includes exam and frames over 24 months, and annual diabetes eye exams.
- d. Mental health services will be provided by Riverside County Mental Health.

As of March 2013, there are 2,180 Riverside County foster children enrolled in IEHP's Open Access Program.

The Agreement was excluded from the competitive bid process as stated in W&I code 14087.3, "(a) the director may contract, on a bid or non-bid basis, with any qualified individual, organization, or entity to provide services to, arrange for or case manage the care of Medi-Cal beneficiaries..."

FINANCIAL:

This agreement has no fiscal impact or exchange of funds, Medi-Cal is billed directly to the state by IEHP.

ATTACHMENT(S):

Operational Agreement #CS-02705 between Riverside County DPSS and IEHP.

CONCUR/EXECUTE – County Counsel

SL:mm

Riverside County Department of Public Social Services

Contracts Administration Unit
 10281 Kidd Street
 Riverside, CA 92503

PROFESSIONAL SERVICES AGREEMENT: CS-02705
PROVIDER: Inland Empire Health Plan
AGREEMENT TERM: July 1, 2013 through June 30, 2014
MAXIMUM REIMBURSEABLE AMOUNT \$0

WHEREAS, the Department of Public Social Services, hereinafter referred to as DPSS, requires that Inland Empire Health Plan will provide and arrange health care services for Medi-Cal Eligible children in foster care;

WHEREAS, Welfare and Institution Code Section 14087.3, states that the Director of DPSS may contract, on a bid or non- bid basis, with any entity to provide services to Medi-Cal beneficiaries;

WHEREAS, Inland Empire Health Plan, a Joint Powers Authority (JPA), is qualified to provide managed health care for DPSS foster care clients. DPSS and Inland Empire Health Plan seek to become working partners in preventing disease, prolonging life, and promoting health through organized efforts;

WHEREAS, DPSS desires Inland Empire Health Plan, hereinafter referred to as IEHP, to perform these services in accordance with the PROFESSIONAL SERVICES AGREEMENT TERMS and CONDITIONS, hereinafter referred to as Agreement T&C, attached hereto and incorporated herein by this reference. The Agreement T&C specify the responsibilities of DPSS and IEHP;

NOW THEREFORE, DPSS and IEHP do hereby covenant and agree that IEHP shall provide said services consistent with the Local Initiative contract, and amendments thereto, between the Department of Health Care Services and the Inland Empire Health Plan for Medi-Cal Health Plan Services, all in accordance with the terms and conditions contained herein, of this Agreement.

Authorized Signature for DPSS:	Authorized Signature for Provider:	Authorized Signature for Provider:
X	<i>Daniel Anderson</i>	<i>Bradley P. Gilbert</i>
Printed Name of Person Signing: John J. Benoit	Printed Name of Person Signing: Gary Oritt Dan Anderson	Printed Name of Person Signing: Bradley P. Gilbert
Title: Chairman, Riverside County Board of Supervisors	Title: Vice - Chairperson of IEHP Governing Board	Title: Chief Executive Officer of IEHP
Address: 4080 Lemon Street Riverside, CA 92501	Address: 303 East Vanderbilt Way, Ste 400 San Bernardino, CA 92408	Address: 303 East Vanderbilt Way, Ste 400 San Bernardino, CA 92408
Date signed:	Date signed: 6-10-13	Date signed: 6-3-13

Operational Agreement
Between
Inland Empire Health Plan
and
Riverside County Department of Public Social Services
for the
Foster Youth Health Care Plan

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1. ABBREVIATIONS AND DEFINITIONS

AAP - Adoption Assistance Program

AFDC - Aid to Families with Dependent Children

BIC - Benefit Identification Card (Medi-Cal)

California Children Services (CCS) - A statewide program that arranges, directs and pays for medical services to children and young adults under age 21 who have an eligible condition.

Caregiver - A person, couple, or agency that provides care for a DPSS client

CHDP - Child Health and Disability Prevention

Contractor - Shall mean any employee, agent or representative of the contract company used in conjunction with the performance of the contract

DPSS - Refers to the County of Riverside and its Department of Public Social Services, which has administrative responsibility for this Agreement.

EA - Emergency Assistance title IVA funding

ET - Eligibility Technician

FC - Foster Children

FFCC - Former foster care children

General Membership - The subset of IEHP Members who do not qualify for the Foster Care Open Access program but are enrolled in IEHP and receive similar benefits through one of our general membership programs

HCPCFC - Health Care Program for Children in Foster Care

HIPAA - The Health and Insurance Portability and Accountability Act of 1996

IPA - Independent Physician Association

ILSP - Independent Living Skills Program

JOM - Joint Operation Meetings

KinGap - A financial and medical assistance program for relative guardians of children who were former DPSS dependents

Medically Fragile - A child who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care. Medical conditions requiring specialized in-home health care require dependency upon one or more of the following: internal feeding tube, total parental feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by trachesotomy, colostomy, ileostomy or medical or surgical procedures or special medication regimens, including injections and intravenous medication.

NREFM - Non-Relative Extended Family Member

NRLG - Non-Related Legal Guardians

Open Access Network - Health care provider network that will be used by the foster care youth

Open Access Program - A program developed by IEHP to deliver managed health care to selected foster children who reside in the IEHP service area

Open Access Unit - A work group providing centralized case management services for Foster Children assigned to the IEHP Open Access Program

PCP - Primary Care Physician

PHN - Public Health Nurse.

PMU - Placement Management Unit

RE - Re-evaluation referring to the annual re-evaluation required for foster care eligibility

Red Flag - Refers to any incident, and/or occurrence that would cause concern or a need for immediate attention

SSI - Supplemental Security Income, disabilities benefit issued by the Social Security

SW - Social Worker, a case manager for a dependent of the Juvenile Court

Warmline - A resource and referral line, staffed by DPSS, for relatives who provide care for kin

2. DPSS RESPONSIBILITIES

- 2.1 Assign DPSS staff to be the liaison. At the discretion of DPSS, the liaison may represent DPSS in the first level review of the dispute resolution process. In addition, DPSS will appoint appropriate liaison personnel as needed to coordinate activities and services with IEHP.
- 2.2 DPSS will monitor the performance of IEHP in meeting the terms, conditions, and services in this Agreement. DPSS, at its sole discretion, may monitor the performance of IEHP through any combination of the following methods: periodic on-site visits, annual inspections, evaluations, and self-monitoring.
- 2.3 Make an application for enrollment for coverage through healthcare options to IEHP upon identification of a DPSS client who is a dependent, and appears Medi-Cal eligible for healthcare services, resides in IEHP'S Medi-Cal service area, and who DPSS determines will benefit from managed health care services.
- 2.4 Make selected staff available to serve as the central point of information in responding to daily operational issues as they occur. The following will be the order of access for contact and information:
 - 2.4.1 First line of access: the DPSS Eligibility Technicians
 - 2.4.2 Second line of access: the DPSS Social Workers
 - 2.4.3 Third line of access: DPSS Liaison
- 2.5 Provide to IEHP updates, as needed, of children in placement, specifically providing current placement changes of DPSS clients, specifically children in placement.
- 2.6 Provide to IEHP a list of employees that are authorized by DPSS to exchange and obtain information from IEHP in compliance with HIPAA regulations.

3. IEHP RESPONSIBILITIES

- 3.1 Refer members who need specialty mental health services to Riverside County Department of Mental Health.
- 3.2 Refer children with suspected CCS eligible conditions to the CCS program. CCS will case manage the care of CCS eligible conditions. IEHP and its network medical groups will case manage the physical health of the member. IEHP will ensure the provision of all medically necessary drugs and over the counter medications consistent with the benefit for all IEHP Medi-Cal members.
- 3.3 Assign an IEHP staff member as the primary liaison between IEHP and DPSS. At the discretion of IEHP, the liaison may represent IEHP in the first level review of the dispute resolution process.
- 3.4 Notify staff and providers of their responsibility to refer members, as appropriate and in compliance with federal and State law, for specialty health services that do not fall within the scope of the PCP.
- 3.5 Provide all of the basic services that all IEHP Medi-Cal members receive, including specialty services, such as, but not limited to doctor visits, hospitalization, immunizations, emergency services, physician services, inpatient hospital services, ambulatory care services, urgent and emergency care services, diagnostic and therapeutic laboratory services, maternity care, family planning services, and vision care. The membership handbook, which is regularly updated and distributed to enrolled members, will serve as reference to basic membership.
- 3.6 Provide healthcare service for all Riverside County foster youth who are enrolled in the plan, and reside in IEHP'S Medi-Cal service area, whose dependent placement costs are paid by AFDC-Foster Care, EA, ACF or CalWORKs. No one is to be turned away because of a pre-existing medical or mental health condition.
- 3.7 Provide general membership case management services for the following Medi-Cal Eligible if they choose to join the plan:
 - 3.7.1 Clients who are emancipated and former foster care children (FFCC).
 - 3.7.2 Clients who receive KinGap, AAP, or AFDC-FCD with a non-related legal guardian.
- 3.8 Provide a foster care service unit dedicated to DPSS clients that may include at a minimum one (1) Registered Nurse case manager, and one (1) Coordinator. IEHP shall maintain a toll free number (800-706-4347) for access to the Foster Care Open Access Unit for SW, ETs and PHNs for information exchanging. IEHP will staff based on the need.
- 3.9 Assist PHNs in accessing client information such as, but not limited to the following, PM160's, X-rays, Laboratory reports, Physician visits, hospital records, surgery procedure reports, and immunizations.
- 3.10 Recruit a network of physicians that has completed a Family Practice and/or Pediatrics residency, and meet IEHP'S credentialing standards.
- 3.11 Permit DPSS clients to change their PCP within the plan at any time without notice.
- 3.12 Coordinate with DPSS to address service gaps identified by DPSS staff and /or foster parents.

- 3.13 Provide non-emergency transportation assistance for medical appointments when advance arrangements have been made with DPSS staff when all other options have been exhausted at the discretion of IEHP.
- 3.14 Provide access to IEHP'S Nurse Advice Line consistent with the benefit for all IEHP members. This service is available 24 hours a day, 7 days per week, including weekends and holidays.
- 3.15 Provide equal access to services provided to all IEHP Medi-Cal members including, but not limited to:
 - 3.15.1 Bicycle safety program that includes bicycle helmets to members between the age of five (5) and fourteen (14), who complete and return a bicycle safety quiz.
 - 3.15.2 Car safety seat training to adult caregivers, resulting in provision of infant car seats for clients under the age of one (1).
 - 3.15.3 Provide access to no-cost vitamins for members under the age of five (5) when prescribed by the physician.
- 3.16 Provide a hardcopy of the "Confidential Screening/Billing Report Forms (PM160)" to the designated public health nurse liaison.
- 3.17 Comply with all laws and regulations.
- 3.18 Develop and send with the new ID card appropriate written communication to inform foster caregivers how to access services at initial enrollment and in the event of changes.
- 3.19 Provide a new ID card to each client as needed, when information changes or card is lost.
- 3.20 Provide a report as needed of IEHP employees, including the personal identification number of each employee that is authorized to exchange information as it relates to DPSS clients.
- 3.21 Participate in foster care trainings or events as requested by DPSS, subject to the availability of IEHP staff and resources.
- 3.22 Provide ongoing training to all physicians, which include required frequency for well child visits and immunizations.
- 3.23 When mutually agreed upon "red flags" are discovered, notify DPSS in the same business day.
- 3.24 Provide specialized training and/or information to the network of physicians who will treat foster children. Such training shall be done at least annually and shall include but not limited to, a reminder to the physicians and physician staff of their reporting obligations under California law if, during their day to day practice, they encounter any indication of physical or emotional abuse to the foster children.

4. JOINT RESPONSIBILITIES

- 4.1 Joint Operating Meetings (JOM)
 - 4.1.1 Will be held bi-annually with an option to convene as needed.

- 4.1.2 Will be intended to facilitate communication between IEHP and DPSS.
- 4.1.3 Will include the primary liaisons from each organization.
- 4.1.4 Will serve as the arena for reviewing all aspects of this Agreement, such as, but not limited to, quarterly statistical report, list of disenrolled clients and reason, grievances, and day-to-day issues, including coordination of care, and case review.
- 4.1.5 Will serve as the arena for establishing the list of Red Flags. This list shall be distributed to all parties with emphasis on including the Red Flag list as part of the physician training materials. The JOM will be open to all feedback from the Mental Health Department, PHN'S, physicians and physician's staff to create the optimum Red Flag list.
- 4.1.6 Will serve as an arena for discussion, planning, reviewing and approving upcoming events and training materials for physicians.
- 4.2 Mutual Disenrollment
 - 4.2.1 DPSS reserves the right to disenroll clients, particularly medically fragile children, should patient's needs not be met by IEHP or if the client is dissatisfied with the services provided by IEHP'S service network provider. In such cases, the client will be transferred to fee-for-service Medi-Cal.
 - 4.2.2 DPSS clients placed outside of IEHP's service area will be disenrolled.

5. EFFECTIVE PERIOD

- 5.1 It is mutually agreed and understood that the obligation of IEHP is limited by and contingent upon the availability of funding for the Medi-Cal Program. IEHP shall notify DPSS in writing within thirty (30) days of learning of any discontinuation of funding. DPSS will notify IEHP in writing within thirty (30) days of learning of any discontinuation of Medi-Cal funding.
- 5.2 This Agreement shall commence on July 1, 2013, and shall continue in effect until June 30, 2014. The term may be extended for up to four additional one (1) year periods, in succession, at the mutual consent of the parties without requiring further action of the of the governing board of either party. In the event that the term of the Agreement is extended for the four (4) additional one (1) year periods, the Agreement shall terminate on June 30, 2018.

6. AVAILABILITY OF FUNDS

No legal liability on the part of DPSS shall arise for non-payment from MEDI-CAL reimbursements to IEHP. This Agreement makes no guarantee of the number of referrals that will be sent to IEHP.

7. TERMINATION

- 7.1 This Agreement may be terminated without cause by either party by giving thirty (30) days written notification to the other party

- 7.2 This Agreement may be terminated due to the dissolution of IEHP by mutual actions of the Riverside County and San Bernardino County Board of Supervisors. If IEHP has incurred no obligations, either County Board of Supervisors may terminate the JPA and IEHP by giving not less than sixty (60) days written notice thereof to the other party. Also, the JPA may be terminated by either County Board of Supervisors by written mutual consent, by giving twelve (12) months written notice thereof to the other party, given that the JPA cannot be terminated until all forms of indebtedness incurred by IEHP have been paid, or adequate provision for such payment has been made.
- 7.3 Upon dissolution of IEHP by Riverside County and San Bernardino County Board of Supervisors, this Agreement is rendered null and void. The debts, liabilities, and/or obligations of IEHP are those of IEHP alone. Neither Riverside County nor San Bernardino County assumes any of the debts, liabilities and/or obligations of IEHP.

8. CONFLICT OF INTEREST

The parties hereto and their respective employees or agents shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

9. NOTICES

Unless expressly provided otherwise, all Notices herein provided to be given, or which may be given, by any party to the other, will be deemed to have been fully given when written and personally delivered or deposited in the United States mail, certified and postage prepaid and addressed as follows:

To IEHP:

Inland Empire Health Plan
 303 East Vanderbilt Way, Suite 400
 San Bernardino, CA 92408
 (909) 890-2000
 Attn: Bradley P. Gilbert,
 Chief Executive Officer

To DPSS:

Riverside County Department of Public Social
 Services
 10281 Kidd St
 Riverside, CA 92503
 (951) 358-3030
 Attn: Contracts Administration Unit
 Contracts Services Officer

10. RECORDS INSPECTIONS AND AUDITS

- 10.1 IEHP shall maintain auditable books, files, records, documents and other evidence pertaining to case management, costs and expenses in this Agreement. IEHP shall maintain these records for no less than five (5) years after the final payment has been made, or until all pending county, state and federal audits, if any, are completed, whichever is later.
- 10.2 Any authorized representative of the County of Riverside, the State of California, and the Federal government shall have access to any documentation, which these representatives may determine to be pertinent to this Agreement, for the purposes of performing an audit, evaluation, inspection, review, assessment or examination. These representatives are authorized to obtain excerpts, transcripts, and copies, as

they deem necessary. Further, these authorized representatives shall have the right at all reasonable times to inspect or otherwise evaluate the work performed, or being performed, under this Agreement and the premises in which it is being performed.

- 10.3 This access to records includes, but is not limited to, service delivery, referral, financial, and administrative documents for five (5) years after final payment is made, or until all pending County, State, and Federal audits are completed, whichever is later.
- 10.4 IEHP must provide a copy of any and all audit findings and responses to audit findings to the DPSS contract administration unit within sixty (60) days from the date of the audit. Should IEHP disagree with any audit conducted by DPSS, IEHP shall have the right to employ a licensed, Certified Public Accountant (CPA) to prepare and file with DPSS a certified financial and compliance audit that is in compliance with generally-accepted government accounting standards of related services provided during the term of this Agreement. IEHP shall not be reimbursed by DPSS for such an audit.
- 10.5 In the event IEHP does not make available its books and financial records at the location where they are normally maintained, IEHP agrees to pay all necessary and reasonable expenses, including legal fees, incurred by DPSS in conducting such an audit.

11. CONFIDENTIALITY

DPSS and IEHP shall observe all federal, state and county requirements, and applicable law concerning the confidentiality of records. DPSS and IEHP, as required by applicable law, shall strictly maintain confidentiality of medical records of patients, including protection of names and address, and other identifying information from unauthorized disclosure.

12. EMPLOYMENT PRACTICES

- 12.1 DPSS shall not discriminate in recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement, and, to the extent they shall apply, with the provisions of the Fair Employment and Housing Act (FEHA), and the Federal Civil Rights Act of 1964.
- 12.2 In the provision of benefits, IEHP shall certify and comply with Public Contract Code 10295.3, to not discriminate between employees with spouses and employees with domestic partners, or discriminate between the domestic partners and spouses of those employees.
- 12.3 For the purpose of this section, Domestic Partner means one of two persons who has filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

13. CLIENT CIVIL RIGHTS COMPLIANCE

- 13.1 Vendor Assurance of Compliance – IEHP shall complete the Vendor Assurance of Compliance with Riverside County Department of Public Social Services Non-

Discrimination in State and Federally Assisted Programs, attached hereto as Exhibit A and incorporated herein by this reference. IEHP will sign and date Exhibit A and return it to DPSS along with the executed Contract. IEHP shall ensure that the administration of public assistance and social service programs are non-discriminatory. To the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance.

- 13.2 Cultural Competency- IEHP shall cause to be available bilingual professional staff or qualified interpreter to ensure adequate communication between clients and staff. Any individual with limited English language capability or other communicative barriers shall have equal access to services.

For the purpose of this Section, a qualified interpreter is defined as someone who is fluent in English and in the necessary second language, can accurately speak, read and readily interpret the necessary second language and/or accurately sign and read sign language. A qualified interpreter must be able to translate in linguistically appropriate terminology necessary to convey information such as symptoms or instructions to the client in both languages.

14. NONDISCRIMINATION

- 14.1 Services and benefits shall be provided by DPSS and IEHP to individuals without reference otherwise to their religion, color, race, sex, national origin, age, sexual preferences, physical or mental handicaps or condition in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by State law and regulations, as all may now exist or be hereafter amended or changed.
- 14.2 For the purpose of this Section, discrimination means denying a participant or potential participant any service, benefit, or accommodation that would be provided to another and includes, but is not limited to, the following:
- 14.2.1 Denying a participant any service or benefit or availability of a facility.
 - 14.2.2 Providing any service or benefit to a participant which is different, or is provided in a different manner, or at a different time or place from that provided to other participants on the basis of race, color, creed or national origin.
 - 14.2.3 Restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
 - 14.2.4 Treating a participant differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service or benefit.

15. HOLD HARMLESS/INDEMNIFICATION

- 15.1 IEHP shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of IEHP, its officers, employees, contractors, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of IEHP, its officers, agents, employees, subcontractors, agents or representative Indemnitors from this Agreement. IEHP shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.
- 15.2 DPSS shall indemnify and hold harmless IEHP, its officers, employees, Governing Board, contractors, subcontractors, agents or representatives from any liability whatsoever, based or asserted upon any services the Indemnitees of DPSS arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of DPSS Indemnitees. DPSS shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards, IEHP, its officers, employees, Governing Board, contractors, subcontractors, agents or representatives in any claim or action based upon such alleged acts or omissions.
- 15.3 With respect to any action or claim subject to indemnification herein by either party, the indemnifying party shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the other party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the party's obligation to indemnify the other party as set forth herein.
- 15.4 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve one party from indemnifying the other to the fullest extent allowed by law.

16. INSURANCE

At a minimum and without limiting or diminishing IEHP'S obligation to indemnify or hold the COUNTY harmless, IEHP shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.

16.1 **Workers' Compensation:**

- 16.1.1 IEHP shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits

not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

16.2 Commercial General Liability:

16.2.1 Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury and cross liability coverage. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

16.3 Vehicle Liability:

16.3.1 IEHP shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

16.4 Professional Liability Insurance:

16.4.1 IEHP shall maintain Professional Liability Insurance providing coverage for IEHP'S performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. If IEHP'S Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and IEHP shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that IEHP has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Agreement.

16.5 General Insurance Provisions - All lines:

16.5.1 Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.

16.5.2 IEHP'S insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such self-insured retentions exceed \$500,000 per

occurrence, such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self insured retention's unacceptable to the COUNTY, and at the election of the County's Risk Manager, IEHP'S carriers shall either; 1) reduce or eliminate such deductibles or self-insured retention's as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- 16.5.3 IEHP shall cause IEHP'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect.
- 16.5.4 IEHP shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.
- 16.5.5 It is understood and agreed to by the parties hereto that IEHP's Insurance shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 16.5.6 If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work which will add to additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by IEHP has become inadequate.

16.5.7 The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance.

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

17. LICENSES AND PERMITS:

17.1 In accordance with the provisions of the Business and Professions Code concerning the licensing of Contractors, all Contractors shall be licensed, if required, in accordance with the laws of this State and any Contractor not so licensed is subject to the penalties imposed by such laws.

17.2 The parties warrant that they have all the necessary permits, approvals, certifications, waivers, and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, State of California, and all other appropriate government agencies, and shall maintain these throughout the term of this Agreement.

18. INDEPENDENT CONTRACTOR

18.1 It is understood and agreed that the relationship between IEHP and the County is an independent contractor relationship, and that no employer-employee relationship exists between the parties hereto. Each party exclusively assumes the responsibility for its own acts and the acts of its employees, agents, contractors or subcontractors as they relate to services to be provided during the course and scope of this Agreement.

18.2 One party's employees shall not be entitled to any benefits payable to employees of the other party including, but not limited to, Worker's Compensation benefits. County shall not be required to make any deductions for employees of IEHP from the compensation payable to IEHP under the provision of this Agreement.

18.3 IEHP and the County hereby agree to hold each other harmless from any and all claims that may be made against the other party based upon contention by any third party that an employer-employee relationship exists by reason of this Agreement. As part of the foregoing indemnity, IEHP agrees to protect and defend at its own expense, including attorney's fees, the County, its officers, agents and employees in any legal action based upon any such alleged existence of an employer-employee relationship by reason of this Agreement. As part of the foregoing indemnity, the County agrees to protect and defend at its own expense, including attorney's fees, IEHP, its officers, agents and employees in any legal action based upon any such alleged existence of an employer-employee relationship by reason of this Agreement. The terms of this Section shall survive the termination of this Agreement.

19. ASSIGNMENT

This Agreement and the rights, interests, and benefits hereunder shall not be assigned, transferred, pledged, or hypothecated in any way by DPSS or IEHP, and shall not be

subject to execution, attachment or similar process, nor shall the duties imposed herein be subcontracted or delegated without the written consent of the other party, as approved by the IEHP Governing Board. Any assignment or delegation of this Agreement by DPSS to a third party shall be void unless prior written approval is obtained from IEHP as approved by the Department of Health Care Services and the Department of Managed Health Care.

20. CHILD ABUSE REPORTING

IEHP shall establish a procedure acceptable to DPSS to ensure that all employees, volunteers, consultants, contractors, subcontractors, or agents performing services under this Agreement report child abuse or neglect to a child protective agency as defined in the Penal Code Sections 11165-11174.3.

21. PERSONNEL DISCLOSURE

DPSS has the sole discretion to approve or not approve any person that IEHP employs to provide services to the DPSS population that has been convicted of any crimes involving sex, drugs, or violence, or who is known to have a substantiated report of child abuse, as defined in Penal Code Section 11165.12, who occupies positions with supervisory or disciplinary power over minors, or who occupies supervisory or teaching positions over adults who provide services under this Agreement. DPSS shall notify IEHP in writing of any person not approved, but to protect client confidentiality, may not be able to disclose the reason(s) for non-approval. Upon notification, IEHP shall immediately remove that person from providing services under this Agreement.

22. DISCLOSURE OF INFORMATION RELEVANT TO CLIENT SAFETY

22.1 As stipulated in Penal Code Section 11105.3 and 11165.12, IEHP agrees to notify DPSS of any Contractor employee or volunteer staff that has been convicted of any crimes involving sex, drugs, or violence, or is are known to have a substantiated report of child abuse, who occupies supervisory or disciplinary power over minors, or who occupies supervisory or teaching positions over adult clients. The notification is required prior to placement. The procedures for notification are as follows:

22.1.1 When such information becomes known to IEHP, IEHP shall immediately notify DPSS concerning any arrests or conviction for anything other than minor traffic offenses, or any substantiated allegations of child abuse, of any paid employee or volunteer staff

22.1.2 In the event that notification is made, DPSS will make the necessary contractual changes up to and including termination of this Agreement; and failure to notify DPSS of the above is grounds for termination of this Agreement.

23. REPORTING

23.1 IEHP shall submit to the DPSS Contracts Administration Unit a quarterly report, if any, in regards to DPSS clients' complaints, unresolved issues, claims denied, and/or disputes filed. Please submit in writing, if any, changes in management, dissolution of a subcontract, and change in liaison.

23.2 IEHP will provide one week prior to each JOM a quarterly report that must be sent to the DPSS liaison that will include, but not limited to, the following as it relates to the Open Access program.

23.2.1 Claims reports by Provider

23.2.2 Open Access Intervention Report

23.2.3 Number of clients receiving services (Enrollment Report)

23.2.4 Number of clients involuntarily disenrolled

23.2.5 Count of clients by zip code of client's residence

23.2.6 Count of clients by ethnicity

23.2.7 Count of clients by primary language

24. PUBLICITY, ANNOUNCEMENT, AND MATERIALS

All publications, pamphlets, public announcement, and materials unique to DPSS clients and distributed to Riverside County DPSS clients must be reviewed by, approved by DPSS-CPS administration, and filed with DPSS contract administration unit prior to release. DPSS may approve these materials within 72 hours of receipt of the materials, if allowable.

25. DEBARMENT AND SUSPENSION

25.1 The parties certify that they, and their principals:

25.1.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.

25.1.2 Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction; violation of Federal or State anti-trust status or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

25.1.3 Are not presently indicated or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

25.1.4 Have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

26. COMPLIANCE WITH RULES, REGULATIONS, REQUIREMENTS AND DIRECTIVES

IEHP shall comply with all rules, regulations, requirements, and directives of the California Department of Social Services, other applicable state agencies, and funding sources which impose duties and regulations upon DPSS, which are equally applicable and made binding upon IEHP as though made with IEHP directly.

27. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) AND HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)

IEHP and DPSS are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 (HITECH), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated thereto. Both parties hereto agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under HIPAA and HITECH. Both parties further agree that it shall be in compliance with the requirements of HIPAA and HITECH, and the laws and regulations promulgated subsequent hereto as may be amended from time to time. In the event that a party independently violates any HIPAA or HITECH law or regulation, the other party will not be held liable. IEHP agrees to require all employees to sign a statement of confidentiality. IEHP and DPSS agree to the terms and conditions set forth in the HIPAA Business Associated Agreements attached hereto as Exhibits B and C and incorporated herein by this reference.

All social service privacy complaints should be referred to:

Department of Public Social Services
HR/Administrative Compliance Services Unit
10281 Kidd Street
Riverside, CA 92503
(909) 358-3030

28. OSHA REGULATIONS

DPSS and IEHP certify awareness of the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, the derivative Cal/OSHA standards and laws, and regulations relating thereto, and shall comply therewith as to all relative elements under this Agreement.

29. RESOLUTION OF DISPUTES

29.1 Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed by this Agreement, shall be disposed by DPSS which shall furnish the decision in writing. The decision of DPSS shall be final and conclusive until determined by a court of competent jurisdiction to have been fraudulent or capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. IEHP shall proceed diligently with the performance of the Agreement pending DPSS' decision. There will be three phases of Dispute Resolution and they are as follows:

29.1.1 Phase 1. This phase of dispute resolution will be called "Phase 1 informal resolution," and it will be conducted between the DPSS liaison and IEHP liaison using the Agreement, the IEHP Provider Policy and Procedure Manual, and other supporting documentation maintaining a level of reason, logic and common sense. Phase 1 must be documented.

- 29.1.2 Phase 2. This phase of dispute resolution will be called "Phase 2 formal resolution," and it will be between the Deputy Director of the Contracts Administrative Unit and/or his/her designee(s) and IEHP Administrators. This incident must be written as a note to file.
- 29.1.3 Phase 3. This phase of dispute resolution will be called "Phase 3 Formal Dispute Resolution," and will be conducted by the Director of DPSS and the CEO of IEHP.
- 29.2 IEHP shall proceed diligently with the performance of the contract during Dispute Resolution.

30. INVALIDITY OF SECTIONS OF AGREEMENT

The unenforceability or invalidity of any Section or provision of this Agreement shall not affect the enforceability and validity of the balance of this Agreement.

31. GOVERNING LAW

- 31.1 IEHP, DPSS and this Agreement are subject to the laws of the State of California and the United States of America, including but not limited to: the California Knox--Keene Act and the regulations promulgated thereunder by the DMHC, the Health Maintenance Organization Act of 1973 and the regulations promulgated thereunder by the United States Department of Health and Human Services, and the Waxman-Duffy Prepaid Health Plan Act and the regulations promulgated by the DHCS.
- 31.2 The provisions of the Government Claims Act (Government Code Section 900, et seq.) must be followed for any disputes under this Agreement and shall become applicable after the procedure in Paragraph 7 ("RESOLUTION OF DISPUTES") has been completed.
- 31.3 All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of Riverside, State of California.
- 31.4 IEHP is subject to the requirements of Title 28 of the California Code of Regulations pertaining to licensed health care service plans and any provision required to be in the Agreement by either of these requirements shall bind IEHP whether or not provided in the Agreement.
- 31.5 IEHP is subject to the requirements of Title 28, Division 1, Chapter 2 (Sections 1300.43-1300.826) of the California Code of Regulations and any provisions required to be in the Agreement by either of these requirements shall bind IEHP whether or not provided in the Agreement.

32. MODIFICATION OF TERMS

No addition to or alteration of the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in writing and formally approved and executed by both parties.

33. ENTIRE AGREEMENT

This Agreement, including Exhibit A, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein.

CONTRACTOR, SUBCONTRACTOR, AND/OR VENDOR
ASSURANCE OF COMPLIANCE
WITH
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES
NON-DISCRIMINATION
IN
STATE AND FEDERALLY ASSISTED PROGRAMS

Inland Empire Health Plan

NAME OF VENDOR/RECIPIENT

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 as amended: Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended, and in particular Section 272.6; Title II of the Americans with Disabilities Act of 1990; Government Code (GC) Section 11135, as amended; California Code of Regulations (CCR) Title 22 Section 98000-98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act; Section 1808 Removal of Barriers to Inter Ethnic Adoption Act of 1996 and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of race, color, national origin, political affiliation, religion, martial status, sex, age, or disability be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records, and submit reports as required to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-39, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance; and shall be submitted annually with the required Civil Rights Plan Update.

6-3-13

Date

Bruce P. Smith

Director's Signature

303 E. Vanderbilt Way, San Bernardino, CA 92408

Address of Vendor/Recipient

HIPAA Business Associate Agreement**Addendum to Contract**

Between the County of Riverside and **Inland Empire Health Plan (IEHP)**

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Inland Empire Health Plan Agreement # CS-02705** (the "Underlying Agreement") between the County of Riverside ("County") and **Inland Empire Health Plan Agreement** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, is a business associate as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

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

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

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

A. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

1. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall

have the meaning given such term in 45 CFR §164.402. For purposes of this definition, “compromises the security or privacy of PHI” means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:

- a. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - b. Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - c. A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. “Data aggregation” has meaning given such term in 45 CFR §164.501.
- C. “Designated record set” as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- D. “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- E. “Electronic health record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. “Health care operations” has the meaning given such term in 45 CFR §164.501.
- G. “Individual” as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. “Person” as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. “Privacy Rule” means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. “Protected health information” (“PHI”) has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. “Required by law” has the meaning given such term in 45 CFR §164.103.
- L. “Secretary” means the Secretary of the Department of Health and Human Services (“HHS”).
- M. “Security Rule” means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.

N. “Unsecured protected health information” and “unsecured PHI” as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

2.0 Scope of Use and Disclosure by Contractor of County’s PHI and/or ePHI.

A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.

B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:

- 1) Use PHI and/or ePHI if necessary for Contractor’s proper management and administration and to carry out its legal responsibilities; and,
- 2) Disclose PHI and/or ePHI for the purpose of Contractor’s proper management and administration or to carry out its legal responsibilities, only if:
 - a) The disclosure is required by law; or,
 - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - ii. Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
- 3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
- 4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.

C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. **Prohibited Uses and Disclosures.** Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.

1. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
2. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.

3. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936. Contractor agrees:
- 1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
 - 2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - 3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.
4. **Obligations of County.** County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- A. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - B. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
 - C. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
 - D. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.
5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:
- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
 - B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
 - C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
 - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
 - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
 - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
 - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
 - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
 - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
 - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
 - B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
 - C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where

applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:

1. Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 2. Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 3. Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
 - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
 - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
 - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
 - E. Ensure compliance by Contractor's workforce;
 - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
 - G. Report to County any security incident of which Contractor becomes aware; and,
 - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
 - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs

associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

- F. **Documentation.** Pursuant to 45 CFR §§ 164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach.

9. **Hold Harmless/Indemnification.**

A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

B. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

C. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice

within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

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

E. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.

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

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- 1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- 3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

- 1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI, which are in the possession of subcontractors or

agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.

- 2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. General Provisions.

- a) **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- b) **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- c) **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- d) **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- e) **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- f) **Interpretation of Addendum.**
- 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
 - 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of this Addendum shall be in writing and delivered to the County by either first class United States mail with postage prepaid, registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name: CONTRACTS ADMINISTRATION UNIT

Address: 10281 KIDD STREET, 1ST FLOOR
RIVERSIDE, CA 92503

**HIPAA BUSINESS ASSOCIATE AGREEMENT
ATTACHMENT TO CONTRACT**

Riverside County Department of Public Social Services

This HIPAA Business Associate Agreement (the “Agreement”) is an Attachment to the **Operational Agreement** (the “Underlying Agreement”) between the Inland Empire Health Plan (“IEHP”) and **Riverside County Department of Public Social Services** (“Business Associate”) as of the date on **Section 5** (the “Effective Date”), of the Underlying Agreement.

RECITALS

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

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

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

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

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

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

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

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

1. Definitions

A. Unless otherwise provided in this Agreement, or specifically defined in Paragraph B of this Section 1, the capitalized terms shall have the same meanings as set forth in the Privacy Rule, Security Rule, and/or HITECH, as may be amended from time to time.

B. Specific Definitions

- (1) "Breach," when used in connection with Unsecured PHI, means, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule (45 C.F.R. Part 164, Subpart E), which compromises the security or privacy of the PHI. Except as otherwise excluded under 45 C.F.R. § 164.402, such acquisition, access, use or disclosure is presumed to be a Breach unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
 - a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b) The unauthorized person who used the PHI or to whom the disclosure was made;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
- (2) "Discovered" means the first day on which such Breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the Breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- (3) "Electronic Protected Health Information" ("ePHI") means, as defined in 45 C.F.R. § 160.103, PHI transmitted by or maintained in electronic media, and for purposes of this Agreement, is limited to the ePHI that Business Associate creates, receives, maintains or transmits on behalf of IEHP.
- (4) "Protected Health Information" ("PHI") shall generally have the meaning given such term in 45 C.F.R. § 160.103, which includes ePHI, and for purposes of this Agreement, is limited to PHI, including ePHI, that Business Associate creates, receives, maintains or transmits on behalf of IEHP.
- (5) "Secretary" means the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- (6) "Subcontractor" means a person to whom a business associate delegates a function, activity, or service other than in the capacity of a member of the workforce of such business associate.

- (7) “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).

2. Scope of Use and Disclosure by Business Associate of PHI and/or ePHI

- A. Business Associate shall be permitted to use PHI and/or ePHI disclosed to it by IEHP:
- C. (1) On behalf of IEHP, or to provide services to IEHP for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule, Security Rule, and/or HITECH.
- D.
- E. (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this Agreement or required by law, Business Associate may:
- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
- (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Business Associate’s proper management and administration or to fulfill any legal responsibilities of Business Associate, only if:
- a) The disclosure is required by law; or
- b) Business Associate obtains written assurances from any person or organization to which Business Associate will disclose such PHI and/or ePHI that the person or organization will:
- (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Business Associate disclosed it to the third party, or as required by law; and
- (ii) Notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) Use the PHI and/or ePHI to provide Data Aggregation services relating to the Health Care Operations of IEHP if authorized by the Underlying Agreement or pursuant to the written request of IEHP.
- (4) De-identify any and all PHI and/or ePHI of IEHP received by Business Associate under this Agreement provided that the De-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.

C. Business Associate shall not:

- (1) Use or disclose PHI and/or ePHI it receives from IEHP, nor from another business associate of IEHP, except as permitted or required by this Agreement, or as required by law.
- (2) Disclose PHI and/or ePHI not authorized by the Underlying Agreement or this Agreement without patient authorization or De-identification of the PHI and/or ePHI as authorized in writing by IEHP.
- (3) Make any disclosure of PHI and/or ePHI that IEHP would be prohibited from making.
- (4) Use or disclose PHI for fundraising or marketing purposes.
- (5) Disclose PHI, except as otherwise required by law, to a health plan for payment or healthcare operations purposes if the individual has requested this restriction, and the PHI solely relates to a health care item or service that is paid in full by the individual or person (other than the health plan) on behalf of the individual (45 C.F.R. § 164.522(a)(1)(vi)).
- (6) Directly or indirectly receive remuneration in exchange for PHI nor engage in any acts that would constitute a Sale of PHI, as defined in 45 C.F.R. § 164.502(a)(5)(ii), except with the prior written consent of IEHP and as permitted by and in compliance with 45 C.F.R. § 164.508(a)(4); however, this prohibition shall not affect payment by IEHP to Business Associate for services provided pursuant to the Underlying Agreement.
- (7) Use or disclose PHI that is Genetic Information for Underwriting Purposes, as those terms are defined in 45 C.F.R. §§ 160.103 and 164.502(a)(5)(i), respectively.

F. Business Associate agrees that in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA and/or HITECH (including but not limited to prohibiting the disclosure of mental health, and/or substance abuse records), the more stringent laws and/or regulations shall control the disclosure of PHI.

3. Obligations of IEHP

- A. Notification of Restrictions to Use or Disclosure of PHI. IEHP agrees that it will make its best efforts to promptly notify Business Associate in writing of any restrictions, limitations, or changes on the use, access and disclosure of PHI and/or ePHI agreed to by IEHP in accordance with 42 U.S.C. § 17935(a), that may affect Business Associate's ability to perform its obligations under the Underlying Agreement, or this Agreement.
- B. Proper Use of PHI. IEHP shall not request Business Associate to use, access, or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule, Security Rule, and/or HITECH.

C. Authorizations. IEHP will obtain any authorizations necessary for the use, access, or disclosure of PHI and/or ePHI, so that Business Associate can perform its obligations under this Agreement and/or the Underlying Agreement.

D. Actions in Response to Business Associate Breach. IEHP shall complete the following in the event that IEHP has determined that Business Associate has a Breach:

(1) Determine appropriate method of notification to the patient/client(s) regarding a Breach as outlined in 45 C.F.R. § 164.404(d).

(2) Send notification to the patient/client(s) without unreasonable delay but in no case later than sixty (60) days of Discovery of the Breach with at least the minimal required elements as follows:

a) Brief description of what happened, including the date of the Breach and the date of Discovery;

b) Description of the types of Unsecured PHI involved in the Breach (such as name, date of birth, home address, Social Security number, medical insurance, etc.);

c) Steps patient/client(s) should take to protect themselves from potential harm resulting from the Breach;

d) Brief description of what is being done to investigate the Breach, to mitigate harm to patient/client(s) and to protect against any further Breaches; and

e) Contact procedures for patient/client(s) to ask questions or learn additional information, which must include a toll-free telephone number, an E-Mail address, website or postal address.

(3) Determine if notice is required to the Secretary.

(4) If required, submit Breach information to the Secretary within the required timeframe, in accordance with 45 C.F.R. § 164.408(b).

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

4. Obligations of Business Associate

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

- B. Appropriate Safeguards. Business Associate shall use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical and technical safeguards in accordance with the Security Rule under 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316:
- (1) Business Associate shall issue and change procedures from time to time to improve electronic data and file security as needed to comply with the measures that may be required by the Privacy Rule or the Security Rule, as applicable, and at all times use an NIST-Approved Technology for all PHI and/or ePHI that is in motion, stored or to be destroyed.
 - (2) Business Associate shall extend such policies and procedures, if applicable, for the protection of physical PHI to prevent, detect, contain and correct security violations, as well as to limit unauthorized physical access to the facility or facilities in which the PHI is housed.
- C. Mitigation. Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI and/or ePHI by Business Associate in violation of this Agreement.
- D. Access to Records. Business Associate shall make internal practices, books, and records including policies and procedures, relating to the use, access, disclosure, and privacy protection of PHI received from IEHP, or created or received by Business Associate on behalf of IEHP, available to the Secretary, for purposes of determining, investigating or auditing Business Associate's and/or IEHP's compliance with the Privacy and Security Rules and/or HITECH, subject to any applicable legal restrictions. Business Associate shall also cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.
- E. Carrying Out IEHP's Obligations. To the extent Business Associate is to carry out one or more of IEHP's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that applies to IEHP in the performance of such obligations.
- F. Subcontractors. In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall require Subcontractors that create, receive, maintain or transmit PHI and/or ePHI on behalf of Business Associate, to agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to the PHI and/or ePHI, including the restrictions, conditions and requirements set forth in this Agreement.
- G. Contract Violations by Subcontractors. Pursuant to 45 C.F.R. § 164.504(e)(1)(iii), if Business Associate knows of a pattern of activity or practice of the Subcontractor that constitutes a material breach or violation of the Subcontractor's obligations under the business associate contract between Business Associate and Subcontractor, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps

are unsuccessful, Business Associate shall terminate the business associate contract with the Subcontractor if feasible.

- H. Workforce Training. Business Associate warrants that all employees who use, access or disclose PHI and/or ePHI shall be properly trained to comply with Privacy Rule, Security Rule, HITECH, or other such applicable law.
- I. Patient Confidentiality Laws and Regulations. Business Associate agrees to obtain and maintain knowledge of the applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- J. Reporting of Improper Access, Use or Disclosure Breach. Business Associate shall report to IEHP any unauthorized use, access or disclosure of Unsecured PHI and/or ePHI or any other security incident with respect to PHI no later than fifteen (15) days after Discovery of the potential Breach (“Notice Date”). The IEHP Compliance Department can be reached via Facsimile: (909) 890-2973, or through the Compliance Hotline: (866) 355-9038. Upon Discovery of the potential Breach, Business Associate shall complete the following actions:
- (1) Provide IEHP’s Compliance Department with the information required by 45 C.F.R. sections 164.410, 164.404, which shall include, but not be limited to:
 - a) The identification of each individual (IEHP Members) whose Unsecured PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used or disclosed;
 - b) Date(s) of Breach: MM/DD/YYYY;
 - c) Date(s) of Discovery of Breach: MM/DD/YYYY;
 - d) Approximate number of individuals (IEHP Members) affected by the Breach;
 - e) Type of Breach, i.e., theft, loss, improper disposal, unauthorized access, hacking/IT incident (for additional selections, see U.S. Department of Health & Human Services, Health Information Privacy);
 - f) Location of breached information, i.e., laptop, desktop computer, network server, E-Mail, other portable electronic device (see U.S. Department of Health & Human Services, Health Information Privacy);
 - g) Type of PHI involved in the Breach, i.e., demographic information, financial information, clinical information (see U.S. Department of Health & Human Services, Health Information Privacy);
 - h) Safeguards in place prior to Breach, i.e., firewalls, packet filtering (router-based), encrypted wireless (see U.S. Department of Health & Human Services, Health Information Privacy);

- i) Actions taken in response to Breach, i.e., mitigation, protection against any further Breaches, policies and procedures (see U.S. Department of Health & Human Services, Health Information Privacy); and
 - j) Any steps individuals should take to protect themselves from potential harm resulting from the Breach.
- (2) Conduct and document a risk assessment by investigating, without reasonable delay and in no case later than twenty (20) calendar days of Discovery, the potential Breach to determine the following:
- a) Whether there has been an impermissible use, acquisition, access or disclosure of PHI and/or ePHI under the Privacy Rule;
 - b) Whether an impermissible use or disclosure compromises the security or privacy of the PHI and/or ePHI, including whether it can be demonstrated that there is a low probability that PHI and/or ePHI has been compromised based on a risk assessment of at least four (4) factors specified in Section 1.B(1) defining Breach; and
 - c) Whether the incident falls under one of the Breach exceptions.
- (3) Provide the completed risk assessment and investigation documentation to IEHP's Compliance Department within twenty-five (25) calendar days of Discovery of the potential Breach, and collaborate with IEHP on making a decision on whether a Breach has occurred.
- a) If a Breach has not occurred, notification to patient/client(s) is not required;
 - b) If a Breach has occurred, notification to the patient/client(s) is required and Business Associate must provide IEHP with affected patient/client(s) names and contact information so that IEHP can provide notification.
- (4) Make available to governing State and Federal agencies in a time and manner designated by such agencies, any policies, procedures, internal practices and records relating to a potential Breach for the purposes of audit; cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.
- (5) Should the Breach of Unsecured PHI be caused solely by Business Associate's failure to comply with one or more of its obligations under this BAA, Privacy Rule, Security Rule and/or HITECH Provisions, Business Associate shall pay for any and all costs associated with providing all legally required notifications to individuals, media outlets and the Secretary.
- (6) Should the Breach of Unsecured PHI involve more than 500 residents of a single State or jurisdiction, Business Associate shall provide to IEHP, no later than the Notice Date, the information necessary for IEHP to prepare the notice to media outlets as set forth in 45 C.F.R. § 164.406.

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

5. Access to PHI, Amendment and Disclosure Accounting

Business Associate agrees to:

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

6. Term and Termination.

- A. Term. This Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement.
- B. Termination for Cause. IEHP may terminate the Underlying Agreement, effective immediately, if IEHP, in its sole discretion, determines that Business Associate has breached a material provision of this Agreement relating to the privacy and/or security of the PHI. Alternatively, IEHP may choose to provide Business Associate with notice of the existence of an alleged material breach and afford Business Associate with an opportunity to cure the alleged material breach. In the event Business Associate fails to cure the breach to the satisfaction of IEHP in a timely manner, IEHP reserves the right to immediately terminate the Underlying Agreement.

- (1) Effect of Termination. Upon termination of the Underlying Agreement, for any reason, Business Associate shall return or destroy all PHI and/or ePHI received from IEHP, or created or received by Business Associate on behalf of IEHP, no later than sixty (60) days after the date of termination. Business Associate shall certify such destruction, in writing, to IEHP. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI and/or ePHI.
- (2) Destruction not Feasible. In the event that Business Associate determines that returning or destroying the PHI and/or ePHI is not feasible, Business Associate shall provide written notification to IEHP of the conditions which make such return or destruction not feasible. Upon determination by Business Associate that return or destruction of PHI and/or ePHI is not feasible, Business Associate shall extend the protections, limitations, and restrictions of this Agreement to such PHI and/or ePHI retained by Business Associate, its subcontractors, employees or agents, and to limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as such PHI and/or ePHI is maintained.

7. Hold Harmless/Indemnification

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

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

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

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

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

8. General Provisions.

- A. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- B. Survival. Notwithstanding Section 6.A of this Agreement, the respective rights and obligations of this Agreement shall survive the termination or expiration of this Agreement.
- C. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, and/or HITECH means the section(s) as in effect or as amended.
- D. Interpretation. This Attachment shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA and HITECH. Any ambiguity in this Agreement and the Underlying Agreement shall be resolved to permit IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- E. Remedies. Business Associate agrees that IEHP shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which IEHP may have at law or in equity in the event of an unauthorized use, access, or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.
- F. Ownership. The PHI shall be and remain the property of IEHP. Business Associate agrees that it acquires no title or rights to the PHI.
- G. Headings. Paragraph headings contained in this Agreement are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

BUSINESS ASSOCIATE:

INLAND EMPIRE HEALTH PLAN:

By: _____
(Business Associate)

By: Bradley P. Gilbert
Bradley P. Gilbert, M.D.
Chief Executive Officer

John J. Benoit
(Typed or Printed Name)

Date: 6/3/13

Chair, Board of Supervisors
(Title)

Date: _____

By: Daniel Anderson
Vice-Chair, IEHP Governing Board

Date: 6-10-13

Attest: Julie Hargrove
Secretary, IEHP Governing Board

Date: 6-11-13

Approved as to Form

PAMELA J. WALLS
County Counsel

By: [Signature]
Deputy County Counsel
Attorneys for Inland Empire Health Plan

Date: 6/10/13