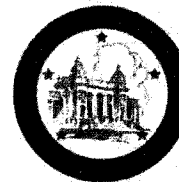


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.44
(ID # 6389)

MEETING DATE:

Tuesday, February 27, 2018

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Approval of the Participation Agreement with the Inland Empire Health Information Organization and Manifest MedEx; District- All; [\$0].

RECOMMENDED MOTION: That the Board of Supervisors:


1. Approve the Participation Agreement with the Inland Empire Health Information Organization and Manifest MedEx to electronically provide and receive health information for the period February 27, 2018 through February 26, 2022; and
2. Authorize the Hospital CEO to sign amendments that do not change the substantive terms of the Agreement as approved by County Counsel.

ACTION: Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: February 27, 2018
xc: RUHS-Medical Center

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

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STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment: No	
			For Fiscal Year: 17/18-21/22	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The requested Board action will allow Riverside University Health System (RUHS) - Medical Center to enter into a non-financial Participation Agreement for the secure exchange of electronic patient health information with the Inland Empire Health Information Organization (IEHIO) and Manifest MedEx, a health information exchange (HIE).

Manifest Medex is one of the nation's largest nonprofit health information exchanges (HIEs). This is the first time Riverside University Health System-Medical Center (RUHS-MC) will participate and submit information to an HIE. HIEs support physicians, nurses, hospitals and health plans in securely sharing crucial health information to ensure that patients receive continuity of safe, efficient and high-quality care as they transition from one provider or hospital to another.

The Federal Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act, promotes the adoption and meaningful use of health information technology. One of the key components of "meaningful use" is connection of each facility's separate Electronic Health Record (EHR) via an HIE. RUHS-MC has implemented an electronic health record system that is capable of meeting this federal requirement by securely exchanging patient health information through the HIE operated by Manifest Medex.

Participation in this HIE is also supported by the Inland Empire Health Plan (IEHP) which has agreed to pay all costs of RUHS-MC's participation in the HIE. Should this funding commitment ever change in the future, the Participation Agreement contains provisions for a negotiation period and termination of the Agreement if those negotiations are not successful. The Agreement also includes a provision permitting the County to terminate at any time, without cause, upon thirty days' notice.

Impact on Residents and Businesses

The Hospital, its site-based clinics and community-based clinics serve residents in all five Riverside County supervisorial districts, providing more than 450,000 patient encounters each

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

year. The care of patients involved in those encounters will be improved if they also seek care from other HIE participants.

Additional Fiscal Information

Not Applicable.

Contract History and Price Reasonableness

The recommended Participation Agreement is non-financial in nature and as such, does not impact the Hospital Enterprise Fund nor the County General Fund.

RUHS Medical Center (FKA: Riverside County Regional Medical Center)

PARTICIPATION AGREEMENT

(12/20/2017)

This Participation Agreement (the "**Agreement**") is entered into and effective as of February 28, 2018 (the "**Effective Date**"), by and between Inland Empire Health Information Organization, a California nonprofit public benefit corporation ("**HIO**"), Manifest MedEx, a California nonprofit public benefit corporation ("**MX**"), and the County of Riverside, a political subdivision of the State of California, on behalf of the Riverside University Health System (RUHS)-Medical Center (FKA: Riverside County Regional Medical Center) ("**Participant**"). MX, HIO and Participant are referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties**." HIO and MX are referred to collectively as "**HIE Provider**."

Recitals

Recitals

A. HIE Provider is organized to facilitate health information aggregation and sharing in a manner that complies with Law.

B. MX operates a health information exchange (the "**HIE**") that will enable its participants to electronically provide and receive health information regarding their patients.

C. Participant will both provide data to and receive data from the HIE.

The Parties agree that:

1. **Participation.** Participant shall participate in the HIE as set forth in this Agreement.
2. **Agreement.** The Agreement includes this document and incorporates by reference the following:
 - a. The *Terms and Conditions* ("**Terms**") attached as Exhibit 2.a.
 - b. The *Service Description* attached as Exhibit 2.b., which includes: a description of the Tech Services that MX will provide to Participant; and the Data Submission Guidelines.
 - c. The *Fee Schedule* attached as Exhibit 2.c., which sets forth Subscription Fees, Implementation Fees -and identifies other related fees that might be paid by Participant pursuant to this Agreement.

d. The *Policies and Procedures* ("**Policies**") set forth on MX's website (<http://www.manifestmedex.org/pdf/Policies.pdf>), and labeled Exhibit 2.d., as amended from time to time pursuant to this Agreement.

e. The *HIPAA Business Associate Agreement* ("**BAA**") attached as Exhibit 2.e. As Participant's Business Associate, HIE Provider is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto.

3. Term. The term of this Agreement shall commence on the Effective Date and continue until the earlier of: The Agreement is terminated by a Party; or Inland Empire Health Plan ("**IEHP**") ceases to pay Participant's Fees. If IEHP ceases to pay Participant's Fees, either MX or Participant may terminate this Agreement by providing ninety days' notice of termination to the other Parties, and the Parties shall immediately upon receiving that notice commence negotiation of a new participation agreement between them. Any new agreement between the Parties shall replace this Agreement. No Party will be obligated to agree to any terms or to enter into a new agreement. This Agreement will terminate automatically ninety days after MX or Participant sends its termination notice, if not terminated earlier by the Parties executing a new agreement.

4. General Provisions.

a. **Conflicts.** If the BAA conflicts with any other part of this Agreement (including the Policies), the BAA shall prevail. If the Policies conflict with any other part of this Agreement (except the BAA), the Policies shall prevail. If the terms of any other Exhibit conflict with those of this Participation Agreement and Exhibit 2.a, this Participation Agreement and Exhibit 2.a shall prevail.

b. **Definitions.** Capitalized terms that are not defined in this Agreement shall have the meanings described in the Terms (Exhibit 2.a.) and BAA (Exhibit 2.e.).

c. **Notices.** Notices and other communications between the Parties shall be in writing and made by overnight delivery service. Notice is deemed given one day after delivery to the overnight service.

For Participant:

RUHS Medical Center
Attn: Attention: CONTRACTS DEPARTMENT
26520 Cactus Avenue
Moreno Valley, CA 92555


Email:

For MX: As set forth in the Terms.

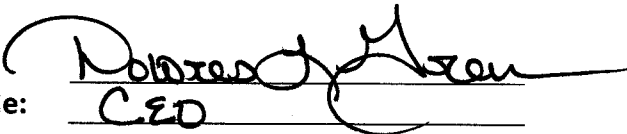
For HIO: As set forth in the Terms.

The Parties hereby execute and enter into this Agreement.

Manifest MedEx

By: 
Title: CEO

HIO

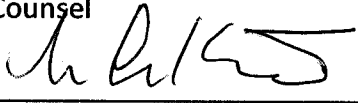
By: 
Title: CEO

Participant

By: 
Title: CHUCK WASHINGTON
CHAIRMAN, BOARD OF SUPERVISORS

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 
Martha Ann Knutson,
Deputy County Counsel

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

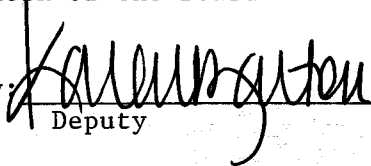
By: 
Deputy

Exhibit 2.a.

RUHS Terms and Conditions

of the

Participation Agreement

(including Definitions)

Article 1

HIE Provider's Functions and Duties

1.1. System, Services and Training. MX shall provide to Participant the System and Services set forth in **Exhibit 2.b.**, and HIO shall provide any other services required by the Agreement.

1.2. MX's Policies. MX shall develop and maintain the Policies.

1.3. HITRUST. MX will use commercially reasonable efforts to obtain HITRUST CSF Certification as soon as reasonably possible and thereafter shall maintain such Certification in accordance with HITRUST standards.

Article 2

Participant's Rights and Duties

2.1. Contribution of Data. Participant shall contribute Patient Data to MX as required by the Service Description (Exhibit 2.b.), the Policies (Exhibit 2.d.) and these Terms and Conditions (Exhibit 2.a., referred to as the "**Terms**").

2.2. Restricted Use, Security and Access. Participant shall restrict access to and use of the System to Participant and its Authorized Users. Participant shall implement security measures with respect to the System and safeguard Patient Data as required by the Agreement. Participant shall not inhibit an NP Participant's access to the System or Patient Data.

Article 3

Mutual Duties; Relationship between the Parties

3.1. Compliance with Law and Safety. Each Party and its Personnel shall perform their duties and exercise their rights under the Agreement in compliance with Law. Each Party and its Personnel shall always consider Patient safety in taking any action under the Agreement.

3.2. Policies. HIE Provider and Participant and their Personnel shall each comply with the Policies, which are incorporated into and are part of the Agreement.

3.3. Committees. HIE Provider may establish committees from time to time (such as a Participants Advisory Committee and/or a Policy Committee) and may request Participants to serve on any such committees.

3.4 Prevent Unauthorized Use. Participant shall: (i) only allow Authorized Users to access or use the System and the passwords and/or the user names applicable to the System; and (ii) make reasonable efforts to prevent all Persons (other than Authorized Users) from accessing and/or using the System. Participant shall notify MX promptly of any unauthorized access or use of the System of which Participant becomes aware.

3.5 Training. Participant shall, to the reasonable satisfaction of MX, educate and train its Authorized Users regarding the requirements of the Agreement, including the Policies and privacy and security protocols.

Article 4 Fees

4.1 Fees. IEHP shall, on behalf of Participant, pay to MX (or its designee) those amounts set forth in its Participation Agreement.

4.2 Change to Subscription Fees. HIE Provider must give Participant and IEHP at least ninety (90) days' prior written notice of any increase in subscription fees (the "Fee Notice"); and (b) in the event of an increase in fees, Participant may terminate the Agreement without cause by providing thirty days prior written notice to MX of its intent to terminate the Agreement.

4.3 Implementation Fees. In addition to Subscription Fees, IEHP shall pay any fees to implement Participant into the System (the "Implementation Fees").

4.4 Payment Timing. IEHP shall pay all Fees within thirty (30) days following the date on which MX or its designee sends an invoice to Participant and IEHP for that Fee.

4.5 Late Charges. Fees not paid to MX in a timely manner as required by the Agreement are subject to interest at the rate of one and one-half percent (1½%) per month or the highest amount permitted by Law, whichever is lower. Interest shall be calculated from the date the invoice was sent.

4.6 Taxes. All Fees will be paid exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force or enacted in the future. IEHP shall pay any tax (excluding taxes on HIE Provider's net income) that HIE Provider may be required to collect or pay due to the sale or delivery of items and services provided to Participant pursuant to the Agreement. HIE Provider will not deliver the System or Services to Participant in tangible form. Notwithstanding the foregoing: (a) the Parties do not anticipate that any sales or use taxes will be payable with respect to the Services or other deliverables provided hereunder (except for any taxes that become payable as the result of any change in applicable Law); and (b) if possible, HIE Provider shall not deliver tangible copies of any software or other deliverables in a manner that would cause taxes to become payable.

4.7 Other Expenses. Participant is solely responsible for all other charges and expenses Participant incurs to access and use the System.

Article 5 Privacy and Security

5.1 Business Associate Agreement (BAA). By executing the Agreement, MX and Participant are executing the BAA and agreeing to comply with the BAA attached as Exhibit 2E.

5.2 Notification of Breach of Privacy or Security. Each Party shall notify the other of any suspected or actual Breach of Privacy or Security involving Participant or HIO.

Article 6 Confidential Information

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

6.2 Equitable Remedies. All Confidential Information represents a unique intellectual property of the Person who owns that Confidential Information (the "**Disclosing Person**"). The Disclosing Person will be entitled to equitable relief and any other remedies available by Law from any Party that violates the provisions of this Article 6.

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

6.4 Media Releases. Notwithstanding any other provision of the Agreement and with advance notice to Participant, HIE Provider may publicly identify Participant as a participant in HIE Provider and may include the name, address, logo, and a brief description of Participant on its website or in any other materials developed by HIE Provider. Participant grants HIE Provider a royalty free license to use Participant's name and logo solely for the foregoing.

Article 7 Representations and Warranties

7.1 Exclusion from Government Programs. Each Party represents and warrants that it and its Personnel are not: (a) excluded from, debarred by, suspended from, or otherwise ineligible to participate in federal and/or state programs; nor (b) have been convicted of any crime relating to any federal and/or state reimbursement program.

7.2 Limited Warranties. Except as otherwise specified in the Agreement: (a) Participant's access to the System, use of the Services, and receipt of Patient Data from MX are provided "as is" and "as available"; and (b) HIE Provider does not make any representation or warranty of any kind regarding the System or Services, expressed or implied, including the implied warranties of

merchantability, fitness for a particular purpose, and non-infringement, except those specifically stated in the Agreement.

Article 8

Data: Ownership, Use, License and Quality

8.1 MX Use of Data. Subject to the limitations on use of Healthcare Data set forth in the Policies, Participant grants to MX a fully-paid, non-exclusive, non-transferable, royalty-free right and license: (a) to permit NP Participants (and their business associates) and MX's subcontractor business associates to access through the System and/or to receive from the System all Healthcare Data provided by Participant (subject to compliance with applicable law) and to use such Healthcare Data in compliance with applicable law and this Agreement; (b) to use Healthcare Data provided by Participant to perform activities MX is allowed to perform under the Agreement (including the Policies); and (c) to use Healthcare Data provided by Participant to carry out MX's duties under the Agreement, including system administration, testing and audits, provision of services, problem identification and resolution and management of the System. MX's right and license under this Article shall continue for as long as MX holds or controls Participant's Healthcare Data.

8.2 Participant Access to System. HIE Provider grants to Participant, and Participant accepts, a non-exclusive, personal, nontransferable, limited right to access and use the System under the terms and conditions set forth in the Agreement. Participant's right is conditioned on Participant fully complying with the Agreement. Participant does not have any other right to access the System unless otherwise expressly granted by the Agreement or a separate arrangement that complies with Section 8.3.1.

8.3 Participant Use of Data. When accessing or using Patient Data pursuant to the Agreement, Participant and Authorized Users may access and/or use Patient Data to perform any activities Participant is allowed to perform under the Agreement (including the Policies).

8.3.1 Participant and Authorized Users may also access Patient Data when Participant is acting as a Business Associate of another Covered Entity, provided that: all documentation of that relationship is completed to MX's satisfaction; Participant complies with that documentation; and the arrangement complies with Law.

8.3.2 Notwithstanding any other provision of the Agreement, if Participant or an Authorized User accesses any Patient Data that it is not permitted to access under the Agreement at the time of that access, then Participant: (i) will be in breach of the Agreement, (ii) will not have or obtain any right to that Patient Data, and (iii) must immediately return or destroy that Patient Data.

8.4 Participant's Data Analysis. As between HIE Provider and Participant, HIE Provider does not have any IP Rights in or to any analysis or derivatives of Participant's Patient Data.

8.5 Trademarks. Participant and its Personnel shall: (i) maintain HIE Provider's and MX Vendor's trademarks, service marks, and copyright legends; and (ii) not violate HIE Provider's and/or MX Vendor's trademarks, service marks, copyright legends and/or any other intellectual

property rights. Participant will be liable for the acts of third party service providers engaged by Participant who violate these proprietary rights or applicable Law.

8.6 Timely Provision of Data. Participant shall provide its Patient Data to MX regularly and promptly after receiving the Patient Data from Participant's source(s). Participant shall maintain its connection to the System and facilitate access to the Patient Data as required by the Policies and Services Description.

8.7 Data Quality. Participant shall use reasonable and appropriate efforts to ensure that all Healthcare Data provided by Participant and/or Personnel to MX is accurate with respect to each Patient. Each Party shall use reasonable and appropriate efforts to assure that its Personnel do not alter or corrupt the Patient Data received by or transmitted from that Party. Participant and its Authorized Users shall use reasonable professional judgment in its use of the Healthcare Data and its application of the Healthcare Data to make clinical decisions.

8.8 Notice of Data Inaccuracy. A Party shall promptly notify the other Parties of any known inaccuracy in the Patient Data provided to the other Party through the System.

8.9 Access to Data. HIO shall not access or view any Patient Data via the System or pursuant to this Agreement, except that HIO may access or view Patient Data that it receives pursuant to a valid business associate agreement.

Article 9 Liability and Indemnity

9.1 Liability and Limitations of Liability. Each Party ("Breaching Party") shall be liable to the other Parties for Damages caused by the Breaching Party's breach of the Agreement, subject to the following limitations:

9.1.1 Consequential Damages. Except as otherwise specified in this Section, in no event shall a Party be liable to the other Parties for any special, indirect, incidental, consequential, punitive, or exemplary damages, including loss of profits or revenues, whether a Claim for that liability or Damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if the Party was appraised of the possibility or likelihood of those damages occurring.

9.1.2 Cap. The aggregate liability of each Party and its officers, directors and Personnel to the other Parties under the Agreement, regardless of theory of liability, will be limited to five hundred thousand dollars (\$500,000).

(a) MX and HIO, collectively, will have the same limitation on liability as does the Participant under this Agreement.

9.1.3 Exclusions. Notwithstanding anything to the contrary in the Agreement, the limitations of liability in Section 9.1.1 and 9.1.2 shall not apply to any Claims or Damages arising out of or relating to a Party's grossly negligent or willful breach of the Agreement.

9.2 MX Liability. Notwithstanding any other provision, HIE Provider has no responsibility for and will not be liable to Participant for: (a) the accuracy, completeness, currency, content or delivery of Healthcare Data; (b) any decision or action taken or not taken by Participant or any other Person involving patient care, utilization management, or quality management that is in any way related to the use of the System, Services, or Healthcare Data; (c) any impairment of the privacy, security, confidentiality, integrity, availability of, and/or restructured use of any Healthcare Data resulting from the acts or omissions of Participant, any Other HIO or NP Participant; (d) unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method; and (e) any Damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunctions, or the use of third-party software. Participant and its Personnel shall have no recourse against, and each does waive any claims against, MX for any loss, damage, claim, or cost relating to or resulting from its own use of the System, Healthcare Data and/or the Services.

9.3 Participant Responsibility. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System, Healthcare Data and/or other information received from HIE Provider, including inaccurate or incomplete information.

9.4 Indemnification. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Parties and their Personnel (the "**Indemnified Party**") from and against any and all third-party Claims (and all Damages arising from or relating to those Claims) arising from: (a) the acts or omissions of the Indemnifying Party related to the Agreement, including the Indemnifying Party's failure to comply with any obligation or satisfy any representation or warranty under the Agreement; and/or (b) a Breach of Privacy or Security arising out of the Indemnifying Party's acts or omissions.

9.5 Rules for Indemnification.

9.5.1 If a legal action is brought against the Indemnified Party, the Indemnifying Party shall, at its sole cost and expense, defend the Indemnified Party after the Indemnified Party demands indemnification by written notice given to the Indemnifying Party. Upon receipt of that notice, the Indemnifying Party will have control of that litigation but may not settle that litigation without the express consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed. An Indemnified Party may also engage counsel at its own cost in connection with any Claim brought against it.

9.5.2 To the extent that the Indemnifying Party and Indemnified Party each have liability for Damages claimed by an Indemnified Party under the Agreement, the Damages will be allocated between them based on their proportionate share of fault for the Damages.

**Article 10
Insurance**

10.1 Insurance.

10.1.1 MX Insurance Requirements. During the Term, MX shall obtain and maintain the following insurance coverage or self-insure in the following amounts:

- (a) Commercial general liability insurance in the amount of at least five million dollars (\$5,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate;
- (b) Comprehensive professional liability (errors and omissions) insurance covering the liability for financial loss due to error, omission or negligence of MX in the amount of at least five million dollars (\$5,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate; and
- (c) Network security liability insurance and privacy liability insurance in the amount of at least ten million dollars (\$10,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate.

10.1.2 Participant and Business Associate Insurance Requirements. During the Term, Participant and any Business Associate of Participant that accesses the System shall each obtain and maintain the following insurance coverage or self-insure in the following amounts:

- (a) Commercial general liability insurance in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the annual aggregate; and
- (b) Comprehensive professional liability or errors and omissions (E&O) insurance of the type and in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate.

10.1.3 General Requirements.

- (a) If any Party purchases “claims made” insurance, all acts and omissions of that Party shall be, during the Term, “continually covered” (i.e., there must be insurance coverage commencing on the Effective Date and ending no earlier than three (3) years after termination of the Agreement; and that insurance must satisfy the liability coverage requirements set forth in this Article 10.
- (b) Each Party shall purchase “tail insurance” if its coverage lapses, or “nose insurance” and/or “tail insurance” if that Party changes insurance carriers, even after termination of the Agreement.
- (c) All insurance coverage required by this Article shall be provided under valid and enforceable policies issued by insurance companies legally authorized to do business in California.

(d) Upon request of a Party, the other Party shall provide certificates of insurance evidencing the coverage that the other Party is required to obtain and maintain.

Article 11 Term, Termination and Suspension

11.1 Term. The Agreement is effective on the Effective Date, and shall continue as set forth above.

11.2 Termination by Participant. Participant may terminate the Agreement at any time, with or without cause, and without penalty, after delivering thirty (30) days' prior written notice to MX.

11.3 Termination by MX. MX may exercise any of the following termination rights.

11.3.1 Cessation. MX may terminate the Agreement after providing ninety (90) days' written notice to Participant that MX will discontinue its operations and/or its provision of the System and Services to participants.

11.3.2 Uncured Breach. MX may terminate the Agreement if Participant breaches the Agreement and that breach continues uncured for a period of thirty (30) days after MX has delivered written notice of that breach to Participant and HIO. MX's notice of breach shall include a description of the breach. MX suspending Participant as allowed by this Agreement shall constitute notice of a breach by Participant as of the day of suspension.

11.4 Termination for Bankruptcy or Dissolution. Either party may terminate the Agreement if MX becomes bankrupt or insolvent, ceases to do business, or commences any dissolution, liquidation or wind up.

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

11.6 Failure to Comply with Law. A Party may terminate the Agreement by providing thirty (30) days' written notice to the other Parties that: (a) identifies the Law that is (or will be) violated by the Agreement; and (b) explains why the Agreement will not comply with Law. After a Party receives that notice, the Parties shall cooperate in good faith during the next thirty (30) days to amend the Agreement so that it complies with the identified Law. If the Parties do not execute a written amendment to the Agreement within the thirty (30) days, then a Party may terminate its participation in the Agreement by delivering a five (5) days' written termination notice to the other Parties. If the Law is already in effect and violated by a Party or the Agreement, then a Party may immediately suspend all or part of its performance under the Agreement that is illegal while the Parties attempt in good faith to modify the Agreement to cure that violation of Law.

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

11.8 Suspended Access to Data. If MX determines in its sole discretion that Participant's continued access to the System would, or is reasonably likely to, endanger the privacy or security of Patient Data, MX may suspend Participant's access to the System for as long as MX believes, in its sole discretion, that the suspension is in the best interests of MX (but MX may in its sole discretion still provide read-only access if reasonably necessary for Patient safety). Participant's suspension under this Section may continue until either: (a) MX terminates the Agreement in accordance with this Article; or (b) the privacy or security problem has been cured to MX's satisfaction in its sole discretion. During this suspension, Participant shall work diligently to cure to the satisfaction of MX any problem(s) with its privacy or security.

11.9 Suspension Due to Fees. If IEHP fails to pay undisputed amounts of Fees within sixty (60) days after the date of invoice, MX may suspend Participant's access to the System after delivering to Participant and IEHP a notice of MX's intent to suspend access at least ten (10) days prior to the suspension. Participant's access to the System shall be restored upon payment of all delinquent undisputed Fees and any late charges assessed pursuant to the Agreement.

Article 12 Miscellaneous Provisions

12.1 Applicable Law. The Agreement, and disputes regarding it, shall be governed by and interpreted in accordance with the laws of the State of California (the "State"), without application of any choice or conflict of law rules that would cause the laws of another jurisdiction to apply.

12.2 Amendment and Material Service Change.

12.2.1 Amendment. Any modification or amendment to the Agreement must be in writing and signed by the Parties, except that the Policies, Terms, Fee Schedule and Material Service Changes may be modified as set forth in the Agreement.

12.2.2 Material Service Change. HIE Provider may in its sole discretion implement a Material Service Change after providing at least ninety (90) days prior written notice of the change to Participant. Following a Material Service Change not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2. If Participant has pre-paid to HIE Provider any Subscription Fees that have not yet been earned by HIE Provider as of the date of termination, HIE Provider shall repay to Participant those unearned Fees.

12.2.3 Policies Revision. MX may in its sole discretion modify or otherwise revise the Policies after providing at least ninety (90) days prior written notice of any material revision to Participant before the material revision is effective. If the Policy revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2.

12.2.4 Fee Revision. MX may, in its sole discretion, modify or otherwise revise the Subscription Fee after providing at least ninety (90) days prior written notice of that revision to Participant and IEHP before the new fee is effective. If the Subscription Fee revision is not acceptable to Participant or IEHP, Participant may terminate the Agreement pursuant to Section 11.2.

12.2.5 Required Revision. Notwithstanding any other provision in the Agreement, if a revision to the Policies, Terms is required, in the reasonable judgment of MX, to be made for the continued technological functioning of the HIE or for compliance with Law, MX may unilaterally implement that revision and may shorten any requirement for prior notice set forth in the Agreement to that time period which MX reasonably determines appropriate under the circumstances. If the Policy revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2.

12.3 Assignment. No Party may assign the Agreement or any of the Party's rights, interests, duties or obligations under the Agreement, by operation of law or otherwise, without the prior written consent of the other Parties, which consent may be given, conditioned or withheld in the other Party's sole discretion, except that (a) a Party may assign the Agreement in whole or in part to an affiliate or to a successor in interest, and (b) consent shall not be necessary in the context of an acquisition, merger or change of control involving either Party. MX shall provide at least sixty days' notice to Participant before the effective date of its merger with another entity. Any attempted assignment or transfer in violation of the foregoing will be null and void.

12.4 Attorney Fees. Except as otherwise specified in the Agreement, the non-prevailing Party in any arbitration, appeal or other legal proceeding pertaining to the Agreement shall pay to the prevailing Party all of the prevailing Party's reasonable fees and costs incurred in the dispute resolution, arbitration or proceeding, including attorneys' fees, arbitration costs and the costs of experts and consultants. The prevailing Party shall be the Party who prevails relative to the other Party, as determined by the arbitrator or a court of competent jurisdiction, whether or not the arbitration or proceeding proceeds to final judgment or award.

12.5 Availability of Records. For four (4) years after any termination of the Agreement, the Secretary, the Comptroller General of the United States ("**Comptroller General**") and/or their designee will have access to all books and records of HIE Provider directly pertaining to the subject matter of the Agreement, in accordance with the criteria developed by the U.S. Department of Health and Human Services as provided in Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. §1395x(v)(1)(A), *et seq.* ("**ORB**"). During that four years, upon request of the Secretary, the Comptroller General and/or their designee, HIE Provider shall make available (at reasonable times) the Agreement and all books, documents and records of MX that are necessary to verify the nature and extent of the costs of Services provided by HIE Provider under the Agreement. Notwithstanding the foregoing, access to HIE Provider's books, records and documents will be discontinued and become null and void upon a finding by

a court or quasi-judicial body of competent jurisdiction that the Agreement is outside the scope of the regulatory or statutory definition of those agreements included within the purview of Section 952 of ORB or the rules and regulations promulgated thereunder.

12.6 Captions. Captions and headings shall have no effect in interpreting the Agreement.

12.7 Counterparts. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

12.8 Disputes. In the event of any Claim or disagreement related to the Agreement (a "**Dispute**"), the Parties shall:

12.8.1 Dispute Notice. A Party alleging a Dispute shall send written notice of the Dispute and the Party's position regarding the Dispute (the "**Dispute Notice**") to the other Party and any other Person that the Party believes is involved in the Dispute.

12.8.2 Jurisdiction and Venue. All Disputes not resolved under this Section will be adjudicated in the state and federal courts located in San Francisco, California and each Party hereby consents to the personal jurisdiction of such courts.

12.9 Representation by Counsel; Interpretation. Each party to this Agreement has been represented by counsel in connection with this Agreement. Both parties expressly waive any claim that ambiguities in this Agreement should be interpreted against the party that initially drafted the ambiguous language.

12.10 Entire Agreement. The Agreement is the entire understanding of the Parties regarding its subject matter, and supersedes all prior written or oral understandings, promises, representations and discussions between them with respect to the subject matter of the Agreement.

12.11 Exhibits. All exhibits and attachments to the Agreement are incorporated into the Agreement and are a part of the Agreement.

12.12 Force Majeure. No Party shall be liable for nonperformance or defective or late performance of any of a duty under the Agreement to the extent and for such periods of time as that nonperformance, defective performance or late performance is due to reasons outside of that Party's control; provided that the Party uses good faith efforts to perform its duties.

12.13 Independent Contractors. The Parties are and shall at all times be an independent contractor of each other, and not an employee, agent, partner of, or joint venture with the other. Except as specifically allowed by the Agreement, no Party has any right or authority to assume or create any obligation of any kind, express or implied, on behalf of the other Parties.

12.14 Severability. If any provision of the Agreement or the application of any provision, in whole or in part, is determined to be invalid, void, illegal or unenforceable by an arbitrator or a court of competent jurisdiction, such provision or part of such provision shall be severed from the Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of the Agreement.

12.15 Survival. Provisions of the Agreement shall survive any termination or expiration of the Agreement when evident by the context of the provision and/or when specifically identified as surviving.

12.16 Third-Party Beneficiary. No Person other than the Parties will have any right under or due to the Agreement, and no Person will be a third-party beneficiary of the Agreement.

12.17 Waiver. No delay or omission by a Party to exercise a right or power it has under the Agreement shall be construed as a waiver of that right or power. A waiver by any Party of any breach of the Agreement shall not be construed to be consent to, waiver of, or excuse for any subsequent or different breach. All waivers must be in writing and signed by the Parties.

12.18 Notice to MX.

Manifest MedEx
Attn: Chief Executive Officer
6001 Shellmound St., Suite 500
Emeryville, CA 94608
Email: privacy@manifestmedex.org or Claudia.williams@manifestmedex.org

12.19 Notice to HIO

Inland Empire Health Information Organization
Attn: Chief Executive Officer
3993 Jurupa Avenue
Riverside, CA 92506
Email: dgreen@rcmanet.org

12.20 Notice to Participant

Riverside University Health System-Medical Center
Attn: CONTRACTS Administration
26520 Cactus Avenue
Moreno Valley, CA 92555

Definitions Applicable to the Agreement

(Unless otherwise indicated, all Section references are to provisions in the Terms and Conditions.)

“Administrator” means one (1) or more individuals designated by Participant to: (a) designate Participant’s Authorized Users; and (b) fulfill other responsibilities specified in the Agreement on behalf of Participant.

“Agreement” means the Participation Agreement signed by Participant, HIO, and MX, including all documents incorporated into the Agreement by reference in the Agreement.

“API” means application programming interface.

“Authorized User” means an individual: (i) designated and authorized by an Administrator, in accordance with the procedures set forth in the Agreement, to access and/or use the System and Services on behalf of a Participant; and (ii) who is permitted under applicable Law to access and/or use the System and Services.

“Breach of Privacy or Security” means any access, use, receipt or disclosure of Patient Data (including electronic PHI) that is not in compliance with Law.

“Business Associate” has the meaning ascribed in 45 C.F.R. § 160.103.

“Business Associate Agreement” (“BAA”) means the business associate agreement that is executed by the Parties and attached to the Agreement.

“Calendar Quarter” means the three months following the first day of January, April, July and October.

“Claim” means any claim, action, suit, or proceeding pertaining to the Agreement to recover Damages, obtain specific performance and/or enjoin an action.

“CMIA” means the California Confidentiality of Medical Information Act, California Civil Code Section 56 *et seq.*

“Comptroller General” is defined in Section 12.5 (Availability of Records).

“Confidential Information” means (a) all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives and agreements, whether written or verbal, that are confidential in nature and pertains to or is related to the Agreement, (b) all Security Information and (c) the Vendor Proprietary Information; provided, however, that Confidential Information shall not include information that:

- (a) is publicly known at the time of disclosure;

(b) is already known or obtained by any Party other than in the course of the Party's performance pursuant to its "participation agreement", and without breach of any confidentiality, nondisclosure or other agreement by that Party or in violation of applicable Law;

(c) is independently developed by any Party;

(d) becomes known from an independent source having the right to disclose that information and without similar restrictions as to disclosure and use and without breach of these Agreement, or any other confidentiality or nondisclosure agreement by the Parties; or

(e) is Patient Data.

"Covered Entity" has the meaning ascribed in 45 C.F.R. § 160.103.

"Damages" means any and all liability, losses, judgments, damages and costs, including reasonable attorneys' fees, court costs and arbitration fees.

"Data Contributor" means a Person that: is not a Participant or NP Participant; and provides Patient Data to MX.

"Data Provider" means Participant or any NP Participant that provides Patient Data to MX.

"Data Recipient" means Participant or any NP Participant that accesses Patient Data from the System.

"Data Submission Guidelines" means the guidelines for Participant to submit Patient Data to MX, as provided by MX to Participant from time to time.

"De-Identified Data" means data that satisfies the requirements of 45 C.F.R. § 164.514(b).

"Disclosing Person" is defined in Section 6.2 (Equitable Remedies).

"Dispute" is defined in Section 12.9 (Disputes).

"Dispute Notice" is defined in Section 12.9.1 (Dispute Notice).

"Effective Date" is defined in the Preamble.

"Fees" means the Subscription Fees and the Implementation Fees.

"Fee Notice" is defined in Section 4.2 (Change to Subscription Fees).

"Go-Live Date" means earlier of: the date on which MX first notifies Participant that Participant has access to use the System, or the six-month anniversary of the Effective Date.

“Health Plan” means Participant or an NP Participant that either: (a) meets the definition of health plan in HIPAA; or (b) provides core health plan administrative services (at a minimum: medical claims processing services and provider network management services) to a health plan that meets the HIPAA definition.

“Healthcare Data” means Patient Data and/or De-Identified Data that is collected, created, maintained or disclosed by MX.

“Healthcare Provider” means Participant or an NP Participant that either: (a) meets the definition of provider in HIPAA; or (b) is a medical group (e.g., independent practice association) providing core administrative services to a provider that meets the HIPAA definition.

“HIE” is defined in Recital B of the Agreement.

“HIE Provider” is defined in the Preamble of the Agreement.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by HITECH, and the regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164.

“HITECH” means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (commonly known as **“ARRA”**), Pub. L. No. 111-5 (February 17, 2009).

“Implementation Fees” is defined in **Exhibit 2.f.**, and is first referenced in Section 4.3 (Implementation Fees).

“IP Rights” means all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, concepts, inventions, processes, techniques, algorithms, software (in source code and object code form) designs, schematics, drawings, formulae, improvements to any of the foregoing, and other intellectual property and proprietary rights, in whatever media or form.

“Law” means any federal, state or local law, statute, ordinance, rule, legally binding administrative interpretation, regulation, order, judgment, or decree that is applicable to a Party or to another Person identified in the Agreement.

“Longitudinal Patient Record” or **“LPR”** means a Patient’s longitudinal patient record maintained by MX.

“Material Service Change” means either: (a) a material cessation or reduction in the functionality or interfaces of the System; or (b) a reduction in the level of Services provided by MX.

“MX Vendor” means a vendor with which MX has contracted with to provide technology in connection with providing Services.

“NP Participant” means a Person that has entered into a “participation agreement” with MX and/or HIO to act as a Data Provider and/or a Data Recipient, but is not a Party to the Agreement.

“NP Participant Liability Limits” means the limitations and exclusions of liability (e.g., liability caps and waivers of consequential or other types of damages) set forth in an NP Participation Agreement, and any exceptions to the foregoing set forth in the NP Participation Agreement.

“NP Participation Agreement” means an agreement between MX and an NP Participant that contains the terms of NP Participant’s participation in the HIE.

“ORB” is defined in Section 12.5 (Availability of Records).

“Other HIO” means a health information organization that contracts with MX to share health data through their respective systems, or an organization that represents a community of payers and/or providers for purposes of exchanging Patient Data between them.

“Party” means Participant, HIO, and MX.

“Patient Data” means health information that: (a) is created or received by a Healthcare Provider or Health Plan; (b) relates to: (i) past, present or future physical or mental health of a Patient, or (ii) the provision of health care to a Patient; (c) identifies the Patient, or there is a reasonable basis to believe the information can be used to identify the Patient (including Protected Health Information, as that term is defined in HIPAA, and Medical Information, as that term is defined in the CMIA); and (d) is made available to the System by a Data Provider or Data Contributor pursuant to the Agreement or an NP Participant’s participation agreement.

“Patient” means each individual whose Patient Data is contributed to MX by a Data Provider or Data Contributor.

“Person” means an individual person, an entity or a governmental organization or agency, including health information exchanges, researchers, Participants, NP Participants and/or an individual who does not participate in MX’s HIE.

“Personnel” means a Person’s employees, Authorized Users, accountants, attorneys, consultants, agents, representatives, subcontractors and subcontractors’ employees that provide, access, receive or use any part of the System or the Services.

“Policies” mean the privacy policies, security policies and/or procedural requirements adopted by HIE Provider and made available to Participant at, as amended by HIE Provider from time to time. The current version of the Policies can be found at <http://www.manifestmedex.org/pdf/Policies.pdf>.

“Protected Health Information” or **“PHI”** has the meaning ascribed in 45 C.F.R. § 164.103.

“Secretary” means the Secretary of the U.S. Department of Health and Human Services.

“Security Information” means the electronic or physical security profile, security assessment and security audit report of MX, HIO, Participant or an NP Participant.

“Service Level” means the level of “service availability” or “service performance” that MX is required to provide under **Exhibit 2.b.** “Service Levels” means both the availability and performance service levels.

“Service Level Failure” means a failure by MX to meet a Service Level.

“Services” means all services provided by MX pursuant to the Agreement.

“State” is defined in Section 12.1 (Applicable Law).

“Subscription Fees” is defined in **Exhibit 2.c.**

“System” means the HIE and its related technology that HIE Provider provides to Participant and NP Participants, as further described in the Policies.

“Tech Services” means those services identified as tech services in **Exhibit 2.b.**

“Term” means the time between the Effective Date and any termination of the Agreement.

“Vendor Proprietary Information” means all software, solutions, services and API keys of MX Vendor to which Participant gains access by being a Party.

**HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and Manifest MedEx**

Exhibit 2.b

SERVICE DESCRIPTION

MX will provide to Participant the following services ("Tech Services"):

- Web-based query portal that enables Participant to look up and access an individual patient's health information. This includes eHealth Exchange services.
- A notification service that alerts Participant when a Patient of Participant is: (i) seen in the emergency department of Participant or an NP Participant; or (ii) admitted to or discharged from the hospital of Participant or an NP Participant. Notifications will be based on the subscription files submitted by Participant.
- Reporting and analytic services that support Participant in analyzing certain healthcare needs of Participant's patients.

A. Training

Participant must designate a training coordinator ("**Training POC**") before Participant begins to use the System. The Training POC will be responsible for training Participant's Authorized Users on the use of the System, and on compliance with the Policies and Agreement. MX and HIO will provide web-based and/or in-person training to Training POC and Administrator POC, and will provide training resources and materials that Training POC can use to train Authorized Users. Any training requested by Participant in addition to MX's standard training will be negotiated by the Parties and memorialized in a separate statement of work.

B. Support

Participant must provide a single point of contact ("**Administrator POC**") for Tech Services before Participant begins to use the System. Administrator POC will be responsible for: the management of Authorized Users (e.g., setting up Authorized User accounts, assigning roles and providing security credentials to Authorized Users); ensuring that Authorized Users have reviewed and agree to comply with the Policies and the Agreement prior to obtaining access to the System; and providing Level 1 help-desk support to Authorized Users, including re-setting passwords.

MX will support Participant's performance of the above responsibilities by offering support for Administrator POC, accessed through the web and/or email during Monday through Friday, 8:00 AM to 5:00 PM PST, excluding MX holidays posted on the MX website.

C. Availability and Network Monitoring

Services will be monitored 24x7x365 by MX vendors. MX and its vendors will maintain hosted services agreements that guarantee at least 99.8% uptime per calendar month, not including scheduled downtime. In the event of unexpected downtime, MX will provide notifications to Participant via e-mail or other electronic method such as the MX landing page.

D. Data Contributions

1. Provider Participants will contribute Patient Data in accordance with the following overall schedule and over a secure connection configured by MX and Participant (unless alternatives are otherwise mutually agreed upon). MX will set forth guidelines ("**Data Submission Guidelines**") for Participant to use in submitting Patient Data to MX. Participant will use reasonable efforts to provide Patient Data to MX consistent with the Data Submission Guidelines. Participant will provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data ("**ADT messages**"), within 6 months of the Effective Date.
 - b. Lab data (ORU messages), within 12 months of the Effective Date.
 - c. Pharmacy data (RDE messages), within 12 months of the Effective Date.
 - d. CCDAs (discharge summaries, transition of care documents), APIs and other data types deemed appropriate by the Parties. The Parties will develop a timeline for contributing that Patient Data as it becomes relevant to the HIE.

2. Health Plan and IPA Participants will contribute Patient Data in accordance with the following overall schedule and over a secure connection configured by MX and Participant (unless alternatives are otherwise mutually agreed upon):
 - a. Eligibility files for health plan enrollees (that define the identities of lives covered by the health plan), within six months of the Effective Date.
 - b. Claims data for health plan enrollees in either X12 or CSV, within 12 months of the Effective Date.

3. Participant must refrain from sending sensitive health information (e.g., substance abuse treatment information or self-pay information) that may be restricted from disclosure by local, state, district, and federal law. Participants are responsible for complying with applicable laws and for filtering any information that should not be provided or disclosed to MX. To the extent technologically possible, MX shall return or destroy such information if it is notified by Participant that such information was inadvertently disclosed to MX and Participant reimburses MX for all internal and external costs incurred by MX to return or destroy that information. Such destruction shall be consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization.

E. Participant Data Access Policies

As detailed in the Policies, the Participant shall develop, maintain and comply with written requirements that govern Participant's and Authorized Users' access to Systems and use of protected health information. Those written requirements must be consistent with the Agreement, and shall be provided to MX upon request.

Exhibit 2.c.

Fees

1. **Definitions.** The following definition applies to this Exhibit. Defined terms in this Exhibit that are not set forth below shall have the meaning given to them in the Agreement.

"Annual Net Patient Revenue" means the combined net patient revenue earned in the State of California by Participant and its affiliated entities, as identified in the Agreement, during its prior fiscal year.

2. **Subscription Fees.** IEHP shall pay, on behalf of Participant, the following fees ("**Subscription Fees**") in accordance with the following:

(a) Commencing on the Go-Live-Date, IEHP on behalf of Participant shall pay to MX a quarterly Subscription Fee, which is calculated as follows:

(i) Determine the Annual Net Patient Revenue, then

(ii) Determine which Payment Tier in the following table applies to Participant based on the Participant's total Annual Net Patient Revenue, and divide the designated Annual Subscription Fee from the table by four (4). The resulting quotient is the Participant's quarterly Subscription Fee.

Annual Net Patient Revenue	"Payment Tier"	Annual Subscription Fee
>\$1 Billion		\$100,000
\$750 Million to \$1 Billion		\$75,000
\$500 Million to \$750 Million		\$50,000
\$250 Million to \$500 Million		\$30,000
\$100 Million to \$250 Million		\$20,000
Less than \$100 Million		\$10,000

(b) IEHP shall pay all amounts due to MX within thirty (30) days of receipt of MX's invoice.

3. **IEHP Failure to Pay Fees; Renegotiate; Termination**

(a) The Parties intend that IEHP shall pay the subscription fees owed under this Agreement. If IEHP provides notice ("Termination Notice") to either Party that IEHP intends to cease paying the subscription fees required by this Agreement, the receiving Party shall promptly notify the other Party. The Parties shall then immediately negotiate between themselves to revise this Agreement in a manner that is acceptable to both Parties, such acceptance to be in the sole discretion of each Party as to the revised terms of this Agreement.

(b) IEHP has agreed with MX that IEHP will continue to pay Participant's Subscription Fees after the Termination Notice until the later of: 90 days after the Termination Notice is received by one or both Parties; or the end of the calendar year during which the Termination Notice was sent by IEHP. If the Parties do not reach a new agreement between themselves prior to IEHP ceasing to pay the RUHS

Subscription Fees, then this Agreement shall automatically terminate when IEHP's payment of the Subscription Fees has terminated, and Participant shall not thereafter owe any Subscription Fees to MX under this Agreement.

4. **Pro-Rated Subscription Fees.**

(a) **Following Go-Live Date.** If Participant's Go-Live Date occurs during a Calendar Quarter, IEHP shall pay pro-rated Subscription Fees for that Calendar Quarter equal to: (i) Participant's Subscription Fees (calculated pursuant to Section 2 of this **Exhibit 2.c**), multiplied by (ii) the number of days from the Go-Live Date to the end of that Calendar Quarter, and divided by (iii) the total number of days in that Calendar Quarter.

(b) **Upon Termination.** If Participant or IEHP terminates the Agreement, then IEHP shall owe to MX all Subscription Fees accrued up to and through the termination date. If the termination date occurs during a Calendar Quarter, IEHP shall owe pro-rated Subscription Fees which shall equal: (i) Participant's Subscription Fees (calculated pursuant to Section 2 of this **Exhibit 2.c**), multiplied by (ii) the number of days from the beginning of that Calendar Quarter through the termination date, and divided by (iii) the total number of days in that Calendar Quarter.

(c) IEHP shall pay all amounts due to MX within thirty (30) days of receipt of MX's invoice.

(d) If MX terminates the Agreement with cause, then neither Participant nor IEHP shall owe any Subscription Fees after the date of termination.

5. **Temporary Fee Holiday.** Notwithstanding any other provision of this Exhibit, IEHP shall not owe or pay Subscription Fees to MX from the Effective Date through June 30, 2018 if:

(i) Participant complies at all times with the data contribution requirements set forth in this Agreement, including timely set up of data feeds consistent with Data Submission Guidelines for ADTs, ORUs and RDEs, and the provision of data necessary for MX's notification services to Participants;

(ii) Participant complies at all times with the Policies; and

(iii) Within thirty days of the Effective Date, Participant identifies one of its Personnel who will serve as the primary point of contact for MX and as the person responsible for training all Participant End Users. Within forty-five days of the Effective Date, the primary contact person shall attend at least one MX training session, and shall similarly train all Participant End Users by June 30, 2018.

6. **Implementation Fees.**

(a) **Amount.** IEHP shall pay ("Implementation Fees") to MX in exchange for implementation services performed by MX for Participant:

(i) Twenty-thousand dollars (\$20,000) for a Standard Implementation that connects Participant to the System and enables Participant to access the System and contribute data.

(ii) IEHP and MX must agree to the amount of any Implementation Fees for a Complex Implementation prior to MX's performance of those services.

(b) **Billing.** Implementation Fees will be billed to Inland Empire Health Plan at the initiation of Onboarding Services, and are due to MX within thirty (30) days of receipt of MX's invoice.

(c) **Definitions.** The following definitions apply to this Exhibit. Defined terms in this Exhibit that are not set forth below shall have the meaning given to them in the Agreement.

(i) **"Onboarding Services"** means VPN and other connectivity services, channel/feed development and configuration, mapping, patient or provider attribution, routing configuration, technical testing, project management, business analysis and other activities that enable Participant's contribution of data or access to the System.

(ii) **"Standard Implementation"** means Onboarding Services for standard HL7 ADT, ORU, RDE, CCD, X12, and/or custom CSV data feeds that do not exceed 180 hours of MX staff time to implement.

(iii) **"Complex Implementation"** means Onboarding Services to implement data feeds that: (1) are not listed in the definition of a Standard Implementation; or (2) require Onboarding Services that exceed 180 hours of MX staff time to complete. Only those hours exceeding 180 hours will be treated as a Complex Implementation if MX's services pertain to the feeds listed in the definition of a Standard Implementation.

Exhibit 2.e

Business Associate Agreement

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Participation Agreement dated December __, 2017 (the "Underlying Agreement") between the County of Riverside ("County") and Manifest MedEx ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

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, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor 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 functions; services and activities 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:

1. **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.

A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of 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.

(1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates

that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four 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 the PHI has been mitigated.

(2) 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. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.

C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.

D. "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.

E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.

F. "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).

G. "Health care operations" has the meaning given such term in 45 CFR §164.501.

H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.

I. "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.

J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.

K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.

- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 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.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

2. 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.

- A. 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.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business or associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. 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, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3); and
 - 3) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. Obligations of County.

- A. County agrees 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.
- B. County agrees 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.
- C. County agrees 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.
- D. 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.
- E. 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 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 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, including breaches of unsecured PHI as required by 45 CFR §164.410.
- F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same (or more restrictive) 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 the Secretary, in the time and manner designated by 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.
- M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
- N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County within five (5) business days of request from County, to satisfy the requirements of 45 CFR §164.524.
- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County 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:

a. 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.

b. Within fifteen (15) days of receiving a written request from County, provide to 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.

c. Make available for County information required by this Section 6.C 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 County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit 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:

1. Comply with the applicable requirements of the Security Rule, and implement 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 in accordance with 45 CFR §164.308, §164.310, and §164.312;

2. 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;

3. Implement security measures designed to protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

4. Implement security measures designed to protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;

5. Require compliance with the Security Rule by Contractor's workforce;

6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same (or more restrictive) restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;

7. Report to County any Security Incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Contractor to County of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to County by Contractor shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

8. Comply with any additional security requirements that are applicable to business associates 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, prominent 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 the Underlying Agreement.

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, including Contractor's completed risk assessment and investigation documentation.

Additional State Reporting Requirements. The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).

1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.

2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, including that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. Hold Harmless/Indemnification. Intentionally Left Blank

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. Breach Pattern or Practice. If party knows of a pattern of activity or practice by the other party that constitutes a material breach or violation of its obligations under HIPAA or this Addendum, such party shall notify the other party of that breach. If such other party is unsuccessful in curing that breach within a reasonable time period specified by the notifying party, the notifying party may terminate this Addendum and the Participation Agreement, if feasible, upon written notice to the other party.

B. 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 breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

C. Effect of Termination.

- 1) Upon termination of this Addendum, for any reason, subject to Section 11.C.2 below, Contractor shall destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and 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) Upon termination or expiration of this Addendum, Contractor and County acknowledge that return or destruction of PHI or ePHI is not feasible (the reasons for which have been separately provided to County). Accordingly, Contractor shall extend the protections of this Addendum to any such PHI for so long as it is not destroyed (and extend such protection to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor), and limit further uses and disclosures of that PHI to those purposes that make the return or destruction not feasible, for as long as Contractor or any subcontractor or agent of Contractor maintains that PHI or ePHI. Upon the expiration of this period of infeasibility, if any, Contractor shall destroy all PHI that it has retained. If PHI is to be destroyed pursuant to this Section 11.C (Conduct Upon Termination) or pursuant to the Participation Agreement, Contractor shall certify in writing to County that that PHI has been destroyed.

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 the parties 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 the parties to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices.** All notifications required to be given by County to Contractor pursuant to the terms of this Addendum shall be made in writing and delivered to Contractor via email to privacy@manifestmedex.org with a copy to legal@manifestmedex.org. All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County. County will advise Contractor of any subsequent changes to the privacy contact person's contact information

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 26520 Cactus Avenue, Moreno Valley, CA 92555

County HIPAA Privacy Officer Phone Number: (951) 486-6471

County HIPAA Privacy Fax: (951)486-4475