

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



ITEM: 3.6
(ID # 12646)

MEETING DATE:
Tuesday, June 09, 2020

FROM: EMERGENCY MANAGEMENT DEPARTMENT:

SUBJECT: EMERGENCY MANAGEMENT DEPARTMENT: Approve Agreements with Manifest Medex and Inland Empire Health Information Exchange for implementation of the +EMS Project and Authorize the Chairman of the Board to Execute Said Agreements, Districts: All. [\$228,900] [100% State Grant Funding]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Master Services Agreement for implementation of the +EMS Project between the County of Riverside, on behalf of its Emergency Management Department, and Manifest Medex, effective upon execution through September 30, 2021, in the amount of \$228,900, and authorize the Chairman of the Board to execute said Agreement on behalf of the County;

ACTION:


Ramon A. Leon, DEPUTY DIRECTOR OF EMERGENCY MGMT DEPT 5/29/2020

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: June 9, 2020
xc: EMD, Purchasing

Kecia R. Harper
Clerk of the Board

By: 
Deputy

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STATE OF CALIFORNIA**

2. Approve the Participant Agreement between the County of Riverside, on behalf of its Emergency Management Department, the Inland Empire Health Information Organization, and Manifest Medex for participation in health information exchange, and authorize the Chairman of the Board to execute said Agreement on behalf of the County;
3. Authorize the Purchasing Agent to sign subsequent amendments to the Master Services Agreement, including an extension of the term as granted by the State of California Emergency Medical Services Authority and modifications of the statement of work that stay within the intent of the Agreement, as approved by County Counsel.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 228,900	\$ 228,900	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 100% State Grant Funding			Budget Adjustment: No	
			For Fiscal Year: 20/21 – 21/22	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Manifest MedEx is the recipient of a 2-year grant from the California Emergency Medical Services Authority (EMSA) for implementation of the +EMS project. The goal of the +EMS project is to promote care coordination between Paramedics and Receiving Hospitals and enhance clinical decision making for both in treating 9-1-1 emergency patients. Hospitals and Emergency Medical Services (EMS) currently maintain their own electronic patient record systems. These systems do not communicate electronically, relying on delayed, verbal or paper-based sharing of 9-1-1 patient information during rapidly evolving emergency situations. The +EMS project will use the SAFR model (Search, Alert, File, Reconcile) to close this gap in emergency patient care by automating the exchange of pertinent patient health information across EMS and hospital patient record systems such as medications, allergies, and medical history. This information will then be made available to medics in the field and receiving hospital care teams for enhanced coordination, communication, and treatment planning. Manifest MedEx, as the grant recipient and the Inland Empire hospitals' Health Information Exchange (HIE) system, has partnered with the Riverside County EMS Agency - Emergency Management Department (REMSA) and 6 other Local EMS Agencies throughout California to participate in this project.

The County of Riverside through coordination by REMSA will subcontract with Manifest MedEx to oversee the connection between the HIE and Riverside County's electronic EMS patient care record system (Imagetrend Elite) which REMSA currently manages. REMSA will assist Manifest MedEx in determining successful milestone achievements by the vendor (Imagetrend) in bi-directional information exchange. REMSA will also engage the county's two Ground EMS

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Transport providers (AMR and County Fire) to participate in the +EMS project to help determine the efficacy and value of the SAFR patient look up tool when responding to emergencies.

Manifest MedEx will reimburse the County of Riverside in the total amount of \$228,900.00 for the 2-year project divided into milestone payments and distributed as follows: \$191,400.00 for REMSA under the Emergency Management Department for staff hours on project planning, coordination, and implementation; and \$18,750.00 x 2 for each EMS 9-1-1 transport provider (AMR and County Fire) for staff training, participation, and feedback, in utilizing the SAFR patient look up tool.

Impact on Residents and Businesses

There is no negative impact on businesses or the public. The public can benefit from implementation of this project by ensuring better more rapid communication between the 9-1-1 medical response and hospital healthcare systems in Riverside County.

Additional Fiscal Information

Budget adjustment for estimated revenue will be done in the first quarter report based on progress of the project.


Cheryl Williams

6/2/2020


Gregory V. Priamos, Director County Counsel

6/2/2020

**County of Riverside, on behalf of its Emergency Management Department, Riverside County
Emergency Medical Services Agency (REMSA)-- IEHIO**

PARTICIPATION AGREEMENT

This Participation Agreement (the "**Agreement**") is entered into and effective as of **JUN 09 2020** (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 County of Riverside, a political subdivision of the State of California, on behalf of its Emergency Medical Department, Riverside County Emergency Medical Services Agency ("**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

- 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** receive data from the HIE and contribute data to the HIE.

The Parties agree that:

1. **Participation.** Participant shall participate in the HIE as set forth in this Agreement. The persons listed in Exhibit 1 ("**Participant Affiliates**") shall also participate in the HIE pursuant to this Agreement. Participant shall ensure that Participant Affiliates comply with the terms of this Agreement, except that only Participant will be obligated to pay Fees or perform other duties specified herein which, by their context, clearly apply only to Participant.
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 and Implementation Fees that Participant will pay to MX, and identifies any other fees that might be paid by Participant pursuant to this Agreement.

- d. The *Policies and Procedures* ("**Policies**") set forth on MX's website (https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.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 amended from time to time pursuant to this Agreement. The BAA sets forth the obligations of MX, in its capacity as the operator of the HIE and a business associate of Participant, and is separately executed by MX and Participant.
3. **Term.** The term of this Agreement shall commence on the Effective Date and continue through unless it is terminated as described in the Terms.
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.
 - i. Notwithstanding Section III.B.4 of Participant Policy – 4 Participant Access To Patient Data, Participant shall not be required to use two-factor authentication as long as Participant and Participant Authorized Users otherwise comply with the MX password policies;
 - ii. Notwithstanding Section III.A of Participant Policy -13 Sanctions, MX agrees that the sanction MX can apply for a violation of the Policies by Participant or its Authorized Users is the suspension (which may be immediate) of Participant's and its Authorized Users ability to access the HIE; and
 - iii. Notwithstanding Section III.B.2 of Participant Policy PP-18 System Security, as long as Participant routinely applies applicable security patches, Participant is not required to have its encryption software routinely updated.
 - b. **Definitions.** Capitalized terms that are not defined in the body of 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: (a) by overnight delivery service; or (b) by e-mail or facsimile transmission. Notice is deemed given on the date of the e-mail or facsimile or one day after delivery to the overnight service. If a sending Party receives notice

that an e-mail message was not delivered, that Party shall deliver the notice by overnight delivery service or by facsimile.

For Participant:

Riverside County Emergency Medical Services Agency
4210 Riverwalk Parkway, Suite 300
Riverside, CA 92505
Attn: Catherine Farrokh

Phone: (951) 358-4082
Email: Cfarrokh@rivco.org


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

County of Riverside

By: 
Name: Paul Biberkraut
Title: Chief Financial Officer
Date: May 11, 2020

By: 
Name: V. Manuel Perez
Title: Chairman, Board of Supervisors
Date: JUN 09 2020

HIO

By: _____
Name: Dolores Green
Title: Board Director
Date: _____

FORM APPROVED COUNTY COUNSEL

BY:  6/1/2020
SUSANNA N. OH DATE

ATTEST:

KECIA R. HARPER, Clerk

By 
DEPUTY

that an e-mail message was not delivered, that Party shall deliver the notice by overnight delivery service or by facsimile.

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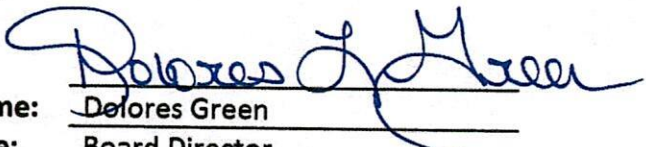
Manifest MedEx

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Date: May 11, 2020

By: _____
Name: V. Manuel Perez
Title: Chairman, Board of Supervisors
Date: _____

HIO

By: _____
Name: Dolores Green
Title: Board Director
Date: _____

Exhibit 1
Participant Affiliates

AMR Blythe
AMR Desert Cities
AMR Hemet
AMR Riverside
Riverside County Fire Dept. Riverside
Riverside County Fire Dept. Covs
Riverside County Fire Dept. Indio

Exhibit 2.a.

**County of Riverside, on behalf of its Emergency Management Department, Riverside County
Emergency Medical Services Agency (REMSA)**

**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 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 abide by MX Policies (Exhibit 2.d.) and by 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 and DSG. HIE Provider and Participant and their Personnel shall each comply with the Policies and the DSG, both of 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. Participant is not obligated to pay any Fees to HIO as of the Effective Date.

4.2 Change to Subscription Fees. MX must give Participant at least ninety (90) days' prior written notice of any increase in Subscription Fees (the "**Fee Notice**"). If MX seeks to increase any Fee and/or charge any Fee to Participant, Participant may, in its sole discretion:

4.2.1 Pay the Fee when due;

4.2.2 Terminate the Agreement pursuant to Section 11.2; or

4.2.3 Suspend the Agreement (including the provision and receipt of data) by delivering fifteen days prior notice of suspension to MX. Upon Participant's suspension of the Agreement under this section, all rights and duties of the Agreement shall remain suspended until the earlier of either: (i) Participant obtains approval to pay the Fee from Participant's responsible governing body (e.g., the Board of Supervisors) and commences to pay the Fee, or (ii) Participant fails to obtain that approval within nine months after MX delivers the Fee Notice. The Agreement shall automatically terminate at the end of the nine-month period if Participant does not then commence to pay the Fee.

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

4.4 Payment Timing. Participant shall pay all Fees within sixty (60) days following the date on which HIO or its designee sends an invoice to Participant for that Fee.

4.5 Taxes. All Fees will be paid exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force or enacted in the future. Participant shall pay any tax (excluding taxes on 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.

4.6 Other Expenses. Participant is solely responsible for all 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.

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 or regarding another Party, MX Vendor, a Party's vendor or an NP Participant, the Party shall: (a) keep and maintain in strict confidence all such Confidential Information; (b) not use, reproduce, distribute or disclose that Confidential Information except as permitted by the Agreement or as required by law; 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 or as required by law.

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.

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, 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 for the foregoing.

Article 7

Representations and Warranties

7.1 Exclusion from Government Programs. Each Party represents and warrants that it and its Personnel have not: (a) been listed by any federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal and/or state programs; or (b) been convicted of any crime relating to any federal and/or state reimbursement program.

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 license and/or otherwise permit Persons to access through the System and/or to receive from the System all Healthcare Data provided by Participant; (b) to use Healthcare Data provided by Participant to perform any activities MX is allowed to perform under the Agreement (including the Policies); and (c) to use Healthcare Data provided by Participant to carry out MX's duties under the Agreement, including system administration, testing and audits, provision of services, problem identification and resolution and management of the System. MX's rights 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. To the degree applicable, 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 shall be liable to the other Parties for Damages caused by the first 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 (including, in the aggregate, its officers, directors and Personnel) to the other Party under this Agreement, regardless of theory of liability, will be limited to the greater of: (i) the aggregate insurance policy limits then available to the Party with respect to such Claim, or (ii) one million (\$1,000,000) dollars.

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) either Party's grossly negligent or willful breach of the Agreement; (b) either Party's material breach of the BAA; or (c) either Party's indemnification obligations.

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 Liability. 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 negligent or intentional 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 negligent or intentional acts or omissions.

It is the intention of MX and the County that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers. It is also the intention of MX and the County that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers.

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 either Party purchases “claims made” insurance, all acts and omissions of that Party shall be, during the Term, “continually covered” (i.e., there must be insurance coverage commencing on the Effective Date and ending no earlier than three (3) years after termination of the Agreement; 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 remain in effect until terminated as set forth below.

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 Privacy and Security. MX may in its sole discretion terminate the Agreement at any time if MX determines in its sole discretion that Participant’s actions and/or continued participation in MX would, or is reasonably likely to, endanger the privacy or security of Patient Data or otherwise result in a breach of the Agreement that is reasonably likely to harm MX or an NP Participant. MX shall deliver notice of this termination to Participant at least twenty-four (24) hours prior to terminating Participant’s access to the System, unless MX determines in its sole discretion that Participant’s access must be terminated immediately in order to protect the privacy or security of the Patient Data, in which case MX may terminate access immediately without notice.

11.3.2 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.

11.3.3 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.

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

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

11.5 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.

11.6 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.

11.7 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 (but may 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.

11.8 Suspension Due to Fees. If Participant 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 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"), but ignoring 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, DSG, 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 and DSG Revision. MX may in its sole discretion modify or otherwise revise the Policies and/or DSG after providing at least ninety (90) days prior written notice of any material revision to Participant before the material revision is effective. If the Policy and/or DSG revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 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 before the new fee is effective. If the Subscription Fee revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2.

12.2.5 Fees Prepayment. 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.

12.2.6 Required Revision. Notwithstanding any other provision in the Agreement, if a revision to the Policies, Terms and/or DSG is required, in the reasonable judgment of MX, to be made for the continued technological functioning of the HIE or for compliance with Law, MX may unilaterally implement that revision and may shorten any requirement for

prior notice set forth in the Agreement to that time period which MX reasonably determines appropriate under the circumstances.

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. Any attempted assignment or transfer in violation of the foregoing will be null and void.

12.4 Availability of Records. For four (4) years after any termination of the Agreement, the Secretary ("**Secretary**"), the Comptroller General of the United States ("**Comptroller General**") and/or their designee will have access to all books and records of 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 Participant'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.

12.5 Federal Reporting Requirements. For four (4) years after any termination of the Agreement, HIE Provider shall maintain its books, documents and records showing the nature and extent of the cost of Services furnished under the Agreement in compliance with Section 1861(v)(1)(I) of the Social Security Act. If requested, HIE Provider shall grant access thereto to the Secretary, the Comptroller General and/or their designee.

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. The Dispute Notice shall propose a time and place for all involved Persons to meet and confer regarding the dispute.

12.8.2 Meet and Confer. Within twenty (20) days of a Party sending a Dispute Notice, the Parties shall meet and confer in good faith regarding the Dispute. Other Persons

interested in the Dispute shall be invited to the conference, but the conference shall be held at the earliest date on which the Parties can attend (regardless of the attendance of other interested Persons). The Meet and Confer shall be considered a settlement negotiation for the purpose of all Laws, including California Evidence Code § 1152.

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

12.8.4 Injunction. Notwithstanding anything to the contrary, any Party may immediately file suit in any court as that Party deems necessary to protect or enforce its IP Rights, Proprietary and Confidential Information or Patient Data.

12.9 Representation by Counsel; Interpretation. Each Party has been represented by counsel in connection with this Agreement, or has had an opportunity to be so represented. Both parties expressly waive any claim that ambiguities in this Agreement should be interpreted against a Party due to that Party drafting the 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 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 and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from the Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of the Agreement.

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., Ste. 500
Emeryville, CA 94608
Email: legal@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

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.

“Administrator POC” is defined in **Exhibit 2.b.**

“ADT Messages” is defined in **Exhibit 2.b.**

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

“Annual Net Patient Revenue” is defined in **Exhibit 2.c.**

“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).

“DSG” is the Data Submission Guidelines (defined above).

“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 one or more of the Participant Affiliates 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.c.**, and is first referenced in Section 4.3 (Implementation Fees).

“Indemnifying Party” is defined in Section 9.4 (Indemnification).

“Indemnified Party” is defined in Section 9.4 (Indemnification).

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

“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.

“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.

“Participant” is defined in the Preamble.

“Participant Affiliates” are defined in Exhibit 1.

“Party” means Participant, HIO, or MX.

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

“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 Roster” is defined in Exhibit 2.b.

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

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

“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 https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.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.

“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” is defined in Section 11.1 (Term).

“Terms” means the terms and conditions set forth in Exhibit 2.a.

“Training POC” is defined in Exhibit 2.b.

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

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 the healthcare needs of Participant's patients.

A. Training

Each Participant must designate a training coordinator ("**Training POC**") before Participant begins to use the System. The Training POC will be responsible for training Participant's Authorized Users on the use of the System, and on compliance with the Policies and Agreement. MX and its HIO affiliates will provide web-based and/or in-person training to Training POCs and Administrator POCs, and will provide training resources and materials that Training POCs can use to train Authorized Users. Any training requested by Participant in addition to MX's standard training will be negotiated by the Parties and memorialized in a separate 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 POCs will be responsible for: the management of Authorized Users (e.g., setting up Authorized User accounts, assigning roles and providing security credentials to Authorized Users); ensuring that Authorized Users have reviewed and agree to comply with the Policies and the Agreement prior to obtaining access to the System; and providing Level 1 help-desk support to Authorized Users, including re-setting passwords.

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

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 [specific data contribution requirements intentionally deleted for EMS Participant]

1. Participants, including each of the Participant Affiliates, will contribute Patient Data, as applicable, in accordance with the schedules described below 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 Participants to use in submitting Patient Data to MX. Participants will use reasonable efforts to provide Patient Data to MX consistent with the Data Submission Guidelines. The provisions in this Section D below not applicable to Participant are for informational purposes as to MX's intent to obtain such data from NP Participants. Those provisions not applicable to Participant are not a guarantee or promise that MX will obtain such data from all NP Participants.
2. 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.

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.

F. Implementation Services

Participant will pay Implementation Fees as set forth in Exhibit 2.c. to MX for implementation services. These services include assisting with VPN and other connectivity services, channel/feed development and configuration, mapping, patient or provider attribution, routing configuration, technical testing, project management, business analysis and other activities that enable Participant's contribution of data to the MX System.

Exhibit 2.c.
Fees

1. **Subscription Fees**. Participant shall not pay any regular subscription fees (“**Subscription Fees**”) to use the System.
2. **Implementation Fees**. Participant shall not pay fees (“**Implementation Fees**”) to MX for a standard implementation performed by MX. The Implementation Fees do not cover Participant’s internal implementation costs, including any fees assessed by Participant’s EHR vendor.

Exhibit 2.d

Policies

As set forth on MX's website (https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.pdf) and as amended from time to time.

Exhibit 2.e

HIPAA Business Associate Agreement ("BAA")

This Business Associate Agreement ("Agreement") is entered into and effective as of _____ (the "Effective Date"), by and between Manifest MedEx, a California nonprofit public benefit corporation ("**Business Associate**"), and County of Riverside, on behalf of its Emergency Management Department, Riverside County Emergency Medical Services Agency (REMSA) ("**Covered Entity**"). Both parties hereby agree to this Business Associate Agreement (this "**BAA**") and are referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties**."

Recitals

A. Covered Entity and Business Associate have entered into an agreement (the "Participation Agreement") pursuant to which Business Associate provides to Covered Entity certain services that now or in the future shall include the creation, receipt, maintenance and/or transmission of "protected health information" (as defined in HIPAA), on behalf of Covered Entity, for a function or activity regulated by HIPAA.

Agreement

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

1. Definitions. All terms used in this BAA not specifically defined otherwise below shall have the same definitions as given to them under HIPAA.

(a) "PHI" or "Protected Health Information" is defined as these terms are defined at 45 C.F.R. § 164.103, except that as used herein, the term shall refer only to Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of or from Covered Entity.

2. Obligations of Business Associate.

(a) Compliance with Regulatory Obligations of Business Associate. Business Associate shall perform and comply with all the applicable obligations and requirements imposed upon business associates pursuant to HIPAA.

(b) Permitted Use and Disclosure of PHI. Business Associate shall use and disclose PHI only as necessary to perform Business Associate's obligations, functions, activities and/or services under the Participation Agreement, and, subject to the limitations of the Participation Agreement, as otherwise permitted or required by this BAA, or by HIPAA or required by Law. Business Associate shall not use or disclose PHI in any manner that would violate the requirements of HIPAA if done by Covered Entity.

(c) Specified Permitted Uses of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), but subject to the limitations of the Participation Agreement, Business Associate may use PHI as follows, if necessary:

- (i) For the proper management and administration of Business Associate.
- (ii) To carry out the legal responsibilities of Business Associate.

(iii) To provide data aggregation services relating to the health care operations of Covered Entity if and to the extent provided by the Participation Agreement.

(iv) To perform services related to the creation of De-Identified Data.

(d) Specified Permitted Disclosures of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), Business Associate may disclose PHI as follows:

(i) For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if:

(A) If the disclosure is required by Law; or

(B) If Business Associate obtains reasonable assurances from vendors or subcontractors to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by Law or for the purposes for which it was disclosed to the person, and if the person promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(e) Safeguards. Business Associate shall use appropriate safeguards and comply, where applicable, with 45 C.F.R. §§ 164.302 through 164.316 with respect to electronic PHI, and will apply appropriate safeguards to prevent use or disclosure of the PHI in any form, including electronic form other than as provided for by this BAA.

(f) Mitigation. Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an improper use, access or disclosure of PHI by Business Associate, its agents or subcontractors in violation of the requirements of this Agreement.

(g) Reporting Unauthorized Uses and Disclosures. Business Associate shall report to Covered Entity, without unreasonable delay, and in accordance with the deadlines provided below, any use or disclosure of PHI not permitted by this BAA of which Business Associate becomes aware, including any use or disclosure involving PHI and any Breach of Privacy or Security as defined herein. Without limiting the generality of the foregoing:

(i) Reporting of Breaches of Privacy or Security.

(A) Following the discovery of (I) any access to, use or disclosure of PHI which is not permitted by the Participation Agreement (including any Breach of Privacy or Security) or (II) any Security Incident, Business Associate shall notify Covered Entity by contacting Covered Entity's designated privacy contact person without unreasonable delay, and in no case later than forty-eight (48) hours after discovery of the Breach of Privacy or Security of the Security Incident; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Covered Entity by Business Associate shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or

disclosure of PHI. Covered Entity will advise Business Associate of any subsequent changes to the privacy contact person's contact information.

(B) In the event of a Breach of Privacy or Security, Business Associate shall without unreasonable delay carry out an investigation and shall provide reasonably frequent updates to Covered Entity as to the results of the investigation, including, as soon as reasonably possible, the identification of each Patient whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach of Privacy or Security.

(C) Business Associate shall cooperate with Covered Entity and shall provide that assistance as Covered Entity may reasonably request so that Covered Entity may comply with any obligations it may have to investigate, remediate, mitigate, report, and or otherwise notify third parties of that Breach of Privacy or Security.

(h) Costs Associated to Breach. Business Associate shall be responsible for reasonable costs associated with a breach due to the negligent or wrongful acts or omissions of Business Associate. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the Agreement at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

1. Postage;
2. Alternative means of notice;
3. Media notification; and
4. Credit monitoring services

(i) Arrangements with Subcontractors. Business Associate shall enter into a BAA with any subcontractor of Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate, pursuant to which the subcontractor shall agree to comply with the applicable requirements of HIPAA and the same (or more stringent) restrictions and conditions that apply to Business Associate with respect to that PHI pursuant to this BAA, and pursuant to which Business Associate shall obtain satisfactory assurances that the subcontractor shall appropriately safeguard that PHI.

(j) Individuals' Access to PHI. If Business Associate receives a Patient's request for access to PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for making the determination regarding the granting or denial of a Patient's request. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. Business Associate shall not make any determinations or provide the requested access unless requested by the Covered Entity or covered entities. If and to the extent that a Covered Entity requests Business Associate's assistance in fulfilling a request made by a Patient for access to PHI, Business Associate shall make that PHI available to Covered Entity within ten (10) business days of the Covered Entity's request as and to the extent required for Covered Entity's compliance with its obligations to provide Patients with access to and copies of PHI pursuant to 45 C.F.R. § 164.524.

(k) Amendments to PHI. If Business Associate receives a Patient request for an amendment to PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for making the determination regarding the granting or denial of a Patient's request. Covered Entity shall be responsible for making all determinations regarding the granting or denial of a Patient's request for amendment, and for notifying Patients thereof, and Business Associate shall not make any that determinations or make any that amendments. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. If and to the extent that Covered Entity requests Business Associate's assistance or directs Business Associate to incorporate an amendment to PHI, Business Associate shall, within ten (10) days of the Covered Entity's request, cooperate with the Covered Entity, including incorporating any amendments to PHI directed by Covered Entity, as and to the extent required for Covered Entity's compliance with 45 C.F.R. § 164.526.

(l) Accountings of Disclosures. If Business Associate receives a Patient's request for an accounting of disclosures of PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for complying with the request. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. Business Associate shall document disclosures of PHI as required to provide Covered Entity with information sufficient to respond to any request by a Patient for an accounting of disclosures in compliance with 45 C.F.R. § 164.528, and shall provide that information to Covered Entity upon request within ten (10) business days. Covered Entity shall be responsible for providing all accountings of disclosures to Patients, and Business Associate shall not provide any accountings to Patients directly.

(m) Other Obligations. To the extent that Business Associate is, pursuant to the Participation Agreement or this BAA, responsible to carry out an obligation of Covered Entity under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of that obligation.

(n) Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance under HIPAA.

3. Covered Entity's Obligations.

(a) Notice of Change in Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that that limitation may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the change to the notice of privacy practices containing such limitation.

(b) Notice of Change in Permissions. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that that change may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the change in permissions. Business Associate shall abide by each change in, or revocation of, permission described above in this clause (b).

(c) Notice of Change in Use. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that that restriction may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the restriction. Business Associate shall abide by each restriction described above in this clause (c).

(d) Appropriate Requests. Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

4. Term and Termination.

(a) Term. Subject to the other provisions of this Section 4 (Term and Termination), the term of this BAA shall be coextensive with that of the Participation Agreement.

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

(c) Conduct Upon Termination. Upon termination or expiration of this BAA, Business Associate and Covered Entity acknowledge that return or destruction of PHI is not feasible. Accordingly, Business Associate shall extend the protections of this BAA, including Section 2(e) (Safeguards), to any PHI for so long as it is not destroyed, and limit further uses and disclosures of that PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate or any subcontractor of Business Associate maintains that PHI. Upon the expiration of this period of infeasibility, if any, Business Associate shall destroy all PHI that it has retained. If PHI is to be destroyed pursuant to this Section 4(c) (Conduct Upon Termination) or pursuant to the Participation Agreement, Business Associate shall certify in writing to Covered Entity that that PHI has been destroyed.

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

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

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

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

9. Waiver. Any failure of a Party to insist upon strict compliance with any term, undertaking or condition of this BAA shall not be deemed to be a waiver of that term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the Parties to this BAA.

10. Counterparts. This BAA may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

11. Governing Law. Notwithstanding any other provision to the contrary, this BAA shall be governed and construed in accordance with the laws of the State of California.

12. Term. This Agreement shall commence upon the Effective Date and shall terminate when all PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Business Associate shall limit further uses and disclosures of such PHI to those purposes which make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

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

Covered Entity

By: V. M. Perez

Name: V. Manuel Perez

Title: Chairman, Board of Supervisors

Business Associate

By: Sandra Parker

Name: Sandra Parker

Title: General Counsel & Chief Privacy Officer

FORM APPROVED COUNTY COUNSEL

BY: Susanna N. Oh 6/1/2020
DATE

ATTEST:

KECIA R. HARPER, Clerk

By: Deborah Kasso
DEPUTY

MANIFEST MEDEX

Local Emergency Medical Services Agency (LEMSA)

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is made as of JUN 09 2020 (the "Effective Date") by and between Manifest MedEx, having its principal place of business at 6001 Shellmound Street, Suite 500, Emeryville, CA 94608 (hereinafter "MX" or "Client"), and County of Riverside, on behalf of its Emergency Management Department, Riverside County Emergency Medical Services Agency (REMSA), having its principal place of business at 4210 Riverwalk Parkway, Suite 300, Riverside, CA 92505 (hereinafter "Contractor").

NOW THEREFORE, in consideration of the promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

- (a) "Services" shall mean all services provided by Contractor in connection with approved SOW(s) under this Agreement.
- (b) "Work Product" shall mean all completed milestones, specifications, trainings, workflows, webinars, marketing material, drafts, and other documents created by Contractor in connection with any SOW under this Agreement.

2. Performance of Services

- (a) Contractor shall perform Services and deliver Work Product in accordance with the specifications and schedule described on one or more Statements of Work (each an "SOW") in Attachments to this Agreement. Each SOW may optionally contain one or more Deliverables with respective delivery fees as detailed within the SOW. Each SOW shall be (i) signed by both parties, (ii) effective as of the date thereon, (iii) appended to this agreement, and (iv) subject to the respective terms and conditions of this Agreement.
- (b) Contractor shall be restricted in its normal practice of subcontracting portions of the Services under any SOW, the Contractor is responsible for all such Services in accordance with the terms and provisions of this Agreement.
- (c) Contractor will furnish to Client only employees, agents, and personnel who are authorized to work in the United States. Consistent with applicable immigration laws, Contractor will be responsible for and will ensure that any legally-required verification of employment eligibility and identity are performed.

3. Invoices and Payments

- (a) MX will pay Contractor within thirty (30) days of its receipt of State payment to MX, and upon receipt of approved information per the State invoice requirements.

4. Proprietary Rights

Unless specified otherwise within a particular SOW, all right, title, and interest to the Work Product is and shall be held by MX, and shall be considered "works made for hire," as that term is defined on The Copyright Act of 1976, as amended.

5. Term and Termination

- (a) This Agreement will become effective on the Effective Date and will continue in full force and effect through the completion of any and all SOWs, and as directed by the State program timeline, unless terminated pursuant to Section 5(b) or Section 5(c) hereof.
- (b) MX may terminate any SOW or any portion thereof immediately upon twenty (20) business days' written notice to Contractor (a "Termination Notice") or at such time specified in the Termination Notice. Upon Contractor's receipt of a Termination Notice, MX shall advise Contractor of the extent to which performance has been or will be completed through the termination date specified in such notice (including reasonable documentation of actual costs and expenses incurred through the date of termination). MX may offer the right to cure to the Contractor, within a specified time line, in the Termination Notice.
- (c) Contractor may terminate the +EMS Service Agreement (Schedule A) upon 20 business days' written notice to MX. Contractor may terminate the +EMS Service Agreement without terminating the Participation Agreement. If Participation Agreement is terminated, the +EMS Service Agreement must also be terminated. No payments for completed milestones that have been approved by EMSA will be clawed back if terminated.

6. Effects of Termination or Expiration

- (a) Upon termination or expiration of this Agreement, Contractor shall deliver to MX any and all Work Product for which payment has actually been received by Contractor.

- (b) Expiration or termination of this Agreement shall not affect the remedies of either party otherwise available at law or in equity in relation to any rights accrued under this Agreement prior to expiration or termination.

7. Representations and Warranties

- (a) Each party represents and warrants that (i) it is duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated; (ii) it has the full rights, power, legal capacity and authority to enter into this Agreement, and to carry out the terms hereof; (iii) this Agreement has been executed by its duly authorized representative and is a valid, legally binding and enforceable obligation of such party; and (iv) materials created or furnished by such party, if any, under this Agreement, do not or will not infringe upon or otherwise violate the rights of any third party. Additionally, Contractor represents and warrants: (A) it will perform the Services in accordance with the highest standards in the industry, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with industry custom and practice would use in the conduct of an enterprise of a like character and with like aims; (B) it will use adequate numbers of qualified employees, agents and personnel with suitable training, education, experience and skill to perform the Services; (C) it will promptly notify MX of an impending work stoppage, strike or other interference with Contractor's performing Services hereunder; (D) when performing Services, Contractor's employees, agents and personnel will observe and comply with MX's security procedures, rules, regulations, policies, working hours and holiday schedules; and (E) it will periodically perform the necessary due diligence review of its administrative and operational capabilities to help assure conformance of the Services with the provisions of this Agreement.

EXCEPT FOR THE FOREGOING WARRANTIES, MX AND CONTRACTOR MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE PARTIES EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES OR THE WORK PRODUCT.

8. Indemnification

- (a) Each Party shall defend, indemnify and hold harmless the other Party, its affiliated companies and their respective officers, directors, employees and agents from and against any and all liabilities, damages, costs and fees (including reasonable attorney's fees) for any third party claims or actions arising solely and exclusively out of the breach of the foregoing representations and warranties of the Indemnifying Party, the negligent acts or omissions or intentional acts of the other Party, or any infringement claim related to any of the Party's obligations under any SOW; provided that: (i) The Party shall have promptly provided the other Party by written notice thereof and providing reasonable cooperation, information, and assistance in connection therewith, and (ii) the Indemnifying Party shall have sole control and authority with respect to the defense, settlement, or compromise thereof.
- (b) Neither party shall, without the prior written consent of the other party, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, against the other party.

9. Limitation of Liability

Each party agrees that the other party's liability for damages under or in connection with this Agreement, howsoever arising (including, without limitation, for breach of contract, for negligence or other tort, or concerning the use or inclusion of any document, material, idea, data or other information in the Work Product), shall in no circumstances exceed in the aggregate the sum of the fees paid by Client hereunder in the twelve months immediately preceding the event giving rise to the claim.

The liability of either party, if any, for damages for any claim of any kind whatsoever and regardless of the legal theory, with regard to the performance of Services under this Agreement, shall not include compensation, reimbursement or damages on account of the loss of profits, expenditures, investments or commitments, whether made in establishment, development, or maintenance of reputation or goodwill or for any other reason whatsoever. In no event shall either party be liable for special, incidental, indirect, or consequential loss or damages.

10. Notices

- (a) Until notified of a change in the contact person, the parties may send all notices and other required communications to each other by registered or certified mail or by facsimile transmission, electronic mail, FedEx, UPS, or other delivery service as follows:

If directed to MX:

MX
6001 Shellmound Street, Suite 500
Emeryville, CA 94608
Attn: David Kates
Chief Technology Office

Phone: (410) 917-1937
Email: david.kates@manifestmedex.org

With a copy to:

legal@manifestmedex.org

If directed to Contractor:

Riverside County Emergency Medical Services Agency
4210 Riverwalk Parkway, Suite 300
Riverside, CA 92505
Attn: Catherine Farrokh

Phone: (951) 358-4082
Email: Cfarrokh@rivco.org

With a copy to:

Rposelski@rivco.org

Delivery shall be deemed effective upon the earlier of receipt or five (5) days after deposit with postal authorities.

- (b) Contractor shall notify Client in writing within forty-eight (48) hours after Contractor becomes aware of the occurrence of any one or more of the following events:
- (i) Contractor becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action relating to Contractor's qualification or ability to provide the Services;
 - (ii) Contractor becomes the subject of any suit, action or other legal proceeding arising out of Contractor's business that might impact the Services;
 - (iii) Contractor Personnel working under this Agreement becomes incapacitated or disabled from performing Services, or voluntarily or involuntarily retires;
 - (iv) Contractor Personnel is charged with or convicted of a criminal offense;
 - (v) Any act of nature or any other event occurs which has a material adverse effect for ten or more business days on Contractor's ability to provide Services;
 - (vi) Contractor is debarred, suspended, excluded or otherwise ineligible to participate in or receive payment from any payer program including any Federal Health Care Program or state equivalent;
 - (vii) Any termination, non-renewal, cancellation or reduction in coverage of any insurance policy required to be maintained by Contractor under this Agreement; or
 - (viii) Contractor determines that it has failed, will foreseeably fail, or is unable to comply with any term of this Agreement.

11. Confidentiality

- (a) Each party (the "Receiving Party") agrees that it will retain in confidence all information and data belonging to or relating to the business of the other party (the "Disclosing Party") and designated as confidential by the Disclosing Party ("Confidential Information") and that it will safeguard such Confidential Information by using the same degree of care and discretion that it uses with its own information and data that it regards as confidential. Confidential Information does not include any information that at the time of disclosure: (i) is generally known by the public through no fault of the Receiving Party, (ii) was in the Receiving Party's possession before receipt from the Disclosing Party, (iii) was independently developed by Receiving Party without use of or access to the Confidential Information, (iv) was disclosed under operation of law, or (v) was rightfully received from a third party without a duty of confidentiality. Either party may disclose Confidential Information in accordance with a judicial or other governmental order, provided that the Receiving Party will provide the Disclosing Party with prompt notice of such request so that the Disclosing Party may seek an appropriate

protective order or other remedy. Notwithstanding termination or expiration of this Agreement, the Receiving Party shall continue to be obligated to protect the confidentiality of the Disclosing Party's Confidential Information provided hereunder for a period of five (5) years after the termination or expiration of this Agreement.

- (b) Contractor shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 and any subsequent laws that might be enacted, and all rules and regulations promulgated thereunder (collectively, "HIPAA," the obligations collectively referred to herein as "HIPAA Obligations"), and any applicable state law equivalents. Additionally, Contractor shall ensure that all employees, agents, and personnel of Contractor that provide Services hereunder: (i) have within the last year undergone a background check (including but not limited to criminal and OIG exclusion) and (ii) undergo HIPAA training at least annually. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.

12. Marketing and Publicity

Each party agrees that it will not use the other party's name or trademark in any marketing materials without the prior written consent in each instance.

13. No Joint Venture

The parties to this Agreement are independent contractors. Nothing contained herein or done pursuant to this Agreement shall constitute either party being the agent or employee of the other party for any purpose, or constitute the parties as partners or joint ventures. Neither party shall create or assume any obligation on behalf of the other party for any purpose whatsoever, unless such other party expressly agrees to such an obligation in writing.

14. No Solicitation

Each party agrees that it shall not solicit directly or indirectly (e.g., through a recruitment service) the other party's employees, agents, or subcontractors without the prior written consent of the party who is the employer. Each party further agrees that it shall not hire or contract with any of the other party's employees, agents, or subcontractors for a period of two (2) years following termination of employment with the other party without the prior written consent of the other party.

15. Waivers

No waiver of any provision of this Agreement shall be binding unless the waiver is in writing signed by the party against whom the waiver is asserted. The waiver or failure of either party to exercise in any aspect any right provided for in this Agreement shall not be deemed a waiver of any further or future right hereunder.

16. Severability

In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

17. Paragraph Headings

The headings in this Agreement are inserted for convenience only and are not deemed a part of this Agreement and shall not be considered in interpreting this Agreement.

18. Survival

The following sections shall survive termination of this Agreement for any reason and shall remain enforceable by the parties; sections regarding Proprietary Rights, Representations and Warranties, Indemnification, Limitation of Liability, Confidentiality, and State Flow Down Requirements.

19. Assignment and Successors

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, neither party shall assign any of its rights nor delegate any of its obligations under this Agreement to any third party without the express written consent of the other; provided that, consent shall not be required in connection with the reorganization or merger of a party or the sale of such party's business or all or substantially all of its assets to a third party so long as the third party is bound by law or written agreements to all of the obligations of the assigning party under this Agreement.

20. General

- (a) This Agreement contains the entire agreement between the parties and supersedes any negotiations, discussions, and agreements.
- (b) This Agreement may only be amended by a written amendment signed by both parties.
- (c) This Agreement shall be governed by and shall be construed in accordance with the laws of the California, without giving effect to the choice of law or conflicts of law provisions. Any dispute arising out of this Agreement shall be adjudicated solely in the applicable federal or state courts within the Alameda County, California.
- (d) This Agreement may be executed in multiple counterparts, all of which taken together shall constitute the whole agreement.

The undersigned, representing that they are duly authorized, have executed this Agreement on behalf of the Parties as of the Effective Date given above.

Manifest MedEx

By: [Signature]
Name: Paul Biberkraut
Title: Chief Financial Officer
Date: Jun 11 2020

COUNTY OF RIVERSIDE

By: [Signature]
Name: V. Manuel Perez
Title: Chairman, Board of Supervisors
Date: JUN 09 2020

FORM APPROVED COUNTY COUNSEL

BY: [Signature] 6/1/2020
SUSANNA N. OH DATE

ATTEST:

KECIA R. HARPER, Clerk

By [Signature]
DEPUTY

SCHEDULE A

+EMS Services Agreement: LEMSA SOW

I. LEMSA RESPONSIBILITIES. Local Emergency Medical Services Agency (LEMSA) shall be responsible for the activities and deliverables outlined in Exhibit B, summarized as the following:

1.1. Project Administration and Management

- a. Participate in local coordinating committee with HIO and MX.
- b. Manage relationships, project management and completion of milestones with EMS Providers and ePCR vendors.
- c. Create and maintain service level agreements with EMS Providers in accordance with the EMSA and MX contracts.
- d. Manage and track payment to EMS Providers as milestones are completed.
- e. Assist MX with reports to EMSA as needed.
- f. Escalate risks to MX when necessary.
- g. Assist MX in the development of a value proposition for the benefits of SAFR.

1.2. Workflow Development

- a. Assist ePCR and MX with the development and administration of workflow curriculum and trainings for EMS Providers including superusers and other users.
- b. Oversee successful implementation and adoption of workflow trainings.

1.3. Milestone Documentation and Payment

- a. Assist with documentation of milestone achievement for EMS Providers within County (see below for list of EMS providers). The achievement of milestone means all EMS Providers have met their milestone, as defined in Exhibit A. LEMSA will not be able to receive payment for a given milestone unless all EMS Providers have met their respective milestone in a given county. Payments will not be clawed back for completed milestones; however, not less than 10% of the agreement amount shall be withheld at the end of the grant pending completion of the agreement, and receipt and acceptance by EMSA of any final reports required under the agreement.
- c. LEMSA is responsible for providing to MX EMS Provider documentation of milestone completion for all milestones per the EMSA requirements. Through the LEMSA, EMS Providers must demonstrate successful achievement of a milestone by either attestation, usage reports and/or screenshot per approval by EMSA.
- d. LEMSA is responsible for passing milestone payment onto EMS Providers within County upon receipt of milestone payment from MX. MX is responsible for passing milestone payment onto ePCR within County upon receipt of milestone payment from EMSA. MX is not responsible for making payments to ePCR vendors unless MX has approved milestone completion by REMSA.

II. Definitions

- 2.1 "EMSA" means the California Emergency Medical Services Authority
- 2.2 "EMS Provider" means emergency medical services provider participating in this project.
- 2.3 "ePCR vendor" means the electronic patient care record ("eCPR") vendors used by emergency medical services providers within LEMSA's jurisdiction and participating in this project.
- 2.4 "MX" means Manifest Medex.
- 2.5 "LEMSA" means Local Emergency Medical Services Agency.

III. Term. The term shall commence on the Effective Date and shall remain in effect until the end date of the term of the contract entered into between MX and the EMSA. The final program invoice is due to EMSA by July 30, 2021.

IV. Invoicing and Payment. Upon receipt of payment by MX from EMSA for completion of a given milestone, MX shall disburse payment to LEMSA within 30 days. MX payment to LEMSA shall be limited to that percentage attached to a given milestone, as outlined in Exhibit D to this document.

Exhibit A. California EMS Authority Milestones and Metrics (flow-down)

LEMSA agrees to accept the Milestones and Metrics outlined herein as flow down requirements and as a material requirement to proceed with this SOW:

The following are measurable milestone objectives for each Emergency Ambulance Provider and LEMSA. See Exhibit B for detailed LEMSA deliverables.

1) Milestone 1-a Adoption Phase 1: Initiate Participation in EMS SAFR

- Contract with MX that will serve as the “hub” for patient query information. Alternative “hub” functionality may serve as the methodology to achieve SEARCH functionality.
- Identify the specific EMS providers that will be on-boarded.
- Develop service agreements for health information exchange on-boarding with each respective EMS SAFR participant.

Milestone 1-b Adoption Phase 2: Testing SEARCH and ALERT

- Demonstrate successful Adoption of SEARCH and ALERT functions among EMS Providers in production. Success is defined as at least one SEARCH with a patient match, retrieval of health information for at least one matched patient, and ALERT reporting of important patient information for at least one patient on a hospital ED dashboard. The metric is measured per participant.

2) Milestone 2 Exchange: SEARCH and ALERT

- Ensure ePCR delivers SEARCH functionality and training to EMS Providers, and ensure EMS Providers incorporate SEARCH function in workflow with a minimum of 50% usage and 30% match success, or retrieval success, by paramedics of identified pre-hospital patients for 3 consecutive months (measured on a monthly basis). MX will provide match functionality and measure match success. The metric is defined as the number of times, for which a patient is searched for, and a patient is successfully identified or for which information is successfully retrieved from MX or other clinical system by the ePCR, divided by the number of new patient encounters created in the ePCR during a 1 month period. The metric is measured per participant.
- Ensure ePCR delivers ALERT functionality and training to hospitals and/or MX, and ensure EMS Providers incorporate ALERT function in workflow with a minimum of 80% usage (on patients to be transported to a defined hospital) for 3 consecutive months (measured on a monthly basis). Success is defined as at least 1 patient match, retrieval of health information for at least 1 matched patient, and reporting of critical patient information for at least 1 patient in a hospital ED dashboard. The metric is measured per participant.

3) Milestone 3 Interoperability: FILE and RECONCILE

- Ensure ePCR delivers FILE functionality to MX and/or hospital with a minimum of 40% usage per record (on transported patients to a defined hospital) for 3 consecutive months (measured on a monthly basis). The metric is defined as the number of times a patient record created in the ePCR is successfully transmitted to the HIO and/or hospital EHR, matched to a patient, and incorporated as structured information. The metric is measured per participant.
- Ensure ePCR delivers RECONCILE functionality to MX and/or hospital with a minimum of 40% usage per record (on transported patients) for 3 consecutive months (measured on a monthly basis). The metric is defined as the number of times a patient record (ADT) is successfully transmitted from the hospital EHR to the ePCR, matched to a patient and encounter, and incorporated as structured information. Hospital discharge summaries also qualify and are encouraged. The metric is measured per participant.

4) Milestone 4 Data and Analytics Phase: Achievement Measurement

- Ensure ePCR evaluates and reports usage during the (SEARCH and ALERT), and the (FILE and RECONCILE) phases on a monthly basis.
- Ensure ePCR submits prehospital data and hospital outcome information on matched patients to MX.
- Assist MX in evaluating performance measures that involve pre-hospital and hospital data elements within EMSA guidelines
- Assist MX in the preparation of final report to EMSA documenting the project objectives, milestones, and overall accomplishments for EMSA. MX will seek an extension at the end of the grant in September 2021, and will amend this contract with the new end date if granted.

Exhibit B. Timeline of LEMSA Activities and Deliverables

Note that timeline is subject to change.

Activity	Timeline
Milestone 1-a: Adoption Phase: Initiate	Q2 2020
A. Engagement	
Participate in internal kick-off with MX and HIO	Q2 2020
Assist MX with the development of value proposition for benefits of SAFR.	Q2 2020
Identify points of contact and project champions at EMS Providers and ePCR vendors	Q2 2020
Participate in and collaborate with partners for the local coordinating committee	Q2 2020
Ensure ePCR and EMS Providers participate in check-ins with MX	Q2 2020
Check in with MX on a regular basis	Q2 2020
B. Training & Knowledge Transfer	
Assist MX and ePCR with introductory workshops with EMS and hospitals	Q2 2020
Identify superusers and users for workflow training on-site	Q2 2020
Assist MX and ePCR with the development of EMS provider workflow training	Q2 2020
C. Technical	
Attend kickoff meeting with hospitals, EMS, HIOs	Q2 2020
Assist ePCR and MX Technical team with documentation/confirmation of technical requirements; design finalization; design sign-off	Q2 2020
Ensure ePCR participates in weekly Technical checkpoint meeting with MX	Q2 2020
Validate technical requirements for EMS workflow	Q2 2020
D. Project Administration	
Execute Participation Agreement and MSA/SOW with MX	Q2 2020
Execute +EMS SLAs with EMS Providers	Q2 2020
Risk identification and mitigation	Q2 2020
E. Invoicing & Milestone Completion	
Assist with documentation and analysis of milestone progress, submission of monthly reports, EMS milestone achievement, and invoices to EMSA	Q2 2020
F. Milestone Completion	

Ensure the successful achievement of Milestone 1a for EMS providers and ePCR in the region	Q2 2020
Milestone 1-b: Adoption Phase 2: Testing	Q2 2020
A. Engagement	
Participate in local coordinating committee check-ins	Q2 2020
Check in with MX regularly	Q2 2020
B. Training & Knowledge Transfer	
Administer workflow training to EMS Providers with ePCR	Q2 2020
C. Technical	
Ensure ePCR provides support to testing and deployment	Q2 2020
Ensure ePCR participates in weekly technical checkpoint meeting with MX	Q2 2020
D. Project Administration	
Risk mitigation and identification	Q2 2020
E. Invoicing & Milestone Completion	
Assist with documentation and analysis of milestone progress, submission of monthly reports, EMS milestone achievement, and invoices to EMSA	Q2 2020
F. Milestone Completion	
Ensure the successful achievement of Milestone 1b for EMS Providers and ePCR in the region	Q2 2020
Milestone 2: Exchange	Q3 2020-Q4 2020
A. Engagement	
Participate in local coordinating committee check-ins	Q3 2020-Q4 2020
Check in with MX regularly	Q3 2020-Q4 2020
B. Training & Knowledge Transfer	
Review of EMS Provider workflow	Q3 2020-Q4 2020
C. Technical	
Ensure ePCR participates in weekly technical checkpoint meeting	Q3 2020-Q4 2020
D. Project Administration	
Risk mitigation and identification	Q3 2020-Q4 2020
E. Invoicing & Milestone Completion	
Assist with documentation and analysis of milestone progress, submission of monthly reports, EMS milestone achievement, and invoices to EMSA	Q3 2020-Q4 2020
F. Milestone Completion	

Ensure the successful achievement of Milestone 2 for EMS Providers and ePCR in the region	Q3 2020-Q4 2020
Milestone 3: Interoperability	Q1 2021
A. Engagement	
Participate in local coordinating committee check-ins	Q1 2021
Check in with MX regularly	Q1 2021
B. Project Administration	
Risk mitigation and identification	Q1 2021
C. Invoicing & Milestone Completion	
Assist with documentation and analysis of milestone progress, submission of monthly reports, EMS milestone achievement, and invoices to EMSA	Q1 2021
D. Milestone Completion	
Ensure the successful achievement of Milestone 3 for EMS Providers and ePCR in the region	Q1 2021
Milestone 4: Data Analytics	Q2 2020-Q1 2021
Ensure ePCR submits prehospital data from EMS providers on matched patients to MX	Q2 2020-Q1 2021
Ensure ePCR reports to MX on usage on Search, Alert, File, Reconcile	Q2 2020-Q1 2021
Assist MX in the collection of metrics from +EMS Participant	Q2 2020-Q1 2021
Assist MX in evaluating performance measures on prehospital and hospital outcome data	Q2 2020-Q1 2021

Exhibit C. List of Participants within LEMSA jurisdiction.

EMS Provider	ePCR Vendor	County
AMR Blythe	ImageTrend	Riverside County
AMR Desert Cities	ImageTrend	Riverside County
AMR Hemet	ImageTrend	Riverside County
AMR Riverside	ImageTrend	Riverside County
Riverside County Fire Dept. Riverside	ImageTrend	Riverside County
Riverside County Fire Dept. Coves	ImageTrend	Riverside County
Riverside County Fire Dept. Indio	ImageTrend	Riverside County

Hospital	EHR Vendor	County
Parkview Community Hospital	Meditech	Riverside County
Riverside University Hospital System	EPIC	Riverside County
Tenet Desert Regional Medical Center	Cerner	Riverside County
Tenet John F. Kennedy Memorial Hospital	Cerner	Riverside County

Exhibit D. LEMSA Milestone Payment Fee Schedule.

Milestone	Total LEMSA payment amount	LEMSA portion	EMS amount (2 providers - AMR and Fire)	Anticipated Milestone Completion Date
Milestone 1-a (30% of total award)	\$68,670.00	\$57,420.00	\$11,250.00	Q1 2020
Milestone 1-b (20% of total award)	\$45,780.00	\$38,280.00	\$7,500.00	Q2 2020
Milestone 2 (15% of total award)	\$34,335.00	\$28,710.00	\$5,625.00	Q4 2020
Milestone 3 (15% of total award)	\$34,335.00	\$28,710.00	\$5,625.00	Q1 2021
Milestone 4 (20% of total award)	\$45,780.00	\$38,280.00	\$7,500.00	Q2 2021
Total	\$228,900	\$191,400.00	\$37,500.00	