

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



**ITEM: 3.40  
(ID # 22445)**

**MEETING DATE:**

Tuesday, January 09, 2024

**FROM :** RUHS-PUBLIC HEALTH:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM – PUBLIC HEALTH: Ratify and Approve the Professional Services Agreement with Inland Empire Health Plan (IEHP) for the Loving Support Breastfeeding Program, Effective Upon Signature through December 31, 2024. All Districts [Total aggregate amount \$350,000; up to \$35,000 in additional compensation – 100% State]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Ratify and approve the Professional Services Agreement with Inland Empire Health Plan (IEHP) for the Loving Support Breastfeeding Program, effective upon signature through December 31, 2024;
2. Authorize the Chair of the Board to sign the agreement, and Attachment C (Ownership Information) on behalf of the County; and
3. Authorize the Director of Public Health or designee, or Purchasing agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved as to form by County Counsel to: (a) sign any certifications, reports or amendments to the Agreement that include modifications of the statement of work or the performance period that stay within the intent of the Agreement; (b) sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total aggregate amount; and (c) sign all certifications, assurances, reports or other related documents required by Inland Empire Health Plan.

**ACTION: Consent, Policy, A-30**

  
Kim Saruwatari, Director of Public Health 12/18/2023

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Perez, 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 Gutierrez  
Nays: None  
Absent: None  
Date: January 9, 2024  
xc: RUHS-PH

Kimberly A. Rector  
Clerk of the Board

By:   
Deputy

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

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$262,500	\$87,500	\$350,000	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> 100% State			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 23/24 -24/25	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Inland Empire Health Plan (IEHP) is providing additional funding to Riverside University Health System – Public Health’s (RUHS-PH) Nutrition and Health Promotion Branch, for the provision of breastfeeding support services for the residents of Riverside County. The services to be provided include a 24-hour Loving Support Breastfeeding Helpline and coordinated outreach to health professionals.

The Loving Support Breastfeeding Program (LSBP) has been in existence since 2000 and this funding will allow services to continue for families in Riverside County. The Helpline staff consists of Internationally Board-Certified Lactation Consultants (IBCLC) and Lactation Educators that make outgoing calls to breastfeeding mothers to encourage and support breastfeeding and answer incoming calls to triage and provide counseling for their concerns and questions.

The LSBP will provide targeted follow-up outreach calls among engaged IEHP Members who have utilized the Helpline, to provide ongoing support for breastfeeding and to support achieving the following care impact/outcome for IEHP Members:

- a. Engage Members (within 7-84 days) to improve postpartum visit completion with Primary Care Provider (PCP) to close care gaps;
- b. Engage infant/child to receive and be on track with first and second set of immunizations to close care gaps;
- c. Engage Members to follow up with newborn Well-Child Visits with PCP to close care gaps; and
- d. Completion of satisfaction survey in the LSBP program.

**Impact on Residents and Businesses**

The LSBP provides mothers, families, and health professionals the support they need to encourage and continue breastfeeding infants of Riverside County. It is well documented that exclusive breastfeeding leads to healthier infants and mothers, increased satisfaction, decreased absenteeism at work and decreased land waste. LSBP has been utilized by residents, the healthcare community, and businesses in their support for breastfeeding women in Riverside County.

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

**Additional Fiscal Information**

This Agreement does not require any county matching funds and there is no impact to County General Funds. The total aggregate amount awarded to RUHS-PH is \$350,000. The allocation will be distributed for each fiscal year as follows:

**County Fiscal Year**

<b>Year</b>	<b>Amount</b>
FY 23/24	\$262,500
FY 24/25	\$87,500
<b>Total</b>	<b>\$350,000</b>

**Contract History and Price Reasonableness**

The Riverside County Board of Supervisors approved the previous Agreement with IEHP for Loving Support Breastfeeding Program on September 24, 2019, Agenda Item 3.25, in the amount of \$75,000 for the period of performance of October 1, 2019 through September 30, 2020.

The Riverside County Board of Supervisors approved the First Amendment to the Agreement with IEHP for Loving Support Breastfeeding Program on September 15, 2020, Agenda Item 3.21, to increase the amount by \$75,000 and extend the performance period through September 30, 2021.

The Riverside County Board of Supervisors approved the Second Amendment to the Agreement with IEHP for Loving Support Breastfeeding Program on September 28, 2021, Agenda Item 3.15, to increase the amount by \$75,000 and extend the performance period through September 30, 2022.

**ATTACHMENTS:**

**ATTACHMENT A** Professional Services Agreement with Inland Empire Health Plan

  
Douglas Ordóñez Jr. 1/2/2024

 Aaron Gettis, Deputy County Counsel 12/18/2023  Aaron Gettis, Deputy County Counsel 12/19/2023



WHEN DOCUMENT IS FULLY EXECUTED RETURN  
**CLERK'S COPY**  
to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

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**PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**LOVING SUPPORT BREASTFEEDING PROGRAM**

**BETWEEN**

**INLAND EMPIRE HEALTH PLAN**

**AND**

**COUNTY OF RIVERSIDE ON BEHALF OF  
RIVERSIDE UNIVERSITY HEALTH SYSTEM - PUBLIC HEALTH**

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JAN 9 2024 3.40



**PROFESSIONAL SERVICES AGREEMENT  
INLAND EMPIRE HEALTH PLAN**

This Professional Services Agreement (“Agreement”) is made and entered into by and between Inland Empire Health Plan (“IEHP”), a local public entity of the State of California, and County of Riverside, a political subdivision of the State of California, on behalf of its Riverside University Health System - Public Health (“CONTRACTOR”), with reference to the following facts:

**RECITALS**

WHEREAS, IEHP is in need of the professional services offered by CONTRACTOR;  
and

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement may be presented to the Governing Board of IEHP for approval and is effective only upon the authorization of the Governing Board of IEHP;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, and in the following exhibits or attachments attached hereto and incorporated herein by this reference:

- ATTACHMENT A – SCOPE OF SERVICES
- ATTACHMENT B – SCHEDULE OF FEES
- ATTACHMENT C – OWNERSHIP INFORMATION
- ATTACHMENT D – BUSINESS ASSOCIATE AGREEMENT

The Parties hereto mutually agree as follows:

**1. SERVICES**

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR shall provide the services necessary to perform in a complete, skillful and professional manner all those services described in Attachment A. CONTRACTOR agrees to maintain any applicable professional license(s) as required by law at all times while performing services under this Agreement.

- B. CONTRACTOR must disclose all current subcontracts which it holds related to the services performed under this Agreement in Attachment A. Other than as specifically indicated in Attachment A, CONTRACTOR will not utilize the services of any subcontractors in providing the services required hereunder without IEHP's prior written approval. CONTRACTOR shall request approval by submitting a written description of the services to be subcontracted along with the name of the subcontractor at least 90 days prior to the anticipated subcontractor start date. If approved by IEHP, CONTRACTOR shall remain the prime contractor for the services and be responsible for the conduct and performance of each approved subcontractor. If approved by IEHP, CONTRACTOR shall furnish to IEHP a copy of the executed subcontract. All references to CONTRACTOR in this Agreement in the context of providing services, where applicable, will also include CONTRACTOR's approved subcontractors.
- C. CONTRACTOR, or its agents or subcontractors, shall not perform any services outside the continental United States of America without IEHP's prior written consent. In the event CONTRACTOR is in breach of this Section, IEHP shall have, in its sole discretion, the right to immediately terminate this Agreement.

## 2. COMPENSATION

- A. IEHP shall compensate CONTRACTOR for the services set forth in Attachment A, upon approval of a properly presented invoice for services. Payment shall be made "net-30" terms from the date of receipt of a complete invoice.
- B. IEHP shall make payments to CONTRACTOR as outlined in Attachment B. CONTRACTOR shall submit invoices to IEHP for authorized services within thirty (30) days of the month of the rendered service. Invoices from CONTRACTOR must be received by IEHP no later than ninety (90) days from the month wherein the services were rendered; invoices submitted after ninety (90) days from the month of services are not eligible for reimbursement.
- C. Other than as stated on Attachment B, price increases will not be permitted during the Agreement term. If applicable, annual increases shall not exceed the Consumer Price Index- All Consumers, All Items – Riverside, San Bernardino and Ontario areas and be subject to satisfactory performance review by IEHP and approved (if needed) for budget funding by the Governing Board.
- D. The total compensation payable under this Agreement shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00). In no event shall compensation exceed this amount without a written amendment to this Agreement authorizing such increase in total compensation payable to CONTRACTOR. CONTRACTOR agrees to monitor its costs at all times and provide IEHP forty-

five (45) days' written notice if CONTRACTOR becomes aware that it may exceed the total compensation authorized pursuant to this Section.

- E. It is expressly agreed between the parties that payment to CONTRACTOR does not constitute or imply acceptance by IEHP of any portion of the CONTRACTOR's work.
- F. It is mutually agreed and understood that the obligations of IEHP are contingent upon the availability of state and federal funds. In the event that such funds are not forthcoming for any reason, this Agreement is rendered null and void, and IEHP shall immediately notify CONTRACTOR in writing. This Agreement shall be deemed terminated and of no further force and effect immediately on IEHP's notification to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of costs for services rendered in accordance with this agreement.

### 3. DISALLOWANCE

In the event CONTRACTOR receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall refund the disallowed amount to IEHP within thirty (30) days of IEHP's written request. IEHP retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement.

### 4. TERM AND TERMINATION

- A. Term of Agreement. This Agreement shall be effective as of the date of last signature ("Effective Date") and shall continue in effect through December 31, 2024 ("Initial Term") unless earlier terminated in accordance with the provisions of Paragraph B of Section 4 (TERM AND TERMINATION) of this Agreement. This Agreement shall immediately lapse unless IEHP exercises its option to extend the term at the end of the Initial Term or any Extended Term.
- B. Termination.
  - 1) Termination for Convenience. Either party may terminate this Agreement, for convenience, upon sixty (60) days' written notice to the other party in accordance with Section 18 (NOTICES).
  - 2) Termination for Cause. Should IEHP determine that there is a basis for termination for cause, such termination shall be effected upon five (5) days' written notice to CONTRACTOR in accordance with Section 18 (NOTICES).

3) Immediate Termination. Immediate termination shall be available to the non-defaulting party, as specified below, by providing written notice in accordance with Section 18 (NOTICES).

- i. The non-defaulting party may immediately terminate this Agreement upon its determination that the other party has engaged in a fraudulent activity against the non-defaulting party or IEHP health plan members.
- ii. If a party is excluded, terminated, or suspended from participation in any state or federal health care program, including, without limitation, appearing on the federal List of Excluded Individuals/Entities (LEIE), the Medi-Cal Suspended and Ineligible Provider List (SIPL), or the System for Award Management (SAM). If such party is CONTRACTOR, CONTRACTOR understands that IEHP is prohibited from paying CONTRACTOR for any services rendered on or after the date of exclusion.
- iii. Pursuant to any provision of this Agreement which expressly authorizes immediate termination.

4) Effect of Termination.

- i. If, for any reason, this Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to IEHP all documents related to services rendered under this Agreement, including without limitation, copies of work papers, schedules or other work products related to this Agreement.
- ii. Unless otherwise provided herein, the rights and obligations of any party which by their nature extend beyond the expiration or termination of this Agreement, shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. This includes, without limitation, the following provisions: DISALLOWANCE, INDEMNIFICATION, LIMITATION OF LIABILITY, WORK PRODUCT AND INTELLECTUAL PROPERTY, CONFIDENTIALITY, and GOVERNING LAW; VENUE.



## 5. INDEMNIFICATION

- A. CONTRACTOR shall indemnify, and hold harmless IEHP, its Governing Board, directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as “Indemnitees”) from liability, loss, settlement, claim, demand, and expense of any kind, arising out of the performance of services or the omission of any required act under the Agreement (and as noted in Attachment A), of the CONTRACTOR, its officers, employees, subcontractors, agents or representatives. CONTRACTOR shall defend the Indemnitees in any claim or action based upon any such alleged acts or omissions, at its sole expense, which shall include all costs and fees, including, but not limited to, attorney fees, cost of investigation, defense, and settlement or awards.

It is not the intent of the parties that the provisions of this Section and the provisions of the Indemnification provision in Attachment D shall be in conflict. In the event of any conflict, the Indemnification provisions in Attachment D shall be interpreted to relate only to matters within the scope of the HIPAA Business Associates Agreement.

- B. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of IEHP; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR’s indemnification to Indemnitees as set forth herein.
- C. CONTRACTOR’s obligation hereunder shall be satisfied when CONTRACTOR has provided to IEHP the appropriate form of dismissal relieving IEHP from any liability for the action or claim involved.
- D. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR’s obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

### MUTUAL INDEMNIFICATION

#### A. Indemnification by Contractor:

1) CONTRACTOR shall indemnify, and hold harmless IEHP, its Governing Board, directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as “Indemnitees”) from liability, loss, settlement, claim, demand, and expense of any kind, arising out of the performance of services or the omission of any required act under the Agreement (and as noted in Attachment A), of the CONTRACTOR, its officers, employees, subcontractors, agents or representatives. CONTRACTOR shall defend the Indemnitees in any claim or action based upon any

such alleged acts or omissions, at its sole expense, which shall include all costs and fees, including, but not limited to, attorney fees, cost of investigation, defense, and settlement or awards.

It is not the intent of the parties that the provisions of this Section and the provisions of the Indemnification provision in Attachment D shall be in conflict. In the event of any conflict, the Indemnification provisions in Attachment D shall be interpreted to relate only to matters within the scope of the HIPAA Business Associates Agreement.

2) With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of IEHP; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR's indemnification to Indemnitees as set forth herein.

3) CONTRACTOR's obligation hereunder shall be satisfied when CONTRACTOR has provided to IEHP the appropriate form of dismissal relieving IEHP from any liability for the action or claim involved.

4) The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

#### B. Indemnification by IEHP:

1) IEHP shall indemnify, and hold harmless CONTRACTOR, its Governing Board, directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as "CONTRACTOR Indemnitees") from liability, loss, settlement, claim, demand, and expense of any kind, arising out of the failure of IEHP, its officers, employees, subcontractors, agents or representatives, as applicable, to perform IEHP's obligation(s) under this Agreement. IEHP shall defend the CONTRACTOR Indemnitees in any claim or action based upon any such alleged acts or omissions, at its sole expense, which shall include all costs and fees, including, but not limited to, attorney fees, cost of investigation, defense, and settlement or awards.

2) With respect to any action or claim subject to indemnification herein by IEHP, IEHP shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of CONTRACTOR; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes IEHP's indemnification to Indemnitees as set forth herein.

3) IEHP's obligation hereunder shall be satisfied when IEHP has provided to CONTRACTOR the appropriate form of dismissal relieving CONTRACTOR from any liability for the action or claim involved.

4) The specified insurance limits required in this Agreement shall in no way limit or circumscribe IEHP's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

## 6. LIMITATION OF LIABILITY

Without affecting the indemnification obligations set forth in this Agreement, in no event shall either party be liable for consequential, indirect, or incidental damages, including, without limitation, lost profits, arising out of the services provided under this Agreement.

## 7. INSURANCE

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

- A. Workers' Compensation - covering all of CONTRACTOR's personnel performing services under this Agreement as prescribed by the laws of the jurisdiction where work is performed. Policy shall include Employers' Liability including Occupational Disease with limits not less than \$1,000,000 per person per accident.
- B. Commercial General Liability - including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, with a general aggregate limit of no less than two (2) times the occurrence limit.
- C. Vehicle Liability - all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit, with a general aggregate limit of no less than two (2) times the occurrence limit.
- D. Professional Liability - a limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. CONTRACTOR shall ensure continuous coverage for such length of time as necessary to cover any and all claims (i.e. appropriate Tail Coverage for coverage written on a claims made basis, etc.).
- E. Cyber and Privacy Liability - covering claims involving privacy violations, information theft, damage to or destruction of electronic information, negligent, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The below referenced coverage is required only if any products and/or services related to professional services or information technology (including hardware and/or software) are

provided to IEHP under this Agreement for such length of time as necessary to cover any and all claims.

- 1) Privacy & Network Liability: \$1,000,000
- 2) Internet Media Liability: \$1,000,000
- 3) Business Interruption & Expense: \$1,000,000
- 4) Data Extortion: \$1,000,000
- 5) Regulatory proceeding: \$1,000,000
- 6) Data Breach Notification & Credit Monitoring: \$1,000,000

In the event of a breach, it is the CONTRACTOR's obligation to notify IEHP's Compliance department immediately, but no later than 24 hours via telephone to the Compliance Hotline (866) 355-9038 and via email to the Compliance Mailbox [compliance@iehp.org](mailto:compliance@iehp.org).

F. General Insurance Provisions – All lines.

- 1) Insurance to be placed with insurers with a current A. M. BEST rating of not less than A: VIII (A:8) unless otherwise acceptable to IEHP.
- 2) CONTRACTOR must declare any deductibles or self-insured retentions ("SIRs") for insurance coverage required to be approved by IEHP. Should any deductibles or SIRs be unacceptable to IEHP, IEHP may require CONTRACTOR to: 1) reduce or eliminate such deductibles or SIRs; 2) provide proof of ability to pay such required fees/expenses within the retention or deductible; and 3) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 3) CONTRACTOR shall furnish IEHP with either 1) original Certificate(s) of Insurance or amendatory endorsements effecting coverage as required herein, or 2) if requested by IEHP, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, CONTRACTOR shall provide no less than thirty (30) days' written notice to IEHP prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In such event, this Agreement shall terminate forthwith, unless IEHP receives, prior to such effective date, another properly executed original Certificate of Insurance, including all endorsements, evidencing the coverage set forth herein are in full force and effect. **CONTRACTOR shall not commence operations until IEHP has been furnished original Certificate(s) of Insurance and endorsements.**
- 4) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

- 5) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to IEHP.
- 6) CONTRACTOR agrees to notify IEHP of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**8. WORK PRODUCT AND INTELLECTUAL PROPERTY**

- A. CONTRACTOR work product, including without limitation, all reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement on behalf of IEHP, becomes the property of IEHP and shall be transmitted to IEHP at the termination of this Agreement (the “Deliverables”).
- B. To the extent that any CONTRACTOR Information (as defined below) is contained in any of the Deliverables, CONTRACTOR hereby grants to IEHP a paid-up, royalty-free, nonexclusive, perpetual license to use and reproduce such CONTRACTOR Information solely for IEHP’s internal business operations.
- C. CONTRACTOR Information is defined as information created, acquired or otherwise to which CONTRACTOR has rights in (or may otherwise obtain rights in), including methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; and data, documentation, and proprietary information and processes.

**9. OFFICERS, OWNERS, STOCKHOLDERS AND CREDITORS**

On an annual basis, CONTRACTOR shall identify the names of the following persons and update such names by providing IEHP with thirty (30) days written notice of any changes in the information of such persons by listing them on Attachment C:

- A. CONTRACTOR officers and owners who own greater than 5% of the CONTRACTOR;
- B. Stockholders owning greater than 5% of any stock issued by CONTRACTOR;
- C. Major creditors holding more than 5% of any debts owed by CONTRACTOR;

10. **NONDISCRIMINATION**

This Agreement hereby incorporates by reference the provisions of *Title 2, CCR, Sections 11105 et seq.*, as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of *Title 2, CCR, Sections 11105 et seq.*, and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

11. **CONFLICT OF INTEREST**

CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

12. **PROTECTED HEALTH INFORMATION (“PHI”)**

In the event that there is PHI shared between IEHP and CONTRACTOR pursuant this Agreement, IEHP and CONTRACTOR are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified at Title 45, C.F.R., Parts 160 and 164, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 (HITECH), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent hereto and as amended, for purposes of services rendered pursuant to the Agreement. The Parties agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under HIPAA and HITECH. The Parties further agree that it shall be in compliance with the requirements of HIPAA, HITECH, and the laws and regulations promulgated subsequent hereto and as amended. CONTRACTOR further agrees to the provisions of the HIPAA Business Associate Agreement, attached hereto in Attachment D, and incorporated herein by this reference.

### 13. CONFIDENTIALITY

- A. Each Party receiving Confidential Information (a “Receiving Party”) hereunder, as defined below, shall hold the Confidential Information in strict confidence and use and access the Confidential Information only as is necessary for the performance of this Agreement. Each Receiving Party may only disclose Confidential Information to its employees and third party consultants who have a bona fide need to know and who have a written agreement restricting use and disclosure of Confidential Information to no less an extent as that required of the parties under this Agreement or as otherwise required by law. Receiving Party shall not otherwise disclose Confidential Information without the prior written consent of the other party (the “Disclosing Party”) or as otherwise required by law.
- B. Confidential Information means any technical, financial, trade secrets, or any information the Disclosing Party has received from others, including personal information, which it is obligated to treat as confidential or proprietary, including without limitation, any and all ideas, techniques, processes, methods, systems, cost data, computer programs, formulas, work in progress, customers/members, business plans, and other business information. Confidential Information shall not include any information that:
- 1) Is or becomes available to the public (other than through any act or omission of Receiving Party);
  - 2) Is required to be disclosed pursuant to an applicable law, subpoena, or court order, provided that the Receiving Party notifies the Disclosing Party to allow Disclosing Party to protect its interests, if desired;
  - 3) Is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party;
  - 4) Is lawfully known by the Receiving Party at the time of disclosure or otherwise lawfully obtained by a third party with no obligation of confidentiality.

### 14. PUBLIC ENTITY STATUS; BROWN ACT/PUBLIC RECORDS ACT

The parties hereby acknowledge and agree that IEHP is a local public entity of the State of California subject to the Brown Act, *California Government Code Sections 54950 et seq.*, and the Public Records Act, *California Government Code Sections 7920.000 et seq.*

15. **COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS**

- A. General. The parties shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect, subsequently amended or hereafter enacted. The parties shall further observe and comply with all applicable executive orders, directives, requirements (including state and/or federal contract requirements), and standards by any organization having jurisdiction over IEHP to regulate the delivery of health care services. This shall include applicable accrediting organizations. All the aforementioned items are hereby made a part hereof and incorporated herein by reference.
- B. Plan Licensing/State Requirements. CONTRACTOR understands that IEHP is a Medi-Cal Managed Care Health Plan and subject to the requirements under applicable laws (including but not limited to the Knox-Keene Health Care Service Plan Act and the Waxman-Duffy Prepaid Health Plan Act), contractual obligations set forth under the contract between IEHP and the California Department of Health Care Services (“DHCS”), and regulations promulgated by the California Department of Managed Health Care (“DMHC”) and DHCS. CONTRACTOR understands that specified requirements of the DHCS and DMHC may apply to CONTRACTOR as a contractor of IEHP.

16. **AUDIT RIGHTS**

- A. CONTRACTOR understands that IEHP is a health plan regulated by entities, including without limitation, DMHC, DHCS, and the Centers for Medicare and Medicaid Services. To the extent CONTRACTOR is identified as a subcontractor for which IEHP is required to do oversight due to its legal and/or contractual obligations to such regulatory agencies, the following provisions shall apply:
- 1) Maintenance of Records. CONTRACTOR will maintain complete and accurate books, records and documentation, including audited financial statements prepared in accordance with generally accepted accounting procedures and practices, to sufficiently and properly reflect the services provided and CONTRACTOR’s direct and indirect costs invoiced in the performance of the Agreement. The retention period for such books and records shall be for a period of ten (10) years or as otherwise stated in the Attachments to this Agreement.
  - 2) Records Subject to Inspection. All books, records, documents, and other materials maintained by CONTRACTOR and relating to the Agreement will be subject, at reasonable times during regular business hours and upon thirty (30) days prior written notice, to examination, inspection, copying, or audit by authorized IEHP personnel. The parties agree that books, records, documents, and other evidence of accounting procedures and practices related to CONTRACTOR’s cost structure, including overhead,



general and administrative expenses, and profit factors will be excluded from IEHP's review. Notwithstanding the foregoing, to the extent CONTRACTOR does not maintain audited financial statements, IEHP shall maintain the right to conduct a financial audit to confirm CONTRACTOR's financial viability in connection with demonstrating CONTRACTOR's ability to continue providing services in accordance with the standards outlined under this Agreement.

- 3) Subcontracts. CONTRACTOR will incorporate into any subcontracts the records retention and review requirements of this Section.

**17. EXCLUSION/DEBARMENT LISTS**

- A. CONTRACTOR represents that it, and the employees and consultants engaged under this Agreement, are not excluded, debarred, or suspended individuals/entities under any exclusion or debarment list relating to state or federal health care programs, including the Federal List of Excluded Individuals/Entities, System for Award Management, and the Suspended and Ineligible Provider List. CONTRACTOR warrants that such status shall be maintained throughout the term of this Agreement.
- B. CONTRACTOR understands that appearing on any such list requires IEHP to terminate this Agreement immediately, and prohibits IEHP from paying CONTRACTOR for any services rendered on or after the date of exclusion. Should CONTRACTOR be in receipt of payment for services rendered after the exclusion date, CONTRACTOR agrees to submit a refund of such fees upon written notice by IEHP. IEHP expressly reserves its right to recoup payment of such fees under Section 3 (DISALLOWANCE).

- C. On March 4, 2022, California Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs all California state agencies and departments to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. All contractors and grantees are obligated to comply with the Economic Sanctions. Accordingly, should the State of California (the State) or IEHP determine CONTRACTOR is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. CONTRACTOR shall be provided with advance written notice of such termination, allowing CONTRACTOR at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the State or IEHP.

**18. NOTICES**

Other than correspondences for which email communication is expressly reserved pursuant to the terms of this Agreement, all notices required or contemplated by this Agreement shall be delivered to the respective parties in the manner and at the addresses set forth below or to such other address(es) as the parties may hereafter designate, in writing. Such notices will be deemed given if sent by certified United States mail or commercial courier, at the time of receipt confirmed by corresponding documentation.

IEHP:

Jarrold McNaughton, MBA, FACHE  
Chief Executive Officer  
IEHP 10801 Sixth Street  
Rancho Cucamonga, CA 91730  
(909) 890-2000  
cc: Procurement Department  
[Procurement@iehp.org](mailto:Procurement@iehp.org)

CONTRACTOR:

RUHS – Public Health  
Procurement & Logistics  
4065 County Circle Drive,  
Riverside, California 92503  
Attn: Contracts Unit  
[PH-Contracts@ruhealth.org](mailto:PH-Contracts@ruhealth.org)  
AND  
[Antoniveros@ruhealth.org](mailto:Antoniveros@ruhealth.org)

**19. SEVERABILITY**

In the event any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect.

20. **WAIVER**

A waiver by a party of any breach of any one (1) or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

21. **INDEPENDENT CONTRACTOR**

It is understood and agreed that the relationship between the parties is an independent contractor relationship. Neither party, including its officers, agents, employees or subcontractors, shall be considered to be employees of the other, nor entitled to any benefits payable to such employees, including Workers' Compensation Benefits. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.

22. **GOVERNING LAW; VENUE**

- A. The provisions of this Agreement shall be construed in accordance with the laws of the State of California, excluding its conflicts of law provisions.
- B. The provisions of the Government Claims Act (*California Government Code Sections 900 et seq.*) must be followed for any disputes under this Agreement.
- C. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law) courts located in the counties of San Bernardino or Riverside, State of California.

23. **FORCE MAJEURE**

Each party shall be excused from performing hereunder to the extent that it is prevented from performing as a result of any act or event which occurs and is beyond the reasonable control of such party, including, without limitation, acts of God, war, or action of a governmental entity; provided that the affected party provides the other party with prompt written notice thereof and uses all reasonable efforts to remove or avoid such causes.

24. **ASSIGNMENT**

A party may not sell, assign, transfer, or otherwise convey this Agreement without the prior express written consent of the other party. Any attempted assignment of this Agreement not in accordance with this Section shall be null and void.

**25. CHANGE IN CONTROL**

CONTRACTOR must obtain IEHP's written consent prior to CONTRACTOR entering into (i) any transaction or series of related transactions (including, but not limited to, any reorganization, merger, or consolidation) that results in the transfer of 50% or more of the outstanding voting power; or (ii) sale of all or substantially all of the assets of the CONTRACTOR to another person or entity. In the event CONTRACTOR fails to obtain IEHP's prior written consent, IEHP shall have the option to terminate this Agreement immediately.

**26. ALTERATION AND/OR AMENDMENT**

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Governing Board of IEHP or designee may authorize any alteration or revision of this Agreement on behalf of IEHP. Notwithstanding the foregoing, amendments required due to legislative, regulatory or other legal authority do not require the prior approval of CONTRACTOR and shall be deemed effective immediately (or such other time frame as required by law or regulation) upon CONTRACTOR's receipt of notice. Notice of amendments required by law, regulation or other legal authority may be given to CONTRACTOR via regular mail at the address provided in Section 18. NOTICES.

**27. ENTIRE AGREEMENT**

This Agreement, including all attachments, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

**28. COUNTERPARTS; SIGNATURES**

This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. The parties' faxed signatures, and/or signatures scanned into PDF format, shall be effective to bind them to this Agreement.

(SIGNATURE PAGE TO FOLLOW)



IN WITNESS WHEREOF, the parties hereto certify that the individuals signing below have authority to execute this Agreement on behalf of their respective organizations, and may legally bind them to the terms and conditions of this Agreement, and any attachments hereto. The parties have signed this Professional Services Agreement as set forth below.

COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of its Riverside University Health System - Public Health department:

By:   
**CHUCK WASHINGTON**  
Chair, Board of Supervisors of Riverside County

Date: 1/9/24

INLAND EMPIRE HEALTH PLAN:

By: \_\_\_\_\_  
Jarrod McNaughton, MBA, FACHE  
Chief Executive Officer

Date: \_\_\_\_\_

ATTEST:  
Kimberly Rector  
Clerk of the Board

By:

By: \_\_\_\_\_  
Chair, IEHP Governing Board

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Minh C. Tran  
County Counsel

By:   
Gregg Gu  
Deputy County Counsel

Attest: \_\_\_\_\_  
Secretary, IEHP Governing Board

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Anna W. Wang  
Vice President, General Counsel  
Inland Empire Health Plan

Date: \_\_\_\_\_

ATTACHMENT A

SCOPE OF SERVICES

COUNTY OF RIVERSIDE ON BEHALF OF  
RIVERSIDE UNIVERSITY HEALTH SYSTEM - PUBLIC HEALTH

A. Program Overview:

Riverside University Health System - Public Health, Loving Support Breastfeeding Program (LSBP) provides accessible and comprehensive breastfeeding education, support and assistance to families and services to improve the health, social-emotional and developmental status of children.

The LSBP is comprised of two (2) components: (1) Services for Families and; (2) Services for Professionals Serving Families.

1. Services for Families:

The LSBP is designed to assist all new families. LSBP utilizes breastfeeding education and support strategies that are effective in increasing breastfeeding initiation and duration among women residing in Riverside County. The LSBP provides information, encouragement and assistance to new mothers to ensure they have the necessary resources to successfully breastfeed at birth through at least, their baby's first year.

The Loving Support Breastfeeding Support Helpline, managed by Lactation Counselors and delivered countywide, provides mothers the assistance and referrals they need; the Loving Support program also maintains a toll-free phone resource and website which is regularly updated with current resources relevant to prenatal and breastfeeding women.

2. Services for Professionals Serving Families

LSBP will coordinate with IEHP to provide outreach to Riverside County delivery hospitals and Health Professionals to maintain referrals to Loving Support Breastfeeding Helpline. Resources for professionals will be updated and maintained on website.

Additionally, LSBP will coordinate as IEHP's plan benefit for maternal/child health and be a resource to helping access this benefit. LSBP's services support IEHP's DHCS and NCQA accreditation goals to improve the following measures: W15/W30 (well child visits in the first 15 months of life, and in within 15-30 months of life) and Prenatal and Postpartum Care (PPC).

B. LSBP Scope of Work:



1. LSBP will provide breastfeeding support through the Loving Support Breastfeeding Helpline.
  - a. Helpline Services are provided in a culturally competent manner, in English, Spanish, and all other IEHP threshold languages (including Chinese and Vietnamese) or utilize Interpreter Services as needed.
2. Loving Support callers will feel supported and empowered to continue breastfeeding until their baby is at least 6 months old.
3. LSBP will provide IEHP Members with education and guidance to complete necessary health tasks that will keep both mom and baby healthy.
4. LSBP will outreach to and collaborate with local community/public health programs to promote referrals to Loving Support Helpline and will provide quarterly (detailed by month) update on these efforts.
5. LSBP will provide targeted follow-up outreach calls among engaged IEHP Members who have utilized the Helpline, to provide ongoing support for breastfeeding and to support achieving the following care impact/outcome for IEHP Members:
  - a. Engage Members (within 7-84 days) to improve postpartum visit completion with PCP to close care gaps;
  - b. Engage infant/child to receive and be on track with first and second set of immunizations to close care gaps;
  - c. Engage Members to follow up with newborn Well-Child Visits with PCP to close care gaps; and
  - d. Completion of satisfaction survey in the LBSP program.
6. Reporting: LBSP will collaborate with IEHP to collect data and provide quarterly reports to evaluate the effectiveness of the program.
  - a. LSBP will collect the following data points for the process objectives to support the overall evaluation of the program (IEHP will be responsible for the impact/outcome objectives).
    - i. # of IEHP Members served by Loving Support
    - ii. # of Follow-ups Conducted
    - iii. # of Members who received care gap guidance (W15, W30, PPC)
    - iv. # of RUHS Staff who received IEHP Training
  - b. LBSP will provide demographic utilization data to include:
    - i. Insurance type, feeding age with status, call log reason, call hours, and breastfeeding status at discharge.

7. IEHP plan benefit and resource navigation: LSBP will coordinate in at least 2 annual training sessions conducted by IEHP to obtain knowledge of health plan benefits (related to maternal and child health) and disseminate this resource to provide health navigation and support for the needs of IEHP Members that may connect with the Helpline.
  - a. LSBP will ensure that all current, and new staff members will also participate in annual trainings to meet requirements.

**C. Objectives:**

The evaluation of this partnership and overall program effectiveness will be based on the following objectives:

1. Process objectives:
  - a. # of outbound calls made
  - b. # of inbound calls received
  - c. # Satisfaction survey collected
2. Impact objectives:
  - a. Breastfeeding rate at newborn, 6 weeks, and 6 months
  - b. Baby's enrollment into a health plan
  - c. Member ID to look at other internal IEHP program navigation/enrollment (i.e. Wildflower application, health education classes, CHW services, etc.)
3. Outcome objectives:
  - a. # of Members able to complete postpartum visit (within 7-84 days of delivery)
  - b. # of babies able to receive 1<sup>st</sup> and 2<sup>nd</sup> set of immunizations
  - c. # of well child visits (including developmental screenings)





ATTACHMENT B

SCHEDULE OF FEES

COUNTY OF RIVERSIDE ON BEHALF OF  
RIVERSIDE UNIVERSITY HEALTH SYSTEM - PUBLIC HEALTH

1. CONTRACTOR shall invoice IEHP electronically for Loving Support Breastfeeding Program fees to IEHP’s Accounts Payable Office at [apinvoices@iehp.org](mailto:apinvoices@iehp.org). Each invoice shall cite the CONTRACTOR’s name, address, and remit to address, description of the work performed, the time period covered by the invoice, and the amount of payment requested.
  - A. Invoices shall be paid electronically by IEHP to the banking institution/account numbers provided by the CONTRACTOR. In the event of a change in banking institution and/or account numbers, CONTRACTOR shall provide IEHP thirty (30) days prior written notice. IEHP will assume no liability for payments made to banking institutions and/or accounts that are due to CONTRACTOR’s failure to provide the correct information.
2. CONTRACTOR’s requests for payments and reimbursements must comply with the requirements set forth in Attachment A.
3. IEHP shall compensate CONTRACTOR for the services set forth in Attachment A, upon approval of a properly presented invoice for services.
4. Requests for services shall be on an as needed basis. CONTRACTOR’s quarterly fees are as follows.

Payment Due Date	Payment Details	Payment Amount*
Within 30 days of Effective Date	Start up and Training Fees	\$87,500
October 2023	Q3 Service period: July 2023 – September 2023 Quarterly Reports	\$43,750
January 2024	Q4 Service period: October 2023 – December 2023 Quarterly Reports	\$43,750
April 2024	Q1 Service period: January 2024 – March 2024 Quarterly Reports	\$43,750
July 2024	Q2 Service period: April 2024 – June 2024 Quarterly Reports	\$43,750
October 2024	Q3 Service period: July 2024 – September 2024 Quarterly Reports	\$43,750



January 2025	Q4 Service period: October 2024 – December 2024 Quarterly Reports	\$43,750
TOTAL NOT TO EXCEED PROJECT COSTS		\$350,000.00

*\*Quarterly payments are contingent upon receipt of reports*

5. All travel related expenses will be included in the total compensation value of the Agreement.



ATTACHMENT C

OWNERSHIP INFORMATION

Contractor's Name: County of Riverside

Tax Identification Number (TIN): 95-6000930

Address: 4065 County Circle Drive

City: Riverside State: CA Zip: 92596

Phone: 951-358-5137

Chair, Board of Supervisors: CHUCK WASHINGTON

Person Signing Contract: CHUCK WASHINGTON

Broker Representative: N/A

Please indicate below how your organization is legally organized:

- Sole Proprietorship
- Partnership (LLC, etc.)
- Corporation
  - Privately Held Company\*
  - Publicly Traded Company
  - Non-Profit Entity
- Government Agency
- Other (please indicate): \_\_\_\_\_

\*If Privately Held Company, please indicate the below information of the owners, officers, stockholders, and creditors if such interest is over 5%.

<u>Name</u>	<u>Ownership/Creditorship % (If greater than 5% interest)</u>
-------------	---

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date /

## ATTACHMENT D

### HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (the “Agreement”) is an Attachment to the Professional Services Agreement (the “Underlying Agreement”) between the Inland Empire Health Plan (“IEHP”) and County of Riverside, a political subdivision of the state of California, on behalf of its Riverside University Health System - Public Health (“Business Associate”) as of the “Effective Date,” of the Underlying Agreement.

#### RECITALS

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

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

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

WHEREAS, the provisions of the California Information Practices Act, more specifically found in California Civil Code sections 1798-1798.98; the Confidentiality of Alcohol and Drug Abuse Patient Records, found in Title 42 C.F.R. Part 2, the California Welfare and Institutions Code section 5328, and the California Health and Safety Code section 11845.5, as may be amended from time to time, which are applicable to the use of certain PHI and/or confidential information; and

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

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

WHEREAS, the parties intend to enter into this Agreement to address the requirements of HIPAA, HITECH, Privacy Rule, and Security Rule as they apply to Business Associate as a

business associate of IEHP, including the establishment of permitted and required uses and disclosures (and appropriate limitations and conditions on such uses and disclosures) of PHI and/or ePHI by Business Associate that is created or received in the course of performing services on behalf of IEHP, and to incorporate the business associate obligations set forth in HITECH; and,

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

WHEREAS, IEHP, on behalf of the California Department of Health Care Services (“DHCS”), provides services or arranges, performs, or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI in order to fulfill IEHP’s obligations under DHCS’ contract;

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

**1. DEFINITIONS**

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

B. Specific Definitions:

1) “Breach,” when used in connection with Unsecured PHI, means, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule (45 C.F.R. Part 164, Subpart E), which compromises the security or privacy of the PHI. Except as otherwise excluded under 45 C.F.R. § 164.402, such acquisition, access, use or disclosure is presumed to be a Breach unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

- i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- ii. The unauthorized person who used the PHI or to whom the disclosure was made;
- iii. Whether the PHI was actually acquired or viewed; and
- iv. The extent to which the risk to PHI has been mitigated.

- 2) “Discovered” means the first day on which such Breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the Breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- 3) “Electronic Protected Health Information” (“ePHI”) means, as defined in 45 C.F.R. § 160.103, PHI transmitted by or maintained in electronic media, and for purposes of this Agreement, is limited to the ePHI that Business Associate creates, receives, maintains or transmits on behalf of IEHP.
- 4) “Protected Health Information” (“PHI”) shall generally have the meaning given such term in 45 C.F.R. § 160.103, which includes ePHI, and for purposes of this Agreement, is limited to PHI, including ePHI, that Business Associate creates, receives, maintains or transmits on behalf of IEHP.
- 5) “Secretary” means the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- 6) “Subcontractor” means a person to whom a business associate delegates a function, activity, or service other than in the capacity of a member of the workforce of such business associate.
- 7) “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).

2. **SCOPE OF USE AND DISCLOSURE BY BUSINESS ASSOCIATE OF PHI AND/OR EPHI**

- A. Business Associate shall be permitted to use PHI and/or ePHI disclosed to it by IEHP:
  - 1) On behalf of IEHP, or to provide services to IEHP for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule, Security Rule, and/or HITECH.
  - 2) As necessary to perform any and all of its obligations under the Underlying Agreement.

- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this Agreement or required by law, Business Associate may:
- 1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - 2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate, only if:
    - i. The disclosure is required by law; or
    - ii. Business Associate obtains written assurances from any person or organization to which Business Associate will disclose such PHI and/or ePHI that the person or organization will:
      - a) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Business Associate disclosed it to the third party, or as required by law; and
      - b) Notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
  - 3) Use the PHI and/or ePHI to provide Data Aggregation services relating to the Health Care Operations of IEHP if authorized by the Underlying Agreement or pursuant to the written request of IEHP.
  - 4) De-identify any and all PHI and/or ePHI of IEHP received by Business Associate under this Agreement provided that the De-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Business Associate shall not:
- 1) Use or disclose PHI and/or ePHI it receives from IEHP, nor from another business associate of IEHP, except as permitted or required by this Agreement, or as required by law.
  - 2) Perform any services (including any and all subcontracted services), which involves creating, receiving, maintaining or transmitting PHI and/or ePHI outside the United States of America.

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



- D. Business Associate agrees that in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA and/or HITECH (including but not limited to prohibiting the disclosure of mental health, and/or substance abuse records), the more stringent laws and/or regulations shall control the disclosure of PHI. Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- E. Business Associate must provide DHCS with a list of external entities, including persons, organizations, and agencies, other than those within its treatment network and other than DHCS, to which it discloses lists of Medi-Cal Member names and addresses. Business Associate must provide DHCS with the list within 30 calendar days of the execution of this Agreement and annually thereafter.

### 3. OBLIGATIONS OF IEHP

- A. Notification of Restrictions to Use or Disclosure of PHI. IEHP agrees that it will make its best efforts to promptly notify Business Associate in writing of any restrictions, limitations, or changes on the use, access and disclosure of PHI and/or ePHI agreed to by IEHP in accordance with 42 U.S.C. § 17935(a), that may affect Business Associate's ability to perform its obligations under the Underlying Agreement, or this Agreement.
- B. Proper Use of PHI. IEHP shall not request Business Associate to use, access, or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule, Security Rule, and/or HITECH.
- C. Authorizations. IEHP will obtain any authorizations necessary for the use, access, or disclosure of PHI and/or ePHI, so that Business Associate can perform its obligations under this Agreement and/or the Underlying Agreement.
- D. Actions in Response to Business Associate Breach. IEHP shall complete the following in the event that IEHP has determined that Business Associate has a Breach:
  - 1) Determine appropriate method of notification to the patient/client(s) regarding a Breach as outlined in 45 C.F.R. § 164.404(d).

- 2) Send notification to the patient/client(s) without unreasonable delay but in no case later than sixty (60) days of Discovery of the Breach with at least the minimal required elements as follows:
    - i. Brief description of what happened, including the date of the Breach and the date of Discovery;
    - ii. Description of the types of Unsecured PHI involved in the Breach (such as name, date of birth, home address, Social Security number, medical insurance, etc.);
    - iii. Steps patient/client(s) should take to protect themselves from potential harm resulting from the Breach;
    - iv. Brief description of what is being done to investigate the Breach, to mitigate harm to patient/client(s) and to protect against any further Breaches; and
    - v. Contact procedures for patient/client(s) to ask questions or learn additional information, which must include a toll-free telephone number, an E-Mail address, website or postal address.
  - 3) Determine if notice is required to the Secretary and/or DHCS.
  - 4) If required, submit Breach information to the Secretary within the required timeframe, in accordance with 45 C.F.R. § 164.408(b).
- E. Contract Violations by Business Associate. Pursuant to 45 C.F.R. § 164.504(e)(1)(ii), if IEHP knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under this Agreement, IEHP must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, IEHP shall terminate the Agreement, if feasible.

#### 4. **OBLIGATIONS OF BUSINESS ASSOCIATE**

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

- B. Appropriate Safeguards. Business Associate shall use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical and technical safeguards in accordance with the Security Rule under 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 and be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels:
- 1) Business Associate shall issue and change procedures from time to time to improve electronic data and file security as needed to comply with the measures that may be required by the Privacy Rule or the Security Rule, as applicable, and at all times use an NIST-Approved Technology for all PHI and/or ePHI that is in motion, stored or to be destroyed.
  - 2) Business Associate shall extend such policies and procedures, if applicable, for the protection of physical PHI to prevent, detect, contain and correct security violations, as well as to limit unauthorized physical access to the facility or facilities in which the PHI is housed.
- C. Disclosure. Business Associate is solely responsible for its decisions regarding the safeguarding of PHI and other confidential information.
- D. Mitigation. Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI and/or ePHI by Business Associate in violation of this Agreement.
- E. Access to Records. Business Associate shall make facilities internal practices, systems, books, and records including policies and procedures, relating to the use, access, disclosure, and privacy protection of PHI received from IEHP, or created or received by Business Associate on behalf of IEHP, available to the Secretary and/or DHCS, for purposes of determining, investigating or auditing Business Associate's, IEHP's, and/or DHCS' compliance with the Privacy and Security Rules and/or HITECH, subject to any applicable legal restrictions. Business Associate shall also cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.
- F. Notification. If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify IEHP unless it is legally prohibited from doing so
- G. Carrying Out IEHP's Obligations. To the extent Business Associate is to carry out one or more of IEHP's obligations under the Privacy Rule, Business Associate

shall comply with the requirements of the Privacy Rule that applies to IEHP in the performance of such obligations.

- H. Subcontractors. In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall require Subcontractors that create, receive, maintain or transmit PHI and/or ePHI on behalf of Business Associate, to agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to the PHI and/or ePHI, including the restrictions, conditions and requirements set forth in this Agreement.
- I. Contract Violations by Subcontractors. Pursuant to 45 C.F.R. § 164.504(e)(1)(iii), if Business Associate knows of a pattern of activity or practice of the Subcontractor that constitutes a material breach or violation of the Subcontractor's obligations under the business associate contract between Business Associate and Subcontractor, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate shall terminate the business associate contract with the Subcontractor if feasible.
- J. Workforce Training. Business Associate warrants that all employees who use, access or disclose PHI and/or ePHI shall be properly trained to comply with Privacy Rule, Security Rule, HITECH, or other such applicable law.
- K. Patient Confidentiality Laws and Regulations. Business Associate agrees to obtain and maintain knowledge of the applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- L. Reporting of Improper Access, Use or Disclosure Breach. Business Associate shall report to IEHP any unauthorized use, access or disclosure of Unsecured PHI and/or ePHI or any other Security Incident with respect to PHI no later than fifteen (15) days after Discovery of the potential Breach ("Notice Date"). With respect to PHI involving Medi-Cal beneficiaries, however, Business Associate shall report to IEHP any Breach or Security Incident of which Business Associate becomes aware, within 24 hours of discovery. Business Associate shall notify IEHP through the IEHP Compliance Department via telephone to the Compliance Hotline (866) 355-9038, via email to the Compliance Mailbox [compliance@iehp.org](mailto:compliance@iehp.org), or via facsimile to the Compliance Fax (909) 477-8536. Upon Discovery of the potential Breach, Business Associate shall complete the following actions:
  - 1) Provide IEHP's Compliance Department with the information required by 45 C.F.R. §§164.410 and 164.404, which shall include, but not be limited to:

- i. The identification of each individual (IEHP Members) whose Unsecured PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used or disclosed;
  - ii. Date(s) of Breach: MM/DD/YYYY;
  - iii. Date(s) of Discovery of Breach: MM/DD/YYYY;
  - iv. Approximate number of individuals (IEHP Members) affected by the Breach;
  - v. Type of Breach, i.e., theft, loss, improper disposal, unauthorized access, hacking/IT incident (for additional selections, see U.S. Department of Health & Human Services, Health Information Privacy);
  - vi. Location of breached information, i.e., laptop, desktop computer, network server, E-Mail, other portable electronic device (see U.S. Department of Health & Human Services, Health Information Privacy);
  - vii. Type of PHI involved in the Breach, i.e., demographic information, financial information, clinical information (see U.S. Department of Health & Human Services, Health Information Privacy);
  - viii. Safeguards in place prior to Breach, i.e., firewalls, packet filtering (router-based), encrypted wireless (see U.S. Department of Health & Human Services, Health Information Privacy);
  - ix. Actions taken in response to Breach, i.e., mitigation, protection against any further Breaches, policies and procedures (see U.S. Department of Health & Human Services, Health Information Privacy); and
  - x. Any steps individuals should take to protect themselves from potential harm resulting from the Breach.
- 2) Conduct and document a risk assessment by investigating, without unreasonable delay and in no case later than twenty (20) calendar days of Discovery, the potential Breach to determine the following:
- i. Whether there has been an impermissible use, acquisition, access or disclosure of PHI and/or ePHI under the Privacy Rule;

- ii. Whether an impermissible use or disclosure compromises the security or privacy of the PHI and/or ePHI, including whether it can be demonstrated that there is a low probability that PHI and/or ePHI has been compromised based on a risk assessment of at least four (4) factors specified in Section 1.B(1) defining Breach; and
    - iii. Whether the incident falls under one of the Breach exceptions.
  - 3) Provide the completed risk assessment and investigation documentation to IEHP's Compliance Department within twenty-five (25) calendar days of Discovery of the potential Breach, and collaborate with IEHP on making a decision on whether a Breach has occurred.
    - i. If a Breach has not occurred, notification to patient/client(s) is not required;
    - ii. If a Breach has occurred, notification to the patient/client(s) is required and Business Associate must provide IEHP with affected patient/client(s) names and contact information so that IEHP can provide notification.
  - 4) For Breaches or Security Incidents involving Medi-Cal PHI, Business Associate shall commence investigations immediately and work with IEHP to submit a "DHCS Privacy Incident Report" within 72 hours of discovery with the information known at the time. Within ten (10) working days of the discovery of the Breach or unauthorized use or disclosure, Business Associate shall work with IEHP to provide a complete report of the investigation to DHCS, which shall include (i) an assessment of all known factors relevant to a determination of whether a Breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law; and (ii) a corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests additional information to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information.
  - 5) Make available to governing State and Federal agencies in a time and manner designated by such agencies, any policies, procedures, internal practices and records relating to a potential Breach for the purposes of audit; cooperate with IEHP should IEHP elect to conduct its own such investigation and analysis.

- 6) Should the Breach of Unsecured PHI be caused solely by Business Associate's failure to comply with one or more of its obligations under this BAA, Privacy Rule, Security Rule and/or HITECH Provisions, Business Associate shall pay for any and all costs associated with providing all legally required notifications to individuals, media outlets and the Secretary.
- 7) Should the Breach of Unsecured PHI involve more than 500 residents of a single State or jurisdiction, Business Associate shall provide to IEHP, no later than the Notice Date, the information necessary for IEHP to prepare the notice to media outlets as set forth in 45 C.F.R. § 164.406.
- 8) Should the Breach of Unsecured PHI involve 500 or more individuals, Business Associate shall provide to IEHP, no later than the Notice Date, the information necessary for IEHP to prepare the notice to the Secretary as set forth in 45 C.F.R. § 164.408.
- 9) Should the Breach of Unsecured PHI involve less than 500 individuals, Business Associate shall maintain a log of such Breaches and provide such log to IEHP, for submission to the Secretary, on an annual basis and not later than forty-five (45) days after the end of each calendar year.

M. Monitoring. Business Associate shall comply with all monitoring provisions of this Agreement and any monitoring requests by DHCS.

N. General Security Controls.

- (1) Confidentiality Statement. All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- (2) Background Check. Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
- (3) Transmission and Storage. The most current industry standards for transmission and storage of PHI and other confidential information must be used.

- (4) Workstation/Laptop encryption. All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- (5) Minimum Necessary. Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- (6) Removable media devices. All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- (7) Email Security. All emails that include DHCS PHI must be sent in a FIPS 140-2 compliant encryption method using a DHCS approved solution or a solution using a vendor product specific on the CSSI.
- (8) Antivirus software. All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution from a commercial third-party with automatic updates scheduled at least daily.
- (9) Patch Management. All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- (10) User IDs and Password Controls. All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:



- a) Upper case letters (A-Z)
- b) Lower case letters (a-z)
- c) Arabic numerals (0-9)
- d) Non- alphanumeric characters (punctuation symbols)

(11) Data Destruction. When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DOD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.

(12) Remote Access. Any remote access to DHCS PHI must be executed over an encrypted method approved by DHCS or using a vendor produce specified on the CSSI. All remote access must be limited to minimum necessary and least privilege principles.

O. System Security Controls.

(1) System Timeout. The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

(2) Warning Banners. All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

(3) System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

(4) Access Controls. The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

- (5) Transmission encryption. All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- (6) Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

P. Audit Controls.

- (1) System Security Review. All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- (2) Log Reviews. All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access. Logs must be maintained for six years after the occurrence.
- (3) Change Control. All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

Q. Business Continuity/Disaster Recovery Controls.

- (1) Emergency Mode Operation Plan. Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- (2) Data Backup Plan. Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

R. Paper Document Controls.

- (1) Supervision of Data. DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- (2) Escorting Visitors. Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
- (3) Confidential Destruction. DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- (4) Removal of Data. DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- (5) Faxing. Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- (6) Mailing. Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained. Disks and other transportable media sent through the mail must be encrypted.

## 5. ACCESS TO PHI, AMENDMENT AND DISCLOSURE ACCOUNTING

Business Associate agrees to:

- A. Provide access, at the request of IEHP, within five (5) days, to PHI, including ePHI if maintained electronically, in a Designated Record Set, to IEHP, or to an individual or individual's designee as directed by IEHP, as necessary for IEHP to satisfy its obligations under 45 C.F.R. § 164.524.
- B. Make any amendment(s) to PHI in a Designated Record Set that IEHP directs or agrees to, at the request of IEHP or an individual, pursuant to 45 C.F.R. § 164.526, within thirty (30) days of the request of IEHP.

- C. Assist IEHP in meeting its disclosure accounting under HIPAA:
- 1) Business Associate agrees to document such disclosures of PHI and information related to such disclosures, as would be required for IEHP to respond to a request by an individual for an accounting of disclosures of PHI.
  - 2) Business Associate agrees to provide to IEHP, within thirty (30) days, information collected in accordance with this Section to permit IEHP to make an accounting of disclosures of PHI by Business Associate in accordance with 45 C.F.R. § 164.528 and HITECH.
  - 3) Business Associate shall have available for IEHP the information required by this Section for the six (6) years preceding IEHP's request for information.

**6. TERM AND TERMINATION**

- A. Term. This Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement.
- B. Termination for Cause. IEHP may terminate the Underlying Agreement, effective immediately, if IEHP, in its sole discretion, determines that Business Associate has breached a material provision of this Agreement relating to the privacy and/or security of the PHI. Alternatively, IEHP may choose to provide Business Associate with notice of the existence of an alleged material breach and afford Business Associate with an opportunity to cure the alleged material breach. In the event Business Associate fails to cure the breach to the satisfaction of IEHP in a timely manner, IEHP reserves the right to immediately terminate the Underlying Agreement.
- 1) Effect of Termination. Upon termination of the Underlying Agreement, for any reason, Business Associate shall return or destroy all PHI and/or ePHI received from IEHP, or created or received by Business Associate on behalf of IEHP, no later than sixty (60) days after the date of termination. Business Associate shall certify such destruction, in writing, to IEHP. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI and/or ePHI.

- 2) Destruction not Feasible. In the event that Business Associate determines that returning or destroying the PHI and/or ePHI is not feasible, Business Associate shall provide written notification to IEHP of the conditions which make such return or destruction not feasible. Upon determination by Business Associate that return or destruction of PHI and/or ePHI is not feasible, Business Associate shall extend the protections, limitations, and restrictions of this Agreement to such PHI and/or ePHI retained by Business Associate, its subcontractors, employees or agents, and to limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as such PHI and/or ePHI is maintained.

## 7. HOLD HARMLESS/INDEMNIFICATION

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

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

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

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

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

## 8. GENERAL PROVISIONS

- A. Medi-Cal Requirements. As a condition of obtaining access to PHI of IEHP relating to Medi-Cal Members, Business Associate acknowledges receipt of a copy of Exhibit G of the contract between IEHP and DHCS (which can also be found at : <https://www.dhcs.ca.gov/provgovpart/Documents/Two-Plan-CCI-Final-Rule-Boilerplate.pdf>) and agrees to the terms and conditions therein with respect to such PHI.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- C. Survival. Notwithstanding Section 6.A of this Agreement, the respective rights and obligations of this Agreement shall survive the termination or expiration of this Agreement.
- D. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, and/or HITECH means the section(s) as in effect or as amended.

- E. Interpretation. This Attachment shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA and HITECH. Any ambiguity in this Agreement and the Underlying Agreement shall be resolved to permit IEHP to comply with the Privacy Rule, Security Rule, HITECH, and HIPAA generally.
- F. Remedies. Business Associate agrees that IEHP shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which IEHP may have at law or in equity in the event of an unauthorized use, access, or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.
- G. No Third-Party Beneficiaries. Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.
- H. Ownership. The PHI shall be and remain the property of IEHP. Business Associate agrees that it acquires no title or rights to the PHI.
- I. Headings. Paragraph headings contained in this Agreement are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this Agreement.
- J. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and its employees and use all due diligence to make any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.