

**CENTRAL VALLEY HEALTH INFORMATION EXCHANGE
AND
MANIFEST MEDEX
COUNTY OF TULARE PARTICIPATION AGREEMENT**

This Participation Agreement (the “**Agreement**”) is entered into and effective as of October 1, 2019 (the “**Effective Date**”), by and between **Central Valley Health Information Exchange**, a California nonprofit public benefit corporation (“**HIO**”), **Manifest MedEx**, a California nonprofit public benefit corporation (“**MX**”), and **County of Tulare** (“**Participant**”). MX, HIO and Participant are referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties**.” HIO and MX are referred to collectively as “**HIE Provider**.”

Recitals

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

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

C. Participant is a County with medical clinic offices for purpose of determining data contributions and fees. Participant will both provide data to and receive data from the HIE.

The Parties agree that:

1. **Participation.** Participant shall participate in the HIE as set forth in this Agreement. The persons listed in Exhibit 1 (“**Participant Affiliates**”) shall also participate in the HIE pursuant to this Agreement. Participant shall ensure that Participant Affiliates comply with the terms of this Agreement, except that only Participant will be obligated to pay Fees or perform other duties specified herein which, by their context, clearly apply only to Participant.
2. **Agreement.** The Agreement includes this document and incorporates by reference the following:
 - a. The *Terms and Conditions* (“**Terms**”) attached as Exhibit 2.a.
 - b. The *Service Description* attached as Exhibit 2.b, which includes: a description of: the Tech Services that MX will provide to Participant; and the Data Submission Guidelines.
 - c. The *Fee Schedule* attached as Exhibit 2.c, which sets forth Subscription Fees and any Implementation Fees that Participant will pay to MX and identifies any other fees that might be paid by Participant pursuant to this Agreement, including the CVHIE Supplemental Fee Structure in Exhibit 2.d.

- d. The *Policies and Procedures* ("**Policies**") set forth on MX's website (https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.pdf), and labeled Exhibit 2.e., as amended from time to time pursuant to this Agreement.
 - e. The following Participant's Exhibits are hereby incorporated by reference and made a part of this Agreement as it fully set forth herein: Exhibit D, HIPAA Business Associate Agreement (hereinafter referred to as the "BAA"); Exhibit E, Cultural Competence and Diversity; and Exhibit F, Information Confidentiality and Security Requirements. Exhibit F shall only be made a part of this Agreement to the extent the contents of this Exhibit are applicable to the data and services described herein.
3. **Term.** The term of this Agreement shall commence on the Effective Date and continue until it is terminated as described in the Terms.
4. **General Provisions.**
- a. **Conflicts.** If the BAA conflicts with any other part of this Agreement (including the Policies), the BAA shall prevail. If the Policies conflict with any other part of this Agreement (except the BAA), the Policies shall prevail. If the terms of any other Exhibit conflict with those of this Participation Agreement and/or Exhibit 2.a, this Participation Agreement and Exhibit 2.a shall prevail.
 - b. **Definitions.** Capitalized terms that are not defined in the body of this Agreement shall have the meanings described in the Terms (Exhibit 2.a.) and the BAA.
 - c. **Notices.** Notices and other communications between the Parties shall be in writing and made: (a) by overnight delivery service; or (b) by e-mail or facsimile transmission. Notice is deemed given on the date of the e-mail or facsimile, or one day after delivery to the overnight service. If a sending Party receives notice that an e-mail message was not delivered, that Party shall deliver the notice by overnight delivery service or by facsimile.

For Participant:

County of Tulare
Attn: Nancy Padjan
5957 S. Mooney Blvd
Visalia, California 93297
Email: npadjan@tularehhsa.org

For MX: As set forth in the Terms.

For CVHIE/HIO: As set forth in the Terms.

Central Valley Health Information Exchange
Physician Practice Participation Agreement 2019

The Parties hereby execute and enter into this Agreement.

Manifest MedEX

Participant

By: *Claudia H Williams*
Claudia H Williams (Oct 1, 2019)
Name: Claudia Williams
Title: Chief Executive Officer
Date: Oct 1, 2019

By: _____
Name: Kuyler Crocker
Title: Chairman of Tulare County's
Board of Supervisors
Date: _____

**HIO
CVHIE**

By: *jamie franklin*
jamie franklin (Oct 2, 2019)
Name: Jamie Franklin
Title: Executive Director Central Valley Health
Information Exchange (CVHIE)
Date: Oct 2, 2019

APPROVED AS TO FORM:
COUNTY COUNSEL
BY *Omie May* 10/2/2019
DEPUTY 2071664

Exhibit 1

Participant Affiliates

Affiliated Medical Groups/Clinics

Name and Address of clinic sites (other than the main site owned or operated by Participant).

Visalia Health Care Center
2611 N Dinuba Blvd.
Visalia, CA 93291
559-623-0700

Farmersville Health Care Center
660 E Visalia Rd.
Farmersville, CA 93223
559-713-2890

Exhibit 2.a.

Terms and Conditions
of the
Participation Agreement
(including Definitions)

Article 1

HIE Provider's Functions and Duties

- 1.1 System, Services and Training. MX shall provide to Participant the System and Services set forth in Exhibit 2.b.
- 1.2 MX's Policies. MX shall develop and maintain the Policies.
- 1.3 HITRUST. MX will use commercially reasonable efforts to obtain HITRUST CSF Certification as soon as reasonably possible and thereafter shall maintain such Certification in accordance with HITRUST standards.

Article 2

Participant's Rights and Duties

- 2.1 Contribution of Data. Participant shall contribute Patient Data to MX as required by the Service Description (Exhibit 2.b.), the Policies (Exhibit 2.e.) and these Terms and Conditions (Exhibit 2.a., referred to as the "Terms").
- 2.2 Restricted Use, Security and Access. Participant shall restrict access to and use of the System to Participant and its Authorized Users. Participant shall implement security measures with respect to the System and safeguard Patient System Data as required by the Agreement. Participant shall not inhibit an NP Participant's access to the System or Patient Data.

Article 3

Mutual Duties; Relationship between the Parties

- 3.1 Compliance with Law and Safety. Each Party and its Personnel shall perform their duties and exercise their rights under the Agreement in compliance with Law. Each Party and its Personnel shall always consider Patient safety in taking any action under the Agreement.
- 3.2 Policies and DSG. HIE Provider and Participant and their Personnel shall each comply with the Policies and the DSG, both of which are incorporated into and are part of the Agreement.
- 3.3 Committees. MX may establish committees from time to time (such as a Participants Advisory Committee) and may request Participants to serve on any such committees.
- 3.4 Prevent Unauthorized Use. Participant shall: (i) only allow Authorized Users to access or use the System and the passwords and/or the user names applicable to the System; and (ii) make reasonable

efforts to prevent all Persons (other than Authorized Users) from accessing and/or using the System. Participant shall notify MX promptly of any unauthorized access or use of the System of which Participant becomes aware.

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

Article 4 **Fees**

4.1 Fees. Initially, Participant shall not pay fees to MX. If in the future MX implements a fee scheduled, then the provisions of this Article shall apply. Participant shall pay to CVHIE or its designee amounts set forth or as subsidized in Exhibit 2.d. of this Agreement.

4.2 Change to Subscription Fees. HIE Provider must give Participant at least ninety (90) days' prior written notice of any increase in subscription fees (the "Fee Notice"); and (b) in the event of an increase in fees, Participant may terminate the Agreement pursuant to Section 11.2.

4.3 Implementation Fees. In addition to Subscription Fees, Participant shall not pay fees to implement Participant into the System (the "Implementation Fees").

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

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

4.7 Invoice. Central Valley Health Information Exchange ("CVHIE") shall be responsible for invoicing Participant, and Participant shall make payment to CVHIE.

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

Article 5 **Privacy and Security**

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

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

Article 6 **Confidential Information**

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

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

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

6.4 Media Releases. Notwithstanding any other provision of the Agreement, MX may publicly identify Participant as a participant in MX and may include the name, address, logo, and a brief description of Participant, such as what category and HIO it belongs to, on its website or in any other materials developed by MX. Participant grants MX a royalty free license to use Participant's name and logo only for the foregoing and the limited license shall only be in place during the term of this Agreement.

Article 7 **Representations and Warranties**

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

7.2 Limited Warranties. Except as otherwise specified in the Agreement: (a) Participant's access to the System, use of the Services, and receipt of Patient Data from MX are provided "as is" and "as available"; and (b) MX does not make any representation or warranty of any kind regarding the System or Services, expressed or implied, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement, except those specifically stated in the Agreement.

7.3 Authorization and Compliance. Participant covenants, represents and warrants that Participant (and each Participant Affiliate) has all necessary authority: to enter into this Agreement, to grant the rights granted herein, and to send and receive the Patient Data exchanged under this Agreement.

Article 8

Data: Ownership, Use, License and Quality

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

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

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

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

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

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

8.5 Trademarks. Participant and its Personnel shall: (i) maintain HIE Provider's M and MX Vendor's trademarks, service marks, and copyright legends; and (ii) not violate HIE Provider's and/or MX Vendor's trademarks, service marks, copyright legends and/or any other intellectual property rights. Participant will be liable for the acts of third party service providers engaged by Participant who violate these proprietary rights or applicable Law.

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

8.7 Data Quality. Participant shall use reasonable and appropriate efforts to ensure that all Healthcare Data provided by Participant and/or Personnel to MX is accurate with respect to each Patient. Each Party shall use reasonable and appropriate efforts to assure that its Personnel do not alter

or corrupt the Patient Data received by or transmitted from that Party. Participant and its Authorized Users shall use reasonable professional judgment in its use of the Healthcare Data and its application of the Healthcare Data to make clinical decisions.

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

8.9 Access to Data. CVHIE shall not access or view any Patient Data via the System pursuant to this Agreement, except that CVHIE may access or view Patient Data that it receives pursuant to a valid Business Associate Agreement.

Article 9 Liability and Indemnity

9.1 Liability and Limitations of Liability. Each Party shall be liable to the other Party for Damages caused by the first Party's and its personnel's breach of the Agreement, subject to the following limitations:

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

9.1.2 Cap. The aggregate personal liability of each Party (including, in the aggregate, its officers, directors and Personnel) to the other Party under this Agreement will be limited to the greater of: (i) the aggregate insurance policy limits then available to the Party with respect to such Claim, or (ii) five hundred thousand (\$500,000) dollars.

9.1.3 Exclusions. Notwithstanding anything to the contrary in the Agreement, the limitations of liability in Section 9.1.1 and 9.1.2 shall not apply to any Claims or Damages arising out of or relating to: (a) either Party's grossly negligent or willful breach of the Agreement; (b) either Party's material breach of the BAA; or (c) either Party's indemnification obligations.

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

against, and each does waive any claims against, MX for any loss, damage, claim, or cost relating to or resulting from its own use of the System, Healthcare Data and/or the Services.

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

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

9.5 Rules for Indemnification.

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

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

Article 10 Insurance

10.1 Insurance.

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

(a) Commercial general liability insurance in the amount of at least five million dollars (\$5,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate;

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

(c) Network security liability insurance and privacy liability insurance in the amount of at least ten million dollars (\$10,000,000) per occurrence and at least ten million dollars (\$10,000,000) in the annual aggregate.

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

(a) Commercial general liability insurance in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the annual aggregate; and

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

10.1.3 General Requirements.

(a) If either Party purchases "claims made" insurance, all acts and omissions of that Party shall be, during the Term, "continually covered" (i.e., there must be insurance coverage commencing on the Effective Date and ending no earlier than three (3) years after termination of the Agreement; and that insurance must satisfy the liability coverage requirements set forth in this Article 10.

(b) Each Party shall purchase "tail insurance" if its coverage lapses, or "nose insurance" and/or "tail insurance" if that Party changes insurance carriers, even after termination of the Agreement.

(c) All insurance coverage required by this Article shall be provided under valid and enforceable policies issued by insurance companies legally authorized to do business in California.

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

Article 11

Term, Termination and Suspension

11.1 Term. The Agreement is effective on the Effective Date and shall remain in effect until terminated as set forth below.

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

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

11.3.1 Privacy and Security. MX may in its sole discretion terminate the Agreement at any time if MX determines in its sole discretion that Participant's actions and/or continued participation in MX would, or is reasonably likely to, endanger the privacy or security of Patient Data or otherwise result in a breach of the Agreement that is reasonably likely to harm MX or an NP Participant. MX

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shall deliver notice of this termination to Participant at least twenty-four (24) hours prior to terminating Participant's access to the System, unless MX determines in its sole discretion that Participant's access must be terminated immediately in order to protect the privacy or security of the Patient Data, in which case MX may terminate access immediately without notice.

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

11.3.3 Uncured Breach. MX may terminate the Agreement if Participant breaches the Agreement and that breach continues uncured for a period of thirty (30) days after MX has delivered written notice of that breach to Participant. MX's notice of breach shall include a description of the breach.

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

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

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

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

11.7 Suspended Access to Data. If MX determines in its sole discretion that Participant's continued access to the System would, or is reasonably likely to, endanger the privacy or security of Patient Data, MX may suspend Participant's access to the System (but may still provide read-only access if reasonably

necessary for Patient safety). Participant's suspension under this Section may continue until either: (a) MX terminates the Agreement in accordance with this Article; or (b) the privacy or security problem has been cured to MX's satisfaction in its sole discretion. During this suspension, Participant shall work diligently to cure to the satisfaction of MX any problem(s) with its privacy or security.

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

Article 12

Miscellaneous Provisions

12.1 Applicable Law. The Agreement, and disputes regarding it, shall be governed by and interpreted in accordance with the laws of the State of California (the "State"), but ignoring any choice or conflict of law rules that would cause the laws of another jurisdiction to apply.

12.2 Amendment and Material Service Change.

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

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

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

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

12.2.5 Prepayment. If Participant has pre-paid to MX any Subscription Fees that have not yet been earned by MX as of the date of termination, MX shall repay to Participant those unearned Fees.

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

the Agreement to that time period which MX reasonably determines appropriate under the circumstances.

12.3 Assignment. Neither Party may assign the Agreement or any of the Party's rights, interests, duties or obligations under the Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent may be given, conditioned or withheld in the other Party's sole discretion, except that (a) either Party may assign the Agreement in whole or in part to an affiliate or to a successor in interest, and (b) consent shall not be necessary in the context of an acquisition, merger or change of control involving either Party. Any attempted assignment or transfer in violation of the foregoing will be null and void.

12.4 Intentionally left blank

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

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

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

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

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

12.9.1 Dispute Notice. A Party alleging a Dispute shall send written notice of the Dispute and the Party's position regarding the Dispute (the "Dispute Notice") to the other Party and any other Person that the Party believes is involved in the Dispute. The Dispute Notice shall propose a time and place for all involved Persons to meet and confer regarding the dispute.

12.9.2 Meet and Confer. Within twenty (20) days of a Party sending a Dispute Notice, the Parties shall meet and confer in good faith regarding the Dispute. Other Persons interested in the Dispute shall be invited to the conference, but the conference shall be held at the earliest date on

which the Parties can attend (regardless of the attendance of other interested Persons). The Meet and Confer shall be considered a settlement negotiation for the purpose of all Laws, including California Evidence Code § 1152.

12.9.3 Jurisdiction and Venue. All Disputes not resolved under this Section will be adjudicated in the Superior Court of Tulare County and the US District Court in Fresno, California and each Party hereby consents to the personal jurisdiction of such courts.

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

12.10 Representation by Counsel; Interpretation. Each Party has been represented by counsel in connection with this Agreement or has had an opportunity to be so represented. Both parties expressly waive any claim that ambiguities in this Agreement should be interpreted against the other Party due to the other Party drafting the language.

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

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

12.13 Force Majeure. Neither Party shall be liable for nonperformance or defective or late performance of any of a duty under the Agreement to the extent and for such periods of time as that nonperformance, defective performance or late performance is due to reasons outside of that Party's control; provided that the Party uses good faith efforts to perform its duties.

12.14 Independent Contractors. The Parties are and shall at all times be an independent contractor of the other, and not an employee, agent, partner of, or joint venture with the other. Except as specifically allowed by the Agreement, neither Party has any right or authority to assume or create any obligation of any kind, express or implied, on behalf of the other Party.

12.15 Severability. If any provision of the Agreement or the application of any provision, in whole or in part, is determined to be invalid, void, illegal or unenforceable by an arbitrator or a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from the Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of the Agreement.

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

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

12.18 Waiver. No delay or omission by a Party to exercise a right or power it has under the Agreement shall be construed as a waiver of that right or power. A waiver by any Party of any breach of the

Central Valley Health Information Exchange
Physician Practice Participation Agreement 2019

Agreement shall not be construed to be consent to, waiver of, or excuse for any subsequent or different breach. All waivers must be in writing and signed by the Parties.

12.19 Notice to MX:

Manifest MedEx
Attn: Chief Executive Officer
6001 Shellmound St., Ste. 500
Emeryville, CA 94608
Email: legal@manifestmedex.org

Notice to HIO:

Central Valley Health Information Exchange
Attn: Executive Director
5629 N. Figarden, Suite 101
Fresno, CA 93722
Email: JFranklin@communitymedical.org

Definitions Applicable to the Agreement

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

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

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

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

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

“API” means application programming interface.

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

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

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

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

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

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

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

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

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

- (a) is publicly known at the time of disclosure;
- (b) is already known or obtained by any other Party other than in the course of the other Party's performance pursuant to its "participation agreement", and without breach of any confidentiality, nondisclosure or other agreement by that other Party or in violation of applicable Law;
- (c) is independently developed by any other Party;
- (d) becomes known from an independent source having the right to disclose that information and without similar restrictions as to disclosure and use and without breach of these Agreement, or any other confidentiality or nondisclosure agreement by that other Party; or
- (e) is Patient Data.

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

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

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

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

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

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

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

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

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

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

"DSG" is the Data Submission Guidelines (defined above).

"Effective Date" is defined in the Preamble.

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

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

“Go-Live Date” means earlier of: the date on which MX first notifies Participant that one or more of the Participant Affiliates has access to use the System, or one hundred eighty days (180) from the Effective Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Participant” is defined in the Preamble.

“Participant Affiliates” are defined in Exhibit 1.

“Party” means Participant or MX.

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

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

“Patient Roster” is defined in Exhibit 2.b.

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

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

“Policies” mean the privacy policies, security policies and/or procedural requirements adopted by MX and made available to Participant at, as amended by MX from time to time. The current version of the Policies can be found at https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.pdf.

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

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

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

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

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

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

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

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

“Term” is defined in Section 11.1 (Term).

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

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

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

Exhibit 2.b.

SERVICE DESCRIPTION

MX will provide to Participant the following services (“**Tech Services**”):

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

A. Training

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

B. Support

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

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

C. Availability and Network Monitoring

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

D. Data Contributions

1. Participants, including each of the Participant Affiliates, will contribute Patient Data in accordance with the schedules described below and over a secure connection configured by MX and Participant (unless alternatives are otherwise mutually agreed upon). MX will set forth guidelines (“**Data Submission Guidelines**”) for Participants to use in submitting Patient Data to MX. Participants will use reasonable efforts to provide Patient Data to MX consistent with the Data Submission Guidelines.

The provisions in this Section D below not applicable to Participant are for informational purposes as to MX’s intent to obtain such data from NP Participants. Those provisions not applicable to Participant are not a guarantee or promise that MX will obtain such data from all NP Participants.

2. Hospital Participants, including each of the Participant Affiliates, will provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data (“**ADT messages**”), within 6 months of the Effective Date, and regularly thereafter.
 - b. Lab data (ORU messages), within 12 months of the Effective Date, and regularly thereafter.
 - c. Pharmacy data (RDE messages), within 12 months of the Effective Date, and regularly thereafter.
 - d. CCDAs (discharge summaries, transition of care documents) within 18 months of the Effective Date, and regularly thereafter.
 - e. As other Patient Data become relevant to the HIE, the Parties shall work together to develop a timeline for Participant to contribute such Patient Data to MX. If the Parties do not agree on a timeline within three months after MX sends the notice to Participant, or MX does not receive such Patient Data pursuant to the Parties’ timeline, either Party may terminate this Agreement by providing thirty days’ notice to the other Party.

3. Physician and ambulatory practice Participants will provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data (“ADT messages”), or a **patient roster** if ADT data cannot be provided, within 6 months of the Effective Date, and regularly thereafter.
 - b. Lab data from national reference labs and transcribed radiology reports by signing an authorization form allowing labs and other entities to send the Participant’s data to MX, within 6 months of Effective Date, and regularly thereafter.
 - c. CCDAs (care summaries) within 18 months of the Effective Date, and regularly thereafter.
 - d. As other Patient Data become relevant to the HIE, the Parties shall work together to develop a timeline for Participant to contribute such Patient Data to MX. If the Parties do not agree on a timeline within three months after MX sends the notice to Participant, or MX does not receive such Patient Data pursuant to the Parties’ timeline, either Party may terminate this Agreement by providing thirty days’ notice to the other Party.

4. Health Plan Participants will provide the following Patient Data to MX:
 - a. Eligibility files for health plan enrollees (that define the identities of lives covered by the health plan), and provider files for Health Plan providers, within six months of the Effective Date, and regularly thereafter.
 - b. Medical and pharmacy claims data for health plan enrollees in mutually agreed format, within 12 months of the Effective Date, and regularly thereafter.

5. IPA Participants will provide the following Patient Data to MX:
 - a. Eligibility files (or patient rosters) for Participant’s members, within six months of the Effective Date, and regularly thereafter.
 - b. Medical and pharmacy claims data for Participant’s members in mutually agreed format, within 12 months of the Effective Date, and regularly thereafter.
 - c. Lab data from national reference labs and transcribed radiology reports by signing an authorization form allowing labs and other entities to send the Participant’s data to MX, within 6 months of Effective Date, and regularly thereafter.
 - d. To the extent the IPA maintains clinical data for Participant members, the Participant will provide CCDAs (care summaries) within 18 months of the Effective Date for those Participant members, and regularly thereafter.

6. Skilled Nursing Facilities will provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data (“ADT messages”), or a **patient roster** if ADT data cannot be provided, within 6 months of the Effective Date, and regularly thereafter.
 - b. Lab data (ORU messages), within 12 months of the Effective Date, and regularly thereafter.
 - c. Pharmacy data (RDE messages), within 12 months of the Effective Date, and regularly thereafter.
 - d. CCDAs (care summaries) within 18 months of the Effective Date, and regularly thereafter.

- e. As other Patient Data become relevant to the HIE, the Parties shall work together to develop a timeline for Participant to contribute such Patient Data to MX. If the Parties do not agree on a timeline within three months after MX sends the notice to Participant, or MX does not receive such Patient Data pursuant to the Parties' timeline, either Party may terminate this Agreement by providing thirty days' notice to the other Party.
7. Participant must refrain from sending sensitive health information (e.g., substance abuse treatment information or self-pay information) that may be restricted from disclosure by local, state, district, and federal law. Participants are responsible for complying with applicable laws and for filtering any information that should not be provided or disclosed to MX.

E. Participant Data Access Policies

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

F. Implementation Services

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

Exhibit 2.c.

MX Fees
[Physician/Physician Group]

1. **Subscription Fees.** Participant shall not pay any regular subscription fees (“**Subscription Fees**”) to MX directly to use the System, except that Central Valley Health Information Exchange (CVHIE) will exclusively determine any Supplemental Fees/Underwriting support charged by CVHIE or credited to Participant by CVHIE as clearly identified in the invoice sent to the Participant as a CVHIE charge/underwriting support (for Supplemental Services or otherwise). Central Valley Health Information Exchange shall invoice Participant each Calendar Quarter in accordance with the above and Participant shall remit all amounts due to Central Valley Health Information Exchange within thirty (30) days of receipt of the invoice.
2. **Implementation Fees.** Participant shall not pay fees (“**Implementation Fees**”) to MX for a standard implementation performed by MX. The Implementation Fees do not cover Participant’s internal implementation costs, including any fees assessed by Participant’s EHR vendor.
3. **Fees.** In the event Subscription Fees are implemented, Central Valley Health Information Exchange shall invoice Participant each Calendar Quarter and Participant shall remit all amounts due to Central Valley Health Information Exchange within thirty (30) days of receipt of the invoice.

Exhibit 2.d.

CVHIE Fee Schedule/subsidy for January to December, 2019
HIO Supplemental Services

| CVHIE Fee Summary w/ Discount Billing Calendar Year 2019- January 1st through December 31st | ** Discount | | | | |
|--|-----------------------------|---------------------------------------|--|-----------------|----------------|
| | CVHIE TOTAL FEES ALLOCATION | | | 37% | |
| | CVHIE FEES | MANIFEST FEES PER CVHIE Allocation | TOTAL FEES | 2019 Billing | Manifest Fees |
| Hospitals | | | | | |
| Valley Children's Hospital | 4,266 | 34,025 | 38,291 | 24,123 | 50,000 |
| Community Medical Centers | 13,385 | 106,758 | 120,143 | 75,690 | 100,000 |
| Kaweah Delta HCD | 6,962 | 55,529 | 62,491 | 39,370 | 50,000 |
| Madera Community Hospital | 1,270 | 10,131 | 11,401 | 7,183 | 10,000 |
| Saint Agnes Medical Center | 5,225 | 41,671 | 46,895 | 29,544 | 30,000 |
| San Joaquin Valley Rehab Hospital | 743 | 5,926 | 6,669 | 4,201 | 10,000 |
| Sierra View Local HCD | 2,001 | 15,961 | 17,962 | 11,316 | 20,000 |
| Totals for Hospitals | 33,852 | 270,000 | 303,852 | 191,427 | 270,000 |
| Identified MDS | | | | | |
| Clinica Sierra Vista | 2,925 | - | 2,925 | 1,843 | - |
| Family Health Care Network | 10,422 | - | 10,422 | 6,566 | - |
| Altura Centers for Health | 4,388 | - | 4,388 | 2,765 | - |
| Visalia Medical Clinic | 7,314 | - | 7,314 | 4,608 | - |
| Key Medical Group | 4,571 | - | 4,571 | 2,880 | - |
| Totals for Identified MDS | 29,621 | - | 29,621 | 18,661 | - |
| Counties | | | | | |
| Fresno County | 12,974 | - | 12,974 | 8,174 | - |
| Tulare County | 6,120 | - | 6,120 | 3,856 | - |
| Madera County (Pending) | 2,063 | - | 2,063 | 1,300 | - |
| Totals for County | 21,158 | - | 21,158 | 13,329 | - |
| | 84,630 | 270,000 | 354,630 | 223,417 | 270,000 |
| ** Total discount includes CVHIE cash surplus, Fresno County Grant, and 20 % Manifest fees retention | | | | | |
| ALLOCATIONS | UNITS | ALLOC % | | | |
| Hosp | 2,825 | 40% | Hospital allocation based on number of beds | | |
| MD | 162 | 35% | Ambulatory allocation based on number of MDs | | |
| County | 1,589,722 | 25% | County allocation based on population | | |

**CVHIE (“HIO”) Supplemental Services
and
Supplemental Fee Structure/Underwriting**

NOTE:

CVHIE shall provide annual updates to the Supplemental Fee Structure/Underwriting by providing written notice and invoices/subsidy information to Participants

CVHIE will provide to Participant the following services (“Supplemental HIO Services”):

A. Training, Onboarding, and Support

- Support Participant in the development of a user adoption plan that incorporates a phased roll-out based on organizational priorities and capacities.
- Perform ongoing and supplemental training as needed for Participant’s use of the System in accordance with the train-the-trainer model.
- Provide project management support to HIE Participants to facilitate their onboarding onto and continued use of the System.
- Meet with Participant’s Privacy and Security Officer to address any questions on adherence to Policies relating to data access by Participant staff.
- Monitor the responsiveness of MX’s customer support services to Participant’s users and escalate issues if Participant does not receive a timely or adequate response.

B. Technology Services Implementation

- Coordinate MX and Participant resources through initial technology implementation phases:
 - Educate Participant on Data Submission Guidelines and coordinate discussion between Participant and MX to resolve any issues with meeting the Guidelines;
 - Serve as overall project manager for Participant’s implementation of interfaces to the System, providing project monitoring, coordination, and status reporting.
 - Represent the interests of the Participant during the implementation process.

C. Local Data-Sharing Priorities

- Act as a representative of HIE Participants’ combined regional interests and directives when working with MX on system initiatives and design.
- Gather and synthesize input from Participants on local priorities for data sharing, including needs arising from local patient population characteristics, provider workflows, and specific programs or initiatives.
- Promote the development of services and the underlying technical functionality by MX to address Participant priorities and support the roll-out of such services to Participants.
- Provide subject matter expertise and identify relevant national and state best practices on an ongoing basis.

D. Governance

- Facilitate a Board of Directors and Committees upon which HIE Participants are allotted seat(s) and contribute to the overall direction of the HIO and the System.
- HIO maintains its own Policies & Procedures governing internal operations.
- Support Participants in meeting requirements for protecting the privacy and security of patient information relating to HIE participation.
- Coordinate communications between Participants and MX on governance-related issues.

E. Administrative Services

- Perform administrative functions required by SJCHIE's non-profit status, such as financial management.
- Facilitate contracting for HIE services with MX and Participants.

Exhibit 2.e.

Policies

The Policies are set forth on MX's website (https://www.manifestmedex.org/wp-content/uploads/Policies_Manifest_MedEx.pdf), and are incorporated herein by reference as Exhibit 2.e., as amended from time to time pursuant to this Agreement.

COUNTY OF TULARE
EXHIBIT D
HIPAA BUSINESS ASSOCIATE AGREEMENT
(Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

1. **Purpose.** This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. **Obligations and Activities of Business Associate.**

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement within 48 hours after the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

COUNTY OF TULARE
EXHIBIT D
HIPAA BUSINESS ASSOCIATE AGREEMENT
(Form revision approved 4/18/18)

breach, along with the names and contact information, when available, of all individuals whose PHI was involved. **(See Section 6 of this Exhibit for further detail.)** 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. **(See Section 11 of this Exhibit for further detail.)**
- e. As related to the County of Tulare PHI, make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's or Covered Entity's compliance with the HIPAA Privacy Rule and Security Rule. **(See Section 12 of this Exhibit for further detail.)**
 - 1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary, to the extent permitted by the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

Unless otherwise limited in this Exhibit, Business Associate may:

- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as necessary to perform the services the Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

6. Reporting Unauthorized Uses and Disclosures.

- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made within 48 hours after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

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EXHIBIT D
HIPAA BUSINESS ASSOCIATE AGREEMENT
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information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate shall cooperate with Covered Entity and shall provide that assistance as Covered Entity may reasonably request so that Covered Entity may comply with any obligations it may have to investigate, remediate, mitigate, report, and or otherwise notify third parties of that Breach of Privacy or Security.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take reasonable corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law or as necessary to investigate or determine or implement its legal responsibilities for a breach or unauthorized access, Business Associate agrees that it will not

inform any third party of a breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure caused by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- d. Provide to Covered Entity, in the time and manner

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designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.

- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522, to the extent notified by Covered Entity of such a request.

10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall require any such agent, contractor or representative to mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of County-specific PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

13. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

14. Term and Termination.

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination or expiration of the Agreement, Business Associate and Covered Entity acknowledge that return or destruction of PHI is not feasible. Accordingly, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business

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Associate or any Subcontractor of Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible. Upon the expiration of this period of infeasibility, if any, Business Associate shall destroy all PHI that it has retained. If PHI is to be destroyed pursuant to this Section 14(b) or pursuant to the Agreement, Business Associate shall certify in writing to Covered Entity that that PHI has been destroyed.

- c. Covered Entity may immediately terminate the Agreement if it determines that Business Associate has violated a material term of this Exhibit.

15. Amendment. The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

16. Lost Revenues; Penalties/Fines.

- a. Penalties/Fines for Failure to Comply with HIPAA.

Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

- b. Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. Entire Agreement. This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them. In the event that a provision of this Exhibit is contrary to a provision of the Agreement pertaining to Business Associate's performance of its obligations as a business associate, the provisions of this Exhibit shall control.

18. Interpretation. Any ambiguity in this Exhibit shall be interpreted to permit compliance with the HIPAA Privacy and Security Rules and the HITECH Act.

COUNTY OF TULARE
EXHIBIT E
TO HHSa SERVICES AGREEMENT
CULTURAL COMPETENCE AND DIVERSITY
(Form revision approved 01/01/2018)

CONTRACTOR is encouraged to support Tulare County Health and Human Services Agency ("HHSa") in the journey to work effectively across and among all cultures. It is the desire of HHSa that services be sensitive to the diversity of the community served, including but not limited to ethnic, linguistic, sexual and cultural characteristics. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

- Assure equal access for people with diverse cultural backgrounds and/or limited English proficiency. Limited English Proficiency includes literacy issues: those who cannot either read or write in any language.

CONTRACTOR and COUNTY agree that:

- **Cultural competence** is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

CONTRACTOR will strive to:

- Ensure that agents, employees or officers providing services are sensitive to the ethnic, linguistic, sexual and cultural diversity of the community served. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

COUNTY OF TULARE
EXHIBIT F
TO HHS SERVICES AGREEMENT
INFORMATION CONFIDENTIALITY AND SECURITY REQUIREMENTS
(Form revision approved 01/01/2018)

- I. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
- A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
- B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
- C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
- D. **Personal Information:** Personal Information includes the following:
1. Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person.
 2. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
 3. This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request
- E. **Nondisclosure.** The CONTRACTOR and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
- II. The CONTRACTOR and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement.
- III. The CONTRACTOR and its employees, agents, or subcontractors shall promptly transmit to the COUNTY all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
- IV. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than COUNTY without prior written authorization from the COUNTY, except if disclosure is required by State or Federal law.
- V. The CONTRACTOR shall observe the following requirements:
- A. **Safeguards.** The CONTRACTOR shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written
- B. information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the CONTRACTOR's operations and the nature and scope of its activities, including at a minimum the following safeguards:

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EXHIBIT F
TO HHS SERVICES AGREEMENT
INFORMATION CONFIDENTIALITY AND SECURITY REQUIREMENTS
(Form revision approved 01/01/2018)

1. Personnel Controls

- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the COUNTY, or access or disclose COUNTY PSCI, must complete information Privacy and security training, at least annually. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. **Confidentiality Statement.** All persons that will be working with COUNTY 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 COUNTY 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.
- d. **Background Check.** Before a member of the workforce may access COUNTY 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.

2. Technical Security Controls

- a. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store COUNTY 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 COUNTY.
- b. **Minimum Necessary.** Only the minimum necessary amount of COUNTY PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- c. **Removable media devices.** All electronic files that contain COUNTY 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.
- d. **Antivirus software.** All workstations, laptops and other systems that process and/or store COUNTY PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- e. **Patch Management.** All workstations, laptops and other systems that process and/or store COUNTY 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.
- f. **User IDs and Password Controls.** All users must be issued a unique user name for accessing COUNTY 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

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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. 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:

- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- g. **Data Destruction.** When no longer needed, all COUNTY 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 COUNTY.
- h. **System Timeout.** The system providing access to COUNTY PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 10 minutes of inactivity.
- i. **Network and/or Operating System Warning Banners.** All systems providing access to COUNTY 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.
- j. **Access Controls.** The system providing access to COUNTY PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- k. **Transmission encryption.** All data transmissions of COUNTY 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.

3. Audit Controls

- a. **System Security Review.** All systems processing and/or storing COUNTY 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.
- b. **Log Reviews.** All systems processing and/or storing COUNTY PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- c. **Change Control.** All systems processing and/or storing COUNTY PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Controls

- a. **Emergency Mode Operation Plan.** CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic COUNTY 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.

5. Paper Document Controls

- a. **Supervision of Data.** COUNTY 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. COUNTY PHI or PI in paper form shall not be left unattended at any

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- time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. **Escorting Visitors.** Visitors to areas where COUNTY PHI or PI is contained shall be escorted and COUNTY PHI or PI shall be kept out of sight while visitors are in the area.
- c. **Confidential Destruction.** COUNTY PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- d. **Removal of Data.** COUNTY PHI or PI must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.
- e. **Faxing.** Faxes containing COUNTY 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.
- f. **Mailing.** Mailings of COUNTY 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 COUNTY 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 COUNTY to use another method is obtained.
- C. **Security Officer.** The CONTRACTOR shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with COUNTY.
- D. **Discovery and Notification of Breach.** The CONTRACTOR shall notify COUNTY **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to COUNTY by the Social Security Administration **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. CONTRACTOR shall take:
1. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 2. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- E. **Investigation of Breach.** The CONTRACTOR shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery.
- F. **Written Report.** The Contractor shall provide a written report of the investigation to the COUNTY HHS Privacy & Compliance Officer ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- G. **Notification of Individuals.** The CONTRACTOR shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The COUNTY HHS Privacy & Compliance Officer shall approve the time, manner and content of any such notifications.
- VI. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of

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whether they are for the acquisition of services, goods, or commodities. The CONTRACTOR shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

- VII. **Contact Information.** To direct communications to the above referenced COUNTY staff, the CONTRACTOR shall initiate contact as indicated herein. COUNTY reserves the right to make changes to the contact information below by giving written notice to the CONTRACTOR. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

| |
|---|
| Tulare County HHS Privacy & Compliance Officer |
| Tulare County HHS Attn: Sravan Sharma 5957 S Mooney Blvd., Visalia, CA 93277 |
| Email:SSharma@tularehhsa.org |
| Telephone: (559) 624-7465 |

- VIII. **Audits and Inspections.** From time to time, COUNTY may inspect the facilities, systems, books and records of the CONTRACTOR to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. CONTRACTOR shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that COUNTY inspects, or fails to inspect, or has the right to inspect, CONTRACTOR's facilities, systems and procedures does not relieve CONTRACTOR of its responsibility to comply with this ICSR exhibit.

IT PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONSULTANT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONSULTANT, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession and work hereunder, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, copyright, trademark, trade dress, invasion of privacy violations, information theft, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, credit monitoring expenses with limits sufficient to respond to these obligations.
 - a. *The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the COUNTY may be endorsed onto the CONSULTANT's Cyber Liability Policy as covered property as follows:*
 - b. *Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of COUNTY that will be in the care, custody, or control of CONSULTANT.*

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONSULTANT must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT.*
 - b. *For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.*

c. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except with written notice to the COUNTY.

d. CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the county by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONSULTANT, its employees, agents and subcontractors. CONSULTANT waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONSULTANT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONSULTANT, and represent the following:

(mark X if applicable)

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Sandra Parker Date: June 12, 2019
Contractor Name ManEast Mod Ex / By its General Counsel
Signature Sandra Parker