

## **INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

This INDEPENDENT CONTRACTOR SERVICES AGREEMENT (the "Agreement") is entered into this January 13, 2025 and effective on January 13, 2025 (the "Effective Date") by and between Intermountain Deaconess Children's Services, a non-profit corporation incorporated under the laws of the State of Montana (the "Contractor"), and East Helena School District ("School District") (each a "party" and collectively the "parties").

### **RECITALS**

- A. School District operates public elementary, middle, and high school facilities (the "School") located in East Helena, Montana.
- B. Contractor is a corporation incorporated under the laws of the State of Montana. Contractor employs providers who specialize in providing behavioral and mental health services in Montana ("Providers"). Contractor's principal place of business located at 3240 Dredge Drive, Helena, Montana.
- C. School District desires to provide access to mental health services to students enrolled in the School District ("Student" or "Students"). School District wishes to retain Contractor to perform Educational and Day Treatment Services ("Day Treatment") to students enrolled in the School District who are authorized to receive Day Treatment services.
- D. Contractor agrees to provide Day Treatment services through its Providers to Students as set forth in **Exhibit A**.

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

### **AGREEMENT**

1. **General Services.** Intermountain agrees to provide the services set forth on the attached **Exhibit A** (collectively, the "Services") through or by Contractor's educational, behavioral, and mental health providers ("Providers"). *See Exhibit A.* The Agreement shall in no way affect the professional judgment of Providers in the practice of behavioral and mental health and in the delivery of Services.

2. **Term and Termination.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue through June 20, 2025 (the "Termination Date"). During the Term of this Agreement either party, at any time, with or without cause, upon 30-days written notice to the other party may terminate this Agreement. The parties shall evaluate the day treatment program's efficacy annually near the end of the school term based on student enrollment, student achievement, student behavioral data, and treatment compiled from School District and Contractor staff. Based upon the annual evaluation, the parties may develop and recommend adjustments to the provision and coordination of the day treatment program and/or this Agreement.

3. Following the Termination Date, this Agreement may continue on a month-to-month basis if the parties agree in writing. If the parties continue on a month-to-month basis, either party, at any time, with or without cause, upon 30-days written notice to the other party may terminate this Agreement. **Billing.** If a Student is provided Services, Contractor shall bill directly the Student, the student's parent or guardian, third-party insurer, or any other payor source.

4. **Compensation.** In consideration for Contractor's performance of the Services and obligations under this Agreement, and to secure availability of Services to Students, School District shall compensate Contractor in accordance with the terms set forth in **Exhibit B**.

5. **Space and Equipment for Delivery of Services.** If Contractor and School District agree the Day Treatment will be provided at the physical location of the School District, the School District will supply a mutually acceptable treatment space and equipment exclusive to Contractor and Providers for the provision of Services under such terms as are described in **Exhibit A**. Treatment space shall be made exclusively available to Providers and Contractor and its staff during School's normal business hours and as required to provide appropriate care to Students. Providers shall prominently display a name badge identifying the Provider's credentials and that Provider is affiliated with Contractor. The space may only be utilized for the delivery of Services to Students and for other duties, including administrative duties associated with the delivery of Services to Students.

6. **Independent Contractor Status.** Contractor is an independent contractor for all purposes and in all situations in the delivery of Services under this Agreement. Contractor has the right to control the activities and means by which Contractor's services under this Agreement are carried out and the right to exercise independent judgment. In all matters related to this Agreement, Contractor will be acting as an independent contractor, and neither Contractor nor any employee or agent of Contractor will be an employee of the School District within the meaning or application of any federal, state or local income or unemployment insurance laws, employee benefit laws, social security, workers' compensation or industrial laws, or otherwise. Contractor shall be responsible for all taxes owed on amounts paid to it under this Agreement. Contractor shall be responsible for payment of all applicable federal, state and local taxes or similar governmental charges incurred in connection with the performance of its activities under this Agreement, including without limitation federal withholding and unemployment taxes, income taxes, Social Security taxes, and worker's compensation premiums. All Providers shall be deemed employees or subcontractors of Contractor and will not be considered employees, agents or subcontractors of School District for any purpose whatsoever.

7. **HIPAA and FERPA Compliance.**

a. **Protected Health Information.** Contractor and School District agree to maintain the privacy and security of any individually identifiable patient health information received from or created for Company in accordance with all relevant state and federal laws and regulations, including, but not limited to, the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996,

set forth at 45 C.F.R. parts 160 and 164 (collectively "HIPAA"), 42 C.F.R. Part 2, and agrees to take such actions as are necessary and appropriate in connection therewith. Contractor agrees to execute the business associate agreement found under **Exhibit C**.

b. *Educational Records.* The Parties agree to protect the educational records of participating Student(s) in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g; 34 CFR Part 99. FERPA is a federal law that protects the privacy of Student records as related to their educational experience. The Parties shall not disclose or share records with a third party without the prior written consent of the participating Student. School District shall have sole responsibility for maintaining all educational records relating to the individual Students. Any and all documentation, including oral and written reports, related to a Student that is created, obtained, or maintained by or on behalf of Contractor and/or Provider shall be kept strictly confidential, is privileged, and shall not be disclosed to School District; provided, however, under certain circumstances and to the extent permitted or required by law, disclosure of such information may be made by Contractor and/or Provider if it is determined by Contractor and/or Provider that disclosure may be necessary to protect the life, health or safety of individuals within School, provider's medical staff, Student, patients, or the general public. Confidentiality of all records shall be maintained by all Parties hereto at all times, unless disclosure is required by law or as otherwise set forth herein, and School District agrees to inform Students of the confidential nature of all Contractor's patients and records, and of their obligations to protect the privacy and security of all protected health information. The provisions of this Section shall survive the termination of this Agreement.

c. *Consent.* The Contractor will require a consent from a Student in order to disclose information to School District about the Student.

d. *Breach.* Each Party agrees to the notify the other Party of a suspected and known breach within three but no later than five business days.

e. *Survival.* This Paragraph 7 shall survive termination of this Agreement. Either Party may take any steps legally available, in law or equity, to enforce the obligations under this Paragraph 7, and unless the Parties agree otherwise, the non-prevailing party shall pay any and all costs (including attorney's fees and costs) incurred by party enforcing the obligations under this Paragraph 7.

8. **Provider Qualifications.** It is expressly understood that Providers have and at all times during the term of Agreement shall have, a current license to provide educational, behavioral, and mental health services in the State of Montana. Providers shall demonstrate the status of such license on request of School District.

9. **Referral/Enrollment Process.** School District and Contractor shall refer and enroll Students for the Services in accordance with Montana Law. Notwithstanding any other provision of the Agreement, School District shall obtain written consent from the parent or legal guardian of the Student before a Provider shall provide the Services to the Student, pursuant to

Mont. Code Ann. § 40-6-702. School District understands that parents/guardians will also enroll with Contractor's services.

10. **Records; Inspection.** Contractor and School District shall each maintain books, records, and documents in accordance with educational, federal, and state medical documentation requirements, accounting procedures and practices that sufficiently and properly reflect the services rendered and funds expended in connection with this Agreement. All service/program notes, books, medical records, documents, or other materials associated with this Agreement shall be subject to reasonable inspection, review, or audit by either party or other legally recognized entities, during usual business hours and upon prior notice. Each party shall retain all records under this Agreement for seven (7) years after the termination or expiration of this Agreement or the conclusion of any audit pertaining to this Agreement, whichever is later.

11. **Claim Submission.** Contractor and Contractor's Providers shall maintain clinical records sufficient to enable Contractor to bill a Student, a Student's parent or guardian, or third-party payers for the Services.

12. **Professional Liability Insurance for Contractor.** Contractor shall provide or shall require Providers to provide professional liability coverage during, and tail coverage upon termination of this Agreement. Such policies will have customary standard limits, but not less than \$1 million occurrence and \$2 million in the aggregate.

13. **Commercial General Liability Insurance.** Contractor and School District shall each maintain insurance for bodily injury and property damage for limits not less than \$1,000,000 per occurrence (\$2,000,000 aggregate) including coverage for a subcontractor's obligations, operations, premises, independent contractors, products/completed operations, personal injury, and advertising injury.

14. **Indemnification by Contractor.** The Contractor agrees to defend, indemnify, and hold the School District, its employees, and agents, harmless for and against any, and all, claims, losses, liabilities, or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of:

- a. Acts or omissions of the Contractor, its employees or agents;
- b. The negligence or willful misconduct of the Contractor, its employees or agents;
- c. Claims by current or former employees of the Contractor relating to their employment and/or provision of services under this Agreement;
- d. Payback that occurs as a result of violations of the Contractor's implementation of any insurer rules and standards;
- e. A breach by the Contractor of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

15. **Indemnification by School District.** The School District agrees to defend, indemnify, and hold the Contractor, its employees, and agents, harmless from any, and all,

claims, losses, liabilities, or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of:

- a. Acts or omissions of the School District, its employees or agents;
- b. The negligence or willful misconduct of the School District, its employees, or agents; and
- c. A breach by the School District of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

16. **No Partnership or Third Party Rights.** Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between the parties hereto. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party, and no such other person shall have any right or cause of action hereunder. Contractor shall have no authority to bid, obligate or commit the Company by any promise or representation.

17. **Compliance with Law.** In connection with performing the Services under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor warrants to School District that it has secured all licenses and bonds necessary for performance of the Services.

18. **Taxes.** Because Contractor is an independent contractor, (a) School District shall not withhold or pay payroll or employment taxes of any kind with respect to any amounts paid under this Agreement, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax, and state reemployment insurance benefits tax, (b) School District shall not provide Contractor or Contractor's agents, Providers, etc. with workers compensation, reemployment benefits or any other benefits, including, but not limited to, malpractice, health, life and disability insurance, salary, bonuses, vacation, sick and other leaves of absence, and retirement plan benefits, and (c) Contractor shall make all filings with and payments to the Internal Revenue Service and state and local taxing authorities as are appropriate to Contractor's status as an independent contractor.

19. **Contract Modifications for Prospective Legal Events.** In the event of the passage of any law (state or federal), promulgation of any regulation by a governmental agency or authority, issuance of any ruling or interpretation of any statute or regulation by any governmental agency having jurisdiction over the subject matter, or the decision or interpretation of any court of competent jurisdiction, governmental agency, or board that would render any provision hereof violative of any federal or state law or regulation or otherwise thwart the purpose of this Agreement, the parties agree to negotiate in good faith a modification hereto as may be reasonably necessary to avoid such violation or bring this Agreement into compliance with such law, regulation, ruling, decision, or interpretation.

20. **Notices; Address for Payment.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement, or any other

agreement executed in connection therewith, shall be in writing and to the appropriate party at the addresses set forth below:

**Contractor:** Intermountain Deaconess Children's Services  
Attn: Chief Executive Officer  
3240 Dredge Drive  
Helena, Montana 59602

**School District:** Dan Rispens - Superintendent  
East Helena School District  
PO Box 1280  
East Helena, MT 59635  
[drispens@ehps.k12.mt.us](mailto:drispens@ehps.k12.mt.us)  
406-227-5534

21. **Assignment.** Contractor shall solely perform the Services. Contractor will not sub-contract or assign any aspect of performing the Services without the written consent of School District.

22. **Use of Premises.** If Contractor and School District agree the Day Treatment will be provided at the physical location of the School District, when providing the Services hereunder, Contractor agrees not to use, or permit any of Contractor's Representatives to use, any part of the Space for any purpose other than the performance of the Services. Without limiting the generality of the foregoing, Contractor agrees that no part of the premises of School shall be used at any time as an office for engaging in any business activities unrelated to the Services provided under this Agreement.

23. **Professional Conduct.** Neither Contractor nor any Contractor's Representative shall engage in any personal or professional conduct that does or may adversely affect the delivery of Services under this Agreement, the health or safety of School's Students or the effective and harmonious operation or reputation of Company.

24. **Conflict of Interest.** Contractor and Contractor's Representative shall not enter into any arrangement or pursue conduct that presents a conflict of interest or materially interferes with Contractor's or Contractor's Representative's performance of duties under this Agreement.

25. **Excluded Person.** Neither Contractor nor any of Contractor's Representatives is now or has ever been excluded, sanctioned, debarred, or otherwise made ineligible from participation in any government sponsored program, including any federal or state health care program (e.g., Medicare, Medicaid). Relatedly, no proceedings, investigations, or inquiries are currently pending or threatened by any federal or state agency as a result of which Contractor or any Contractor's Representative could be excluded, sanctioned, debarred or otherwise made ineligible from participation in any government sponsored program or sanctioned for any violation of any rule or regulation of such programs (excluding denial of reimbursement or payment of any specific claim or claims). Contractor will immediately provide written notice to Company of any such pending or threatened investigation or inquiry upon becoming aware of such investigation or inquiry.

26. **Charge or Conviction.** Neither Contractor nor any Contractor's Representative has been convicted of, or entered a plea of guilty or nolo contendere, to any misdemeanor charge related to the delivery of health care services, any felony, any drug-related crime, or any other crime involving moral turpitude (e.g., theft, fraud, embezzlement, or similar crime of dishonesty), whether or not sentence is imposed.

27. **Legal Authorization to Work.** Contractor and each of Contractor's Representatives are legally authorized to work in the United States in the capacity indicated under this Agreement.

28. **Severability and No Violation.** Whenever possible, each provision and term of this Agreement will be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

29. **Resolution of Disputes and Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana and Contractor hereby agrees to the jurisdiction and venue of the State of Montana with respect to any dispute arising out of this Agreement. All parties agree that no party shall be entitled to, or recover for, consequential, punitive, exemplary or extraordinary damages.

30. **Non-Waiver.** A delay or failure by either party to exercise a right under this Agreement, or a partial or single exercise of that right, shall not constitute a waiver of that or any other right.

31. **Entire Contract.** This Agreement and the Exhibits attached hereto constitute the entire understanding and agreement between School District and Contractor with regard to all matters herein. There are no other agreements, conditions or representations, oral or written, expressed or implied with regard thereto.

32. **Amendments in Writing.** This Agreement may be amended only by a written instrument executed by both parties.

33. **Additional Documents.** Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement and to otherwise cooperate fully with such other party in connection with the performance of such party's obligations under this Agreement.

34. **Confidentiality.** All terms of this Agreement, including all Exhibits, are confidential and may not be disclosed except to each party's attorneys, Contractor's Board of Directors, accountants (or other similar financial consultants), by written agreement of the parties and/or as ordered by a Court order.

35. **Executed Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute one

and the same agreement. The signatures of all of the parties need not appear on the same counterpart. Delivery of an executed counterpart signature page by electronic signature, facsimile or other electronic delivery of a scan or image of an executed counterpart signature page is as effective as execution and delivery of a manually executed counterpart signature page to this Agreement.

36. **Mediation of Disputes.** Any disputes between the parties on any matter pertaining to this Agreement shall be mediated by a mediator acceptable to both parties in Helena, Montana, and paid for equally by both parties. Prior to the filing of any suit by either party, a good faith effort to hold a mediation must have been made.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth in the preamble hereto.

**CONTRACTOR:**

Intermountain Deaconess Children's Services

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SCHOOL DISTRICT:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **Services**

#### **1. Contractor's Duties.**

Contractor shall provide the Services through Contractor and Contractor's Providers to the School District as follows:

- A. Contractor will provide staffing in accordance with ARM 37.106.1936.
- B. Contractor will provide behavioral health services as determined by the student's individual treatment plan and Individualized Educational Plan (IEP).
- C. Upon termination of this Agreement, if applicable, Contractor agrees to immediately vacate the offices, no later than 3 business days after termination of this Agreement, provided by the School District, and to return the offices and office equipment to the condition they were issued in, adjusting for normal wear and tear.

#### **2. School District's Duties.**

School District agrees to provide the following to Contractor:

- A. If applicable, provide an office in each School District Facility where the School District requested Day Treatment services. Each office will include a desk, a locking file cabinet, a desk chair, and chair(s) as needed. To establish office and equipment condition, a dual inspection and an inventory of the office and the equipment will be conducted by the service provider and the School District prior to the Contractor occupying the office. In addition to the office, internet access, copier access, parking, janitorial services, and a telephone will also be provided. The School District will not provide cell phones and will not provide e-mail access to the School District's e-mail server. The service provider will provide its own computers, but the school district will provide technical support on the initial installation of the computers.
- B. Inform the service provider of topics, dates and times of collaborative professional development opportunities offered/provided by the School District.
- C. Support admissions to Day Treatment services, for School District agrees to follow all Administrative Rules of Montana (ARM) regarding Day Treatment. including: identifying youth who exhibit inappropriate behaviors to the degree that a positive behavior intervention plan is needed and youth at risk of, or suspected to have need of, mental health services; implementing and monitoring

the progress of a positive behavior intervention plan for its effectiveness; and referring youth to the Day Treatment program when positive behavior interventions and supports have not resulted in significant positive behavioral change or when a youth may have a clinical condition and may be in need of mental health services.

- D. The School District will allow Day Treatment staff access to School District buildings, transportation (where applicable) during non-School District business hours, including holidays, PIR, evenings/weekends, and over summer months when School District is not in session.
- E. The School District will identify the role of the School District counselor, School District social worker, and School District psychologist, as appropriate, in the provision of mental health services and support to the youth including coordination with the Day Treatment program and coordination and monitoring of the Student's IEP.
- F. The School District will provide adequate bussing or other transportation services and breakfast to program students, unless other arrangements have been made and agreed to by all parties.
- G. The School District is responsible for completing a search of the student of any potential contraband, prior to leaving the school.
- H. Space for Service. If Contractor and School District agree the Day Treatment will be provided at the physical location of the School District, the School District agrees as follows:
  - i. The School District agrees to provide a space adequate to provide services to children that may include items such as furniture and other aesthetics. In providing the space the School District agrees to respect the privacy of the Contractor by not installing or utilizing any observation equipment such as two-way mirrors or utilizing technology to monitor the space. The space should have reasonable acoustic privacy that provides reasonable confidentiality to children from neighboring spaces.
  - ii. The School District agrees to provide limited access to the space (e.g., doors with limited locks) used exclusively by the Contractor.
  - iii. School District agrees to provide the Contractor with office space, privacy and treatment space, phone, reliable internet access, printer/fax access via the internet, copier access, and reasonable office supplies to support the provision of Day Treatment services in the School District. The School District will not support contractor technology.
  - iv. The School District will provide Contractor with required 24-hour notice of entry, when such entry is necessary. The School District may enter the premises without the consent of Contractor in the case of an emergency.

- v. The School District agrees to resolve any conflicts of this section in a timely and cordial fashion with a focus on providing quality care to children.
- I. Technology. If Contractor and School District agree the Day Treatment will be provided at the physical location of the School District, the School District agrees as follows:
  - i. The School District agrees to not utilize any audio or video recording equipment in spaces directly designated for the Contractor to provide Services (e.g., in offices where therapy is provided). Privacy is an important aspect of the care provided by the Contractor and the School District must comply with the Montana Pupil Online Personal Information Protection Act and secure data privacy agreements with all applicable providers.
  - ii. The School District may provide access to Internet resources to the Contractor in the form of wired or wireless connections.
  - iii. The School District may provide the Contractor with access to a School District email account or other resources. The School District may require Contractor employees to agree to or sign an acceptable use agreement as long as the requirements do not inhibit any of the privacy or technology requirements of this agreement. The School District may wish to do this in order to provide seamless scheduling and communication with children. The School District is responsible for determining appropriate access and disclosure of information within their own policy and procedures.

## **EXHIBIT B**

### **Compensation**

Contractor will provide the direct Day Treatment services and bill for those services following this procedure:

1. Contractor will provide Day Treatment services to enrolled Students authorized to receive Day Treatment services.
2. For those students who are not Medicaid eligible, Contractor shall bill the Student, the student's parent or guardian, third party insurer, or any other payor source. It is the responsibility of Contractor to seek payment for Day Treatment services rendered to non-Medicaid eligible students from all third-party payers.
3. Either party may request changes to this rate during contract term if there are changes to the service rate on the Medicaid Fee schedule or Office of Public Instruction (OPI) funding.
4. Contractor will invoice the District for Students enrolled in the Day Treatment program who are ineligible for Medicaid, uninsured, whose parents do not consent to insurance billing, or who have exhausted benefits from commercial or private insurance, at a rate equivalent to the DPHHS day treatment reimbursement rate. These costs include: \$92.94 per day (6 hours per Medicaid fee schedule). Monthly statements will be provided for services not covered by Medicaid or private insurance during the 2024-2025 school year. Additionally, Contractor will issue an annual invoice for non-reimbursable Medicaid or private insurance day treatment costs within ten (10) business days after the final day of school, and the District will settle these charges by the end of the contract year.
5. If any out-of-pocket expenses are incurred by the Contractor for services provided to students, the District will be responsible for reimbursing these costs in full after the Contractor has made reasonable and documented attempts to collect payment from the client or their family. Documentation of such collection efforts, including communication logs and billing notices, will be provided to the District upon request. The District's reimbursement shall include any outstanding amounts necessary to ensure the Contractor is fully compensated for services rendered.
6. Operational costs for delivering therapeutic services to students will be billed monthly (on or before the 25th of each month). For the 2024-2025 school year (180 days), these operational costs total \$8 per school day, per student.

# **EXHIBIT C**

## **Business Associate Agreement**

This Business Associate Agreement (“Agreement”) is entered into and effective this 13th day of January, 2025 (the “Effective Date”), by and between East Helena School District (“Business Associate”) and Intermountain Deaconess Children’s Services, a Montana Non-Profit Corporation (the “Covered Entity”), (sometimes individually referred to as a “Party” and collectively as the “Parties”).

The Parties have entered into an agreement(s) (“Services Agreement”) pursuant to which Business Associate is providing certain services, as are more particularly described in the Services Agreement (the “Service(s)”) to the Covered Entity that may require the use, creation of, transmittal, storage and/or disclosure of protected health information (“PHI”). Both Parties are committed to complying with the Privacy and Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the HITECH Act of 2009 (“HITECH Act”). This Agreement sets forth the terms and conditions by which PHI that is provided to, or, transmitted, stored or received by the Business Associate from or on behalf of the Covered Entity, will be handled, stored and transmitted between the Covered Entity, the Business Associate, any subcontractor to Business Associate, and any third party during the term of this Agreement and after its termination. The Parties agree as follows:

### **1. GENERAL USE AND DISCLOSURE AND SECURITY.**

1.1 Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as Required by Law.

1.2 PHI is defined as detailed in Section 9, below. PHI may relate to the past, present or future physical or mental health or condition of an individual, or the payment for the provision of health care to an individual. PHI identifies the individual who is the subject or based on which there is a reasonable basis to believe that the individual who is the subject can be identified.

1.3 Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Agreement and which reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that Business Associate either creates, receives, maintains, or transmits while performing the Services. Business Associate agrees that, if necessary, Covered Entity may be allowed to evaluate Business Associate’s technical security controls and safeguards prior to entering into this Agreement. Business Associate shall also develop and implement policies and procedures and meet the Security Rule documentation requirements to the extent required by the HITECH Act.

## **2. PERMITTED USES AND DISCLOSURES OF PHI.**

2.1 Business Associate may use or disclose PHI as necessary to perform its obligations under the Services Agreement, and as otherwise Required by Law. All other uses and disclosures of PHI not authorized by this Agreement are prohibited.

2.2 Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by the Covered Entity, except that:

- a. Business Associate may use PHI received by Business Associate in its capacity as Business Associate for the Covered Entity, as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; and
- b. Business Associate may disclose PHI in connection with a function, responsibility, or service identified in (a) above, if such disclosure is either:
  - i. Required by Law; or
  - ii. Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity, and such person or entity notifies Business Associate of any instances of which it becomes that the confidentiality of the information has been breached.

## **3. REQUIREMENTS RELATED TO SCOPE OF USE AND DISCLOSURES.**

3.1 Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

3.2 Business Associate shall report to the Covered Entity Privacy Officer, in writing c/o Privacy Officer, Intermountain Deaconess Children's Services, 3240 Dredge Drive, Helena, Montana 59602 , any use and/or disclosure of PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, including the discovery of a privacy or security breach of unsecured PHI as required by 45 C.F.R. 164.410, and any security incident of which it becomes aware, within two (2) business days of Business Associate's discovery of such unauthorized use and/or disclosure. Such notice shall include the identification of each Individual whose unsecured PHI has been or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

3.3 Business Associate shall ensure that any subcontractor business associates that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the

same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and § 164.308(b)(2).

- a. In the event Business Associate becomes aware of a pattern of activity or practice of a subcontractor business associate that constitutes a material breach or violation of the subcontractor business associate's obligations under its agreement with Business Associate, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, Business Associate shall terminate the agreement with the subcontractor business associate, if feasible.

3.4 Business Associate shall make available PHI in a Designated Record Set to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 C.F.R. § 164.524.

3.5 Business Associate shall make available all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy & Security Rule, subject to attorney-client and other applicable legal privileges.

3.6 Within fourteen (14) days of receipt of a written request by the Covered Entity, Business Associate shall make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Covered Entity for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement.

3.7 Business Associate shall make available PHI for amendment and incorporate any amendments to PHI as directed by the Covered Entity pursuant to 45 C.F.R. § 164.526, and take such other measures as directed by the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. § 164.526.

3.8 Within five (5) days of receiving a written request from the Covered Entity, Business Associate shall provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of the Individual's PHI in accordance with 45 C.F.R. § 164.528.

3.9 To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

3.10 Business Associate shall make all uses, disclosures and requests for PHI in accordance with the Covered Entity's minimum necessary policies and procedures.

3.11 Business Associate may de-identify PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(a)-(c).

3.12 Business Associate may provide data aggregation services relating to the Health Care Operations of the Covered Entity.

3.13 Business Associate may make any use or disclosure of PHI permitted under 45 C.F.R. § 164.512 except uses or disclosure for research are not permitted without the prior written approval of the Covered Entity.

3.14 Upon termination of this Agreement, Business Associate shall return the PHI to the Covered Entity in accordance with the Termination provisions of this Agreement and 45 C.F.R. § 164.504(e)(2)(ii)(J).

#### **4. RESPONSIBILITIES OF THE COVERED ENTITY.**

4.1 The Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices (the "Notice") that the Covered Entity provides to Individuals pursuant to 45 C.F.R. § 164.520, to the extent such limitation(s) may affect Business Associate's use or disclosure of PHI.

4.2 The Covered Entity shall notify Business Associate of any changes in, or revocation of, the authorization provided to the Covered Entity by Individuals pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent such changes may affect Business Associate's use or disclosure of PHI.

4.3 The Covered Entity shall notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, including, but not limited to, any restriction on the use or disclosure of PHI the Covered entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent such restrictions may affect Business Associate's use or disclosure of PHI.

4.4 The Covered Entity will not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

#### **5. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI.**

5.1 Responsibilities of Business Associate with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that the PHI constitutes a Designated Record Set, Business Associate hereby agrees to do the following:

- a. At the request of, and in the time and manner designated by the Covered Entity, provide access to the PHI to the Covered Entity or the Individual to whom such PHI relates or his or her authorized representative in order to meet a request by such Individual under 45 C.F.R. § 164.524.

- b. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule and the HITECH Act. Business Associate agrees to provide to the Covered Entity or an Individual, in the time and manner identified by Covered Entity, information collected to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule and the HITECH Act.

5.2 Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that the PHI constitutes a Designated Record Set, the Covered Entity hereby agrees to do the following:

- a. Notify the Business Associate, in writing, of any PHI that Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which the Business Associate shall provide such access.
- b. Notify the Business Associate, in writing, of any amendment(s) to the PHI in the possession of the Business Associate that the Business Associate shall make and inform the Business Associate of the time, form and manner in which such amendment(s) shall be made.

## 6. REPRESENTATIONS AND WARRANTIES.

6.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- a. That all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of PHI of any Individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Privacy or Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion.
- b. That it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.
- c. Business Associate will verify through the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals/Entities ("LEIE") that none of its current or future members, shareholders, directors, officers, agents, employees or workforce members have been excluded from participation in Medicare, Medicaid, or other Federal healthcare programs. In addition, Business Associate will

perform criminal background checks on each director, officer, agent, employee or other member of its workforce to verify that no such person has been convicted, under federal or state law, of a criminal offense related to (i) the neglect or abuse of a patient, (ii) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (iii) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any federal or state healthcare program operated by or financed in whole or in part by any federal, state or local government agency, or (iv) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance under a federal or state healthcare program. Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

## **7. TERMS AND TERMINATION.**

7.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 7. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 8.3 below.

7.2 Termination by the Covered Entity. In the event Business Associate breaches a material term of this Agreement, the Covered Entity may choose to either (a) terminate this Agreement immediately, or (b) provide Business Associate with written notice of the material breach, and provide Business Associate thirty (30) days to cure such material breach to the satisfaction of the Covered Entity. Failure to cure within thirty (30) days from the date of the written notice shall result in immediate termination of this Agreement and any Services Agreement.

7.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under this Agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days prior written notice of its intention to terminate this Agreement; provided, however, that prior to terminating this Agreement, Business Associate agrees to cooperate with the Covered Entity to attempt to find a mutually satisfactory resolution to the matter.

7.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the last agreement in effect between the Parties.

7.5 Effect of Termination. Upon the event of termination pursuant to this Section 7, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. Business Associate shall notify the Covered Entity in writing if it is not feasible for the Business Associate to return or destroy such PHI. Such notification shall include: (a) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

## **8. MISCELLANEOUS.**

8.1 Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein.

8.2 Survival. The respective rights and obligations of Business Associate and the Covered Entity under the provisions of Sections 7.5, 8, 9 and Section 3 solely with respect to PHI Business Associate retains in accordance with Section 7.5 because it is not feasible to return or destroy such PHI, shall survive termination of this Agreement indefinitely. In addition, Section 5 shall survive termination of this Agreement, provided that the Covered Entity determines that the PHI being retained pursuant to Section 7.5 herein constitutes a Designated Record Set.

8.3 Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rule of HIPAA as that legislation may be amended from time to time. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

8.4 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.5 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below.

**If to Covered Entity, to:**

Intermountain Deaconess  
Children's Services  
c/o Privacy Officer  
3240 Dredge Drive  
Helena, Montana 59602

**If to Business Associate, to:**

EHPS  
PO Box 1280  
226 E Clinton  
East Helena, 59635

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

8.6 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8.7 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Business Associate Agreement, the Parties shall make good faith efforts to resolve such matters informally. In no event shall this clause effect a mutually agreed upon forum selection clause.

8.8 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy & Security Rule.

**9. DEFINITIONS.**

9.1 Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.2 Health Care Operations. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.3 Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

9.4 Privacy Officer. "Privacy Officer" shall have the same meaning as the term "privacy official" in 45 C.F.R. § 164.530(a)(1), as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.5 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

9.6 PHI. "PHI" shall have the same meaning as the term "PHI" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised, limited to the information created or received by Business Associate from or on behalf of Covered Entity. "PHI" shall include all "electronic PHI" as that term is defined in 45 C.F.R. § 160.103, and as it is subsequently amended or revised.

9.7 Required by Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.8 Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the first date written above.

**COVERED ENTITY**

INTERMOUNTAIN DEACONESS  
CHILDREN'S SERVICES

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Printed Name

Name: \_\_\_\_\_  
Printed Name

Its: \_\_\_\_\_

Its: \_\_\_\_\_

