
PROFESSIONAL SERVICES AGREEMENT

FOR

ECONSULT AND REFERRAL MANAGEMENT SUPPORT SERVICES

BETWEEN

**SAN BERNARDINO COUNTY
ON BEHALF OF
ARROWHEAD REGIONAL MEDICAL CENTER**

AND

WISE HEALTHCARE, INC.

**PROFESSIONAL SERVICES AGREEMENT
ARROWHEAD REGIONAL MEDICAL CENTER**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California, on behalf of Arrowhead Regional Medical Center (“COUNTY”), and WISE Healthcare, Inc., a California corporation (“CONTRACTOR”). COUNTY is a political subdivision of the State of California operating a hospital or surgery center.

RECITALS

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

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

WHEREAS, County previously entered into a Memorandum of Understanding (Agreement No. 18-135) (“MOU”) in which, IEHP, COUNTY and Riverside University Health System collectively agreed to adopt eConsult and where IEHP funded the “Initial Term” of the Multi-County eConsult Initiative (“MCeI”); and,

WHEREAS, eConsult is a covered benefit of the California Department of Health Care Services and the use of IEHP’s eConsult via the eConsultIE portal is required to capture encounter data for IEHP to submit to the State per APL 09-002; and,

WHEREAS, County previously entered into an agreement with Safety Net Connect, Inc., (“VENDOR”) an eConsult technology vendor, to provide eConsult and eReferral Management Software; and,

WHEREAS, COUNTY now desires to contract directly with the CONTRACTOR for the continued support and project management of COUNTY's eConsult and eReferral (“eCRM”) services and any related interface work;

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

ATTACHMENT A – SCOPE OF SERVICES- GENERAL
ATTACHMENT A-2- SCOPE OF SERVICES- EPIC INTERFACE SERVICES
ATTACHMENT B – SCHEDULE OF FEES FOR GENERAL SERVICES
ATTACHMENT B-2 – SCHEDULE OF FEES FOR EPIC INTERFACE SERVICES
ATTACHMENT C – OWNERSHIP INFORMATION
ATTACHMENT D – BUSINESS ASSOCIATE AGREEMENT

The Parties hereto mutually agree as follows:

1. SERVICES

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR shall provide the services necessary to perform in a complete, skillful and professional manner all those services described in Attachments A and A-2 ("Scope"). CONTRACTOR agrees to maintain any applicable professional license(s) as required by law at all times while performing services under this Agreement.
- B. Other than as specifically indicated in Attachment A, CONTRACTOR will not utilize the services of any subcontractors in providing the services required hereunder without COUNTY's prior written approval. CONTRACTOR shall request approval by submitting a written description of the services to be subcontracted. If approved by COUNTY, CONTRACTOR shall remain the prime contractor for the services and be responsible for the conduct and performance of each approved subcontractor. All references to CONTRACTOR in this Agreement in the context of providing services, where applicable, will also include CONTRACTOR's approved subcontractors.
- C. CONTRACTOR, or its agents or subcontractors, shall not perform any services outside the United States of America without COUNTY's prior written consent. In the event CONTRACTOR is in breach of this Section, COUNTY shall have, in its sole discretion, the right to immediately terminate this Agreement.

2. COMPENSATION

- A. COUNTY shall compensate CONTRACTOR for the services set forth in the Scope, upon approval of a properly presented invoice for services. Payment shall be made "net-60" terms from the date of receipt of a complete invoice.
- B. COUNTY shall make payments to CONTRACTOR as outlined in Attachment B and B-2. CONTRACTOR shall submit invoices to COUNTY for authorized services within thirty (30) days of the month of the rendered service. Invoices from CONTRACTOR must be received by COUNTY no later than ninety (90) days from the month wherein the services were rendered; invoices submitted after ninety (90) days from the month of services are not eligible for reimbursement.
- C. Other than as stated on Attachment B, price increases will not be permitted during the Agreement term. If applicable, annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Riverside- San Bernardino- Ontario, CA areas and be subject to satisfactory performance review by COUNTY and approved (if needed) for budget funding by the Governing Board.
- D. The total compensation payable under this Agreement shall not exceed Two Million Nine Hundred Twenty -Five Thousand dollars (\$2,925,000.00). In no event shall compensation exceed this amount without a written amendment to this Agreement

authorizing such increase in total compensation payable to CONTRACTOR. CONTRACTOR agrees to monitor its costs at all times and provide COUNTY forty-five (45) days' written notice if CONTRACTOR becomes aware that it may exceed the total compensation authorized pursuant to this Section.

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

3. **DISALLOWANCE**

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

4. **TERM AND TERMINATION**

- A. Term of Agreement. This Agreement shall be effective as of March 1, 2022 ("Effective Date") and shall continue in effect through February 28, 2027 ("Term") unless earlier terminated in accordance with the provisions of Paragraph B of Section 4 of this Agreement. This Agreement shall automatically expire on February 28, 2029.
- B. Termination.
 - 1) Termination for Convenience. COUNTY may terminate this Agreement, for convenience, upon thirty (30) days' written notice delivered in accordance with Section 21 (NOTICES).
 - 2) Termination for Cause. Should COUNTY determine that there is a basis for termination for cause, such termination shall be effected upon five (5) days' written notice to CONTRACTOR in accordance with Section 21 (NOTICES).
 - 3) Immediate Termination. Immediate termination shall be available to the

non-defaulting party, as specified below, by providing written notice in accordance with Section 21 (NOTICES).

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

4) Effect of Termination.

- i. Upon expiration or termination of this Agreement for any reason, CONTRACTOR shall promptly:
 - a. Furnish to COUNTY all documents related to services rendered under this Agreement, including without limitation, copies of work papers, schedules or other work products related to this Agreement that do not include contractor's intellectual property.
 - b. On a pro rata basis, repay all fees and expenses paid in advance for any fees and expenses, including licensing fees, paid in advance for any Services which have not been provided.
 - c. Provide reasonable cooperation and assistance to COUNTY in transitioning the Services to an alternate service provider.
- ii. Unless otherwise provided herein, the rights and obligations of any party which by their nature extend beyond the expiration or termination of this Agreement, shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. This includes, without limitation, the following provisions: DISALLOWANCE, INDEMNIFICATION, LIMITATION OF LIABILITY, WORK PRODUCT AND INTELLECTUAL PROPERTY, CONFIDENTIALITY, GOVERNING LAW; and VENUE.

5. INDEMNIFICATION

- A. CONTRACTOR shall indemnify, and hold harmless COUNTY, directors, officers,

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

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

- B. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against COUNTY, or COUNTY receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, COUNTY will use reasonable efforts to notify CONTRACTOR promptly of such lawsuit, claim or election. However, COUNTY's failure to provide or delay in providing such notice will relieve CONTRACTOR of its obligations only if and to the extent that such delay or failure materially prejudices CONTRACTOR's ability to defend such lawsuit or claim. COUNTY will give CONTRACTOR sole control of the defense (with counsel reasonably acceptable to COUNTY) and settlement of such claim; provided that CONTRACTOR may not settle the claim or suit absent the written consent of COUNTY unless such settlement (a) includes a release of all claims pending against COUNTY, (b) contains no admission of liability or wrongdoing by COUNTY, and (c) imposes no obligations upon COUNTY other than an obligation to stop using the Goods or Services that are the subject of the claim. In the event that CONTRACTOR fails to or elects not to defend COUNTY against any claim for which COUNTY is entitled to indemnity by CONTRACTOR, then CONTRACTOR shall reimburse COUNTY for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from COUNTY. After thirty (30) days, COUNTY will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by COUNTY to CONTRACTOR. This shall not apply to any judgment or settlement amount, which amounts COUNTY shall be entitled to notify, invoice or debit CONTRACTOR's account at any time; and COUNTY, at its sole discretion, may settle the claim or suit.
- C. CONTRACTOR's obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- D. The specified insurance limits required in this Agreement shall in no way limit or

circumscribe CONTRACTOR's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

6. LIMITATION OF LIABILITY

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

7. INSURANCE

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

- A. Workers' Compensation/Employer's Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of CONTRACTOR and all risks to such persons under this Agreement. If CONTRACTOR has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY'S Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- B. Commercial General Liability - CONTRACTOR shall carry General Liability Insurance covering all operations performed by or on behalf of CONTRACTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - 1) Premises operations and mobile equipment
 - 2) Products and completed operations
 - 3) Broad form property damage (including completed operations)
 - 4) Explosion, collapse and underground hazards
 - 5) Personal injury
 - 6) Contractual liability
 - 7) \$2,000,000 general aggregate limit.
- C. Vehicle Liability - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If CONTRACTOR is transporting one or more non-employee passengers in

performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If CONTRACTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- D. Professional Liability - a limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate or Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits. CONTRACTOR shall ensure continuous coverage for such length of time as necessary to cover any and all claims (i.e. appropriate Tail Coverage for coverage written on claims made basis, etc.).
- E. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- F. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.
- G. General Insurance Provisions – All lines.
 - 1) Insurance to be placed with insurers with a current A. M. BEST rating of not less than A: VIII (A:8) unless otherwise approved by COUNTY Risk Management.
 - 2) CONTRACTOR must declare any deductibles or self-insured retentions (“SIRs”) for insurance coverage required to be approved by COUNTY. Should any deductibles or SIRs be unacceptable to COUNTY, COUNTY may require CONTRACTOR to: 1) reduce or eliminate such deductibles or SIRs; 2) provide proof of ability to pay such required fees/expenses within the retention or deductible; and 3) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
 - 3) CONTRACTOR shall furnish COUNTY with either 1) original Certificate(s) of Insurance or amendatory endorsements effecting coverage as required herein, or 2) if requested by COUNTY, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, CONTRACTOR shall provide no less than thirty (30) days’ written notice to COUNTY prior to any material modification, cancellation, expiration or reduction in

coverage of such insurance. In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to cancel this Agreement or obtain insurance if it deems necessary and any premiums paid by COUNTY will be promptly reimbursed by CONTRACTOR or COUNTY payments to CONTRACTOR will be reduced to pay for COUNTY purchased insurance. **CONTRACTOR shall not commence operations until COUNTY has been furnished original Certificate(s) of Insurance and endorsements.**

- 4) CONTRACTOR's insurance shall be construed as primary insurance, and COUNTY's insurance shall not be construed as contributory. CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit CONTRACTOR and CONTRACTOR'S employees or agents from waiving the right of subrogation prior to a loss or claim. CONTRACTOR hereby waives all rights of subrogation against COUNTY. All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 5) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to COUNTY.
- 7) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.
- 8) CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between CONTRACTOR and COUNTY or between COUNTY and any other insured or additional insured under the policy.
- 9) Insurance requirements are subject to periodic review by COUNTY. The

COUNTY Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever COUNTY determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, if the Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against COUNTY, inflation, or any other item reasonably related to the COUNTY'S risk.

- 10) Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.
- 11) Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.
- 12) CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

AVAILABILITY OF CONTRACT TERMS TO PUBLIC AGENCIES

"PIGGYBACK CLAUSE". Intentionally blank

8. WORK PRODUCT AND INTELLECTUAL PROPERTY

COUNTY acknowledges that all proprietary and intellectual property rights, title and interest, including copyright, in and to the original and copies of the Application Modifications, Application Software, Replacement Products, Source Code, System Operating Software, and System Software elements that are provided originally by CONTRACTOR and not COUNTY, and the Documentation provided to COUNTY pursuant to this Agreement other than Third Party Software (which shall remain the property of the applicable third party, subject to COUNTY'S License), and any changes or modifications thereto are and shall remain the exclusive property of CONTRACTOR (hereinafter "Contractor Materials"), with all such Application Modifications, Application Software, Replacement Products, System Operating Software, and System Software being subject to the License granted to COUNTY pursuant to the SaaS agreement.

COUNTY releases all proprietary and intellectual property rights, title and interest, including copyright, in and to all Interfaces, Baseline Customizations and Additional Customizations developed pursuant to this Agreement ("Application Modifications") to CONTRACTOR, subject to CONTRACTOR'S incorporation of said Application Modifications into the Application Software in perpetuity and subject to CONTRACTOR'S provision of Maintenance and Support Services for the Application Software, as required by this Agreement, including (Scope of Work), inclusive of such Application Modifications and any Updates and Version Releases to Application Software, to COUNTY in exchange for COUNTY's full consideration therefore.

All User Data and other information entered into the System, including and any and all updates or modifications to User Data shall be deemed the COUNTY'S Confidential Information, as that term is defined in Paragraph 3.0 (Confidentiality) of Exhibit A (Additional Terms & Conditions) to this Agreement. Upon any expiration or termination of this Agreement, and continuously throughout the Term, CONTRACTOR will make available to and otherwise provide Authorized Users with a complete copy of the most recent back up of the User Data in a mutually agreed upon, commercially standard format that is compatible with the User's then existing systems and will make commercially reasonable efforts to assist the User in the transition of such User Data as reasonably requested by the requesting User. Upon request, CONTRACTOR, within ten (10) days of termination, certify in writing its compliance with this Paragraph to the requesting User. During the term of the Agreement, COUNTY or its Users may make suggestions or provide input regarding the functions or features of the System. This Agreement shall not be construed as granting any ownership rights in CONTRACTOR to any User Data or any other COUNTY Confidential Information. The User Data shall not be used by CONTRACTOR for any purpose other than as required under this Agreement, nor shall the User Data or any part of the User Data be disclosed, sold, assigned, leased or otherwise disposed of to third parties by CONTRACTOR or commercially exploited or otherwise used by or on behalf of CONTRACTOR, its officers, directors, employees, subcontractors or agents.

CONTRACTOR will not retain any User Data for any period longer than necessary for CONTRACTOR to fulfill its obligations under this Agreement. As soon as CONTRACTOR no longer needs to retain such User Data in order to perform its duties under this Agreement, CONTRACTOR will, at COUNTY'S direction and in COUNTY'S sole discretion, promptly return to each User and destroy or erase all originals and copies of such User Data.

9. LICENSE/ACCESS GRANT

CONTRACTOR hereby grants to COUNTY a worldwide, non-exclusive license to access and use the System and Work, including any related Documentation (hereinafter "License"), by all Authorized Users in accordance with the scope set forth in this paragraph and subject to the Service as a Software Agreement, attached hereto as Exhibit E, for COUNTY's business purposes during the term specified in Term).

10. OFFICERS, OWNERS, STOCKHOLDERS AND CREDITORS

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

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

11. NONDISCRIMINATION

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

12. CONFLICT OF INTEREST

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

13. PROTECTED HEALTH INFORMATION ("PHI")

CONTRACTOR further agrees to the provisions of the HIPAA Business Associate Agreement, attached hereto in Attachment D, and incorporated herein by this reference.

14. CONFIDENTIALITY

- A. Each Party receiving Confidential Information (a "Receiving Party") hereunder, as defined below, shall hold the Confidential Information in strict confidence and use and access the Confidential Information only as is necessary for the performance of this Agreement. Each Receiving Party may only disclose Confidential Information to its employees and third party consultants who have a bona fide need to know. Receiving Party shall not otherwise disclose Confidential Information without the prior written consent of the other party (the "Disclosing Party") or as required by law.
- B. Confidential Information means any technical, financial, trade secrets, or any information the Disclosing Party has received from others, including personal information, which it is obligated to treat as confidential or proprietary, including without limitation, any and all ideas, techniques, processes, methods, systems, cost data, computer programs, formulas, work in progress, customers/members, business plans, and other business information. Confidential Information shall not

include any information that:

- 1) Is or becomes available to the public (other than through any act or omission of Receiving Party);
- 2) Is required to be disclosed pursuant to an applicable law, subpoena, or court order, provided that the Receiving Party notifies the Disclosing Party to allow Disclosing Party to protect its interests, if desired;
- 3) Is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party;
- 4) Is lawfully known by the Receiving Party at the time of disclosure or otherwise lawfully obtained by a third party with no obligation of confidentiality.

15. PUBLIC ENTITY STATUS; BROWN ACT/PUBLIC RECORDS ACT

The parties hereby acknowledge and agree that COUNTY is a local public entity of the State of California subject to the Brown Act, *California Government Code Sections 54950 et seq.*, and the Public Records Act, *California Government Code Sections 6250 et seq.*

16. COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS

- A. General. The parties shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect, subsequently amended or hereafter enacted. The parties shall further observe and comply with all applicable executive orders, directives, requirements (including state and/or federal contract requirements), and standards by any organization having jurisdiction over COUNTY or any Authorized User to regulate the delivery of health care services. This shall include applicable accrediting organizations. All the aforementioned items are hereby made a part hereof and incorporated herein by reference.

17. AUDIT RIGHTS

- A. CONTRACTOR understands that COUNTY is a county managed provider regulated by entities, including without limitation, DMHC, DHCS, and the Centers for Medicare and Medicaid Services. To the extent CONTRACTOR is identified as a subcontractor for which COUNTY is required to do oversight due to its legal and/or contractual obligations to such regulatory agencies, the following provisions shall apply:
- 1) Maintenance of Records. CONTRACTOR will maintain complete and accurate books, records and documentation, including audited financial statements prepared in accordance with generally accepted accounting procedures and practices, to sufficiently and properly reflect the services provided and CONTRACTOR's direct and indirect costs invoiced in the

performance of the Agreement. The retention period for such books and records shall be for a period of ten (10) years or as otherwise stated in the Attachments to this Agreement.

- 2) Records Subject to Inspection. All books, records, documents, and other materials maintained by CONTRACTOR and relating to the Agreement will be subject, at reasonable times during regular business hours and upon thirty (30) days prior written notice, to examination, inspection, copying, or audit by authorized COUNTY personnel. The parties agree that books, records, documents, and other evidence of accounting procedures and practices related to CONTRACTOR's cost structure, including overhead, general and administrative expenses, and profit factors will be excluded from COUNTY's review.
- 3) Subcontracts. CONTRACTOR will incorporate into any subcontracts the records retention and review requirements of this Section.

18. EXCLUSION/DEBARMENT LISTS

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

19. NOTICES

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

COUNTY:

William L. Gilbert
Director
ARMC
400 North Pepper Avenue
Colton CA 92324

CONTRACTOR:

Sajid Ahmed
Chief Executive Officer
WISE Healthcare, Inc.
103 East Olive Ave, Suite 100
Redlands, CA 92373
415-377-9514
Sajid.Ahmed@WISE.Healthcare

ARMC (CC):
Arrowhead Regional Medical Center
Attn: Genaro Grajeda / Maria Tucci
400 North Pepper Avenue
Colton CA 92324

20. SEVERABILITY

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

21. WAIVER

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

22. INDEPENDENT CONTRACTOR

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

23. GOVERNING LAW; VENUE

- A. The provisions of this Agreement shall be construed in accordance with the laws of the State of California, excluding its conflicts of law provisions.
- B. The provisions of the Government Claims Act (*California Government Code Sections 900 et seq.*) must be followed for any disputes under this Agreement.
- C. All actions and proceedings arising in connection with this Agreement shall be tried

and litigated exclusively in the state or federal (if permitted by law) courts located in the San Bernardino County, State of California.

24. FORCE MAJEURE

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

25. ASSIGNMENT

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

26. CHANGE IN CONTROL

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

27. ALTERATION AND/OR AMENDMENT

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the San Bernardino County Board of Supervisors or designee may authorize any alteration or revision of this Agreement on behalf of COUNTY. Notwithstanding the foregoing, amendments required due to legislative, regulatory or other legal authority do not require the prior approval of CONTRACTOR and shall be deemed effective immediately (or such other time frame as required by law or regulation) upon CONTRACTOR's receipt of notice. Notice of amendments required by law, regulation or other legal authority shall be given as provided in Section 21 (NOTICES).

28. ENTIRE AGREEMENT

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

29. COUNTERPARTS; SIGNATURES

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

30. COUNTERPARTS; SIGNATURES

If there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

- a) Applicable federal and State laws, regulations and policies;
- b) The Business Associate Agreement (Attachment D);
- c) The terms and conditions in the body of this Agreement;
- d) The terms of the Attachments (except Attachment D) and/or other documents attached to this Agreement, provided that no order of precedence shall be applied among such Attachments and/or other documents;
- e) The Documentation

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

SAN BERNARDINO COUNTY

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

By _____
Deputy

WISE HEALTHCARE, INC.

By ►

(Authorized signature – sign in blue ink)

SAJID AHMED

Name _____

Title **CEO**

Dated: **1/19/2022**

FOR COUNTY USE ONLY

Approved as to Legal Form

►

County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Date _____



ATTACHMENT A

SCOPE OF SERVICES-GENERAL

CONTRACTOR shall meet or exceed the Operational & Technical Services, and support requirements for ARMC Ambulatory Care & Specialty Clinics according to this ATTACHMENT A and ATTACHEMTN A-2.

1. CONTRACTOR shall support of all COUNTY specialty clinic and primary care sites, referral systems and process and eConsult and care management process.
- 2.
3. CONTRACTOR shall maintain effective, timely, and thorough communication with COUNTY using an established project communication plan which has been submitted to and approved by COUNTY prior to the commencement of work.
4. CONTRACTOR shall follow quality assurance processes and plans based on a plan submitted to and approved by COUNTY, prior to the commencement of work.
5. CONTRACTOR shall follow a reporting plan based on a plan submitted to and approved by COUNTY, prior to the commencement of work.
6. CONTRACTOR shall follow processes and plans submitted to and approved by COUNTY, prior to the commencement of work.
7. CONTRACTOR shall develop and complete all deliverables under this Agreement based on a plan submitted to and approved by COUNTY prior to the commencement of work.
8. Completion of "Scope Deliverables" (as defined below) is contingent on receiving the minimum necessary deliverables from COUNTY in a timely manner. Project plan/timelines will be updated upon receipt of approved business requirements.
9. Implementation of eCRM Module enhancements is contingent on receiving the minimum necessary deliverables from COUNTY, in a timely manner. Project plan/timelines will be updated upon receipt of approved business requirements.

CONTRACTOR shall provide eConsult and eReferral ("eCRM") Program Management services according to what is outlined below:

SCOPE DELIVERABLES A:

1. Business Requirements: CONTRACTOR's Professional Services shall meet or exceed the business requirements outlined below:
 - A. eConsult/eCRM program operations and support:
 - 1) provide continuity in services for existing eConsult/eCRM users

- 2) onboard new ARMC users (eConsult and eCRM)
 - 3) onboard new referring site users (eCRM)
 - 4) provide support desk/call center services, triage, and escalation as appropriate
 - 5) training for all ARMC licensed providers
 - 6) provide technical oversight/project management to technology vendor (SNC)
 - 7) oversee program enhancement and improved user experience
- B. Specialist Reviewer Management services for ARMC and SBCSD, working with IEHP contracted multi-specialty eConsult medical group HubMD, P.C.
- 1) Provide licensed physician/provider clinical responses to ARMC and SBCSD patients within 72 hours
- C. Optimization:
- 1) Manage additional specialty services
 - 2) Evaluate and improve workflows and use of eConsult at all sites live on eConsult.
 - 3) Provide access to community specialists after member referrals are authorized
- D. Epic technical and user support
- 1) Build and test interfaces (we have Epic programming and development resources)
 - i. Epic ADT to eConsult interface
 - ii. eConsult to Epic bidirectional message exchange interface
 - iii. Closed eConsult to Epic record sharing interface
 - 2) Physician training and workgroup leadership



ATTACHMENT A-2

SCOPE OF SERVICES **EPIC INTERFACE MANAGEMENT**

SCOPE DELIVERABLES A-2:

CONTRACTOR shall provide the following:

1. Commencing no later than March 1, 2022 (“Service Date”), provide technical assistance and to complete the required Epic – eConsultIE interfaces as listed above. This will be additional key resources who have already completed the Epic-eConsultIE interfaces for Riverside University Health System and will not require any additional time from ARMC Epic team members.
2. Act as “Technical Assistance & Management” for ARMC, which shall include but not be limited to the following duties:

Coordinate all work effort and leverage its previous expertise with completing Orders & Results Interfaces, and SSO + patient contextual work. This work will provide ARMC with all of the Epic-eConsult required interfaces necessary to operationalize the program.

Recommended (before or after EPIC go-live on Feb 12, 2022) Epic-eConsultIE portal interfaces include:

1) SSO/ Patient Context

This interface is needed to support 150+ ARMC physicians (including residents) submitting and responding back to eConsults with specialists. This will launch single sign on from Epic to eConsultIE portal within the Results Inbasket folder, and pass over patient contextual information, so providers can respond back to pending eConsults. Providers will not need to check other systems i.e., email notifications for pending eConsults needing response and instead manage and coordinate via their Results Inbasket.

2) Orders Interface: Ability to submit, view and respond to eConsult dialog

Please see technical and workflow diagrams (below). Orders interface will automatically generate an eConsult within the eConsultIE portal (ORM interface) with all of its associated patient demographics and clinical question on behalf of patient. This will eliminate providers and staff having to re- enter information and initiate eConsults on the eConsultIE portal.

3) Results Interface (Preliminary & Final Results + Authorization Info)

Please see technical and workflow diagrams (below). ORU results are sent back when there are updates to the eConsult i.e., updated additional information needed by specialist and follow up needed. Recommendations for next steps, along with all associated eConsult metrics like time stamps and dialogs are sent back as part of results interface (ORU) to Epic. Additionally, send



updated authorization details and statuses. This meets one of the technical requirements of the MOU and RFP for records sent back to the EHR. Without this process, the referral coordinators (TCCs) will need to monitor updates and statuses on behalf of providers. Moreover, providers will be alerted with this update so they can have all associated information and updates related to their patient's eConsults and next step items.

Scope Deliverables: Overview of Process for EPIC-eConsultIE Interface

Future enhancements to the eConsult platform ("eConsultIE") are based upon an interactive process between CONTRACTOR and COUNTY to refine the specifications of each enhancement.

CONTRACTOR will work with COUNTY to refine the requirements for future eConsultIE enhancements. CONTRACTOR utilizes an interactive process to develop a Build Requirements Document (BRD) that the Client will review and provide "sign-off" prior to any modification work begins. Such BRD will present an estimation of hours and cost budget. Along with the BRD, CONTRACTOR shall provide a project timeline. A typical project timeline is set forth as follows:

- | | |
|--|-----------|
| 1. Finalize Business Requirements and a SOW document | 1-2 weeks |
| 2. Development and Internal testing Completion | 12 weeks |
| 3. Client Completes User Acceptance Testing | 4 weeks |
| 4. Client Reports finding to technical team | 2 days |
| 5. Technical Team reviews/Fixes Findings | 3 days |
| 6. Client re-tests updated sites | 1 week |
| 7. Client Signs off on Testing | 1 day |
| 8. Push to Demo and Production/ Training and Go-Live | 2 days |

**** Note -** Timeline dependencies resulting from external, non-CONTRACTOR resources may alter the expected duration of the development and internal testing efforts.

Deliverables for anticipated future enhancements are set forth below. Utilizing the standard CONTRACTOR approach, the specific items will be collaboratively refined and presented in a BRD. Upon completion of the BRD, a timeline shall be set forth based upon the work effort agreed upon. For planning and budgeting purposes, based on the information available, we have provided estimated budget cost and targeted completion timelines.

1. Scope Deliverable 1: EPIC-eCONSULTIE Interface Enhancements

- eCONSULTIE** Module enhancements and configuration per requirements
- Future enhancements to the **eCONSULTIE** system identified by COUNTY will undergo collaborative scope development and cost estimation by COUNTY and CONTRACTOR. Rates for future enhancements will be per the hourly fee schedule in Attachment B.
- CONTRACTOR shall develop and complete all deliverables under this scope of work based on a plan submitted to and approved by COUNTY prior to the commencement of work.



ATTACHMENT B

SCHEDULE OF FEES

WISE HEALTHCARE, INC.

1. CONTRACTOR shall invoice COUNTY electronically for Scope service fees to COUNTY's Accounts Payable Office at accountspayable@armc.sbcounty.gov. Each invoice shall cite the CONTRACTOR's name, address, and remit to address, description of the work performed, the time period covered by the invoice, and the amount of payment requested.
 - a. Invoices shall be paid electronically by ARMC to the banking institution/account numbers provided by the CONTRACTOR. In the event of a change in banking institution and/or account numbers, CONTRACTOR shall provide ARMC thirty (30) days prior written notice. ARMC will assume no liability for payments made to banking institutions and/or accounts that are due to CONTRACTOR'S failure to provide the correct information.
2. The consideration to be paid to CONTRACTOR, as provided herein, shall be in full payment for all CONTRACTOR Services and expenses incurred in the performance hereof, including travel and per diem. CONTRACTOR shall adhere to COUNTY'S Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Agreement and for which reimbursement is sought from COUNTY. In addition, CONTRACTOR is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
3. Compensation. COUNTY shall compensate CONTRACTOR as follows:
 - a. Fees. As specified below, compensation under this Agreement is General Scope of Work as described in ATTACHMENT A.
 - b. Service fees shall be paid in accordance with the below payment schedule.

IMPLEMENTATION FEES		
Payment Description	Payment Date	Payment
SCOPE OF SERVICES-GENERAL: ATTACHEMENT A	Monthly Invoice	\$48,750.00
Total FEES		\$48,750.00

5. Total compensation, under this AGREEMENT as listed below, for sixty (60) months will not exceed two million nine hundred and twenty- five thousand (\$2,925,000.00).

Fee Schedule	
Year 1: (March 1, 2022 – February 28, 2023)	\$585,000.00
Year 1: (March 1, 2023 – February 29, 2024)	\$585,000.00
Year 1: (March 1, 2024 – February 28, 2025)	\$585,000.00



Year 1: (March 1, 2025 – February 28, 2026)	\$585,000.00
Year 1: (March 1, 2026 – February 28, 2027)	\$585,000.00
TOTAL (60 months)	\$2,925,000.00

- c. Additional rates for customizations and consulting services on an as-needed basis shall be paid in accordance with the below payment schedule. However, any additional customizations and technical assistance require COUNTY's prior written approval.

WISE Healthcare Professional Hourly Rates	
Resource	Hourly Rate
Principal/Lead	\$325/hour
Sr. Director/Physician Lead/Director/Project Manager	\$295/hour
Sr. Manager/Sr. Project Manager/Manager/Project Manager	\$220/hour
Sr. Consultant - Workflow Engineer/Consultant - Workflow Engineer Business Analyst	\$195/hour
Principal/Lead	\$180/hour
Sr. Director/Physician Lead/Director/Project Manager	\$140/hour
Sr. Manager/Sr. Project Manager/Manager/Project Manager	\$120/hour
Sr. Consultant - Workflow Engineer/Consultant - Workflow Engineer Business Analyst	\$100/hour
Test Engineer	\$100/hour

- d. **Termination of Participation in eConsult System within Months 1-60.** Upon thirty (30) days written notice of intent to terminate its use of the eConsult System ("Notice"), CONTRACTOR shall reimburse COUNTY for (i) any prepaid License fees; and (ii) any prepaid fees for implementation for services to the extent that such services have not been performed by the date of Notice. In the event such termination is due to CONTRACTOR'S failure to deliver the requirements in the Scope, as defined in Attachments A and A-2, CONTRACTOR shall reimburse COUNTY for the total amount of Implementation fees paid for the Participant's implementation.



ATTACHMENT B-2

SCHEDULE OF FEES – EPIC INTERFACE MANAGMENT

WISE HEALTHCARE, LLC

1. CONTRACTOR shall invoice IEHP electronically for Workflow Redesign and eConsult Implementation Services fees to ARMC's Accounts Payable Office at [\[NEED ARMC EMAIL\]](#). Each invoice shall cite the CONTRACTOR's name, address, and remit to address, description of the work performed, the time period covered by the invoice, and the amount of payment requested.
 - a. Invoices shall be paid electronically by ARMC to the banking institution/account numbers provided by the CONTRACTOR. In the event of a change in banking institution and/or account numbers, CONTRACTOR shall provide ARMC thirty (30) days prior written notice. ARMC will assume no liability for payments made to banking institutions and/or accounts that are due to CONTRACTOR'S failure to provide the correct information.
4. Compensation. ARMC shall compensate CONTRACTOR's as follows:

Compensation under this Agreement is for Technical Assistance & Management for Epic-eConsultIE Interfaces. **The estimated time and resources needed to complete the project is: \$171,750, or \$14,312.50 per month.**

Resource and vendor costs are provided below for the interfaces do not include workflow implementation resource costs. All costs and hours are an estimated level of effort and could change due to delays or changes in project scope.

Role	Estimated Hours	Estimated Costs
EPIC EHR Application Analysts	620	\$108,500.00
Principal Trainer	40	\$4,500.00
Project Management	250	\$43,750.00
Subtotal		\$156,750.00
Project Start Up Costs		\$15,000.00
Total Estimated Labor Hours & Costs	910	\$171,750.00

2. CONTRACTOR requests for payments and reimbursements must comply with the requirements set forth in Attachment A-2.



- Additional rates for customizations and consulting services on an as-needed basis shall be paid in accordance with the below payment schedule. However, any additional customizations and technical assistance require COUNTY's prior written approval.

WISE Healthcare Professional Hourly Rates	
Resource	Hourly Rate
Principal/Lead	\$325/hour
Sr. Director/Physician LeadDirector/Project Manager	\$295/hour
Sr. Manager/Sr. Project Manager Manager/Project Manager	\$220/hour
Sr. Consultant -Workflow EngineerConsultant - Workflow Engineer Business Analyst	\$195/hour
Principal/Lead	\$180/hour
Sr. Director/Physician LeadDirector/Project Manager	\$140/hour
Sr. Manager/Sr. Project Manager Manager/Project Manager	\$120/hour
Sr. Consultant -Workflow EngineerConsultant - Workflow Engineer Business Analyst	\$100/hour
Test Engineer	\$100/hour

- **Termination of Participation in eConsult System within Months 1-60.** Upon thirty (30) days written notice of intent to terminate its use of the eConsult System ("Notice"), CONTRACTOR shall reimburse COUNTY for (i) any prepaid License fees; and (ii) any prepaid fees for implementation for services to the extent that such services have not been performed by the date of Notice. In the event such termination is due to CONTRACTOR'S failure to deliver the requirements in the Scope, as defined in Attachments A and A-2, CONTRACTOR shall reimburse COUNTY for the total amount of Implementation fees paid for the Participant's implementation.



ATTACHMENT C

OWNERSHIP INFORMATION

Contractor's Name: WISE HEALTHCARE INC

Tax Identification Number (TIN): __82-1806474

Address: 104 East Olive Ave, Suite 100

City: Redlands **State:** CA **Zip:** 92373

Phone: 415 377 9514

President: Sajid Ahmed.

Contact Person: Waheed Baqai

Person Signing Contract: _Sajid Ahmed

Broker Representative: _____

Please circle below how your organization is legally organized:

• **Sole Proprietorship**

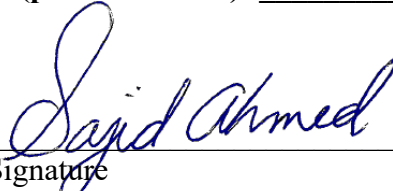
• **Partnership (LLC, etc.)**

• **Corporation**

- **Privately Held Company***
- Publicly Traded Company
- Non-Profit Entity

• **Government Agency**

• **Other (please indicate):** _____



Authorized Signature

11/18/2021
Date



ATTACHMENT D

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (BAA) supplements and is made a part of the contract ("Contract") by and between the San Bernardino County on behalf of Arrowhead Regional Medical Center (hereinafter "Covered Entity") and Safety Net Connect Inc. (hereinafter "Business Associate"). This BAA is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity ("CE") wishes to disclose certain information to Business Associate ("BA") pursuant to the terms of the Contract, which may include Protected Health Information ("PHI"); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code ("U.S.C.") section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

A. Definitions

Unless otherwise specified herein, capitalized terms used in this BAA shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42



- U.S.C. section 17921 and 45 C.F.R. section 160.103.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
 4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
 5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
 6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
 7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
 8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
 9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
 10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this BAA and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation



of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this BAA.

3. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI. Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this BAA.

4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:



- a) Date the Breach or suspected Breach occurred;
 - b) Date the Breach or suspected Breach was discovered;
 - c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 - d) Number of potentially affected Individual(s) with contact information; and
 - e) Description of how the Breach or suspected Breach allegedly occurred.
 - ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - b) The unauthorized person who had access to the PHI;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
 - iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
 - iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.
- 6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.
- 7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.
- 8. Access to Records



- BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.
9. Accounting for Disclosures
BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include:
- i. the date of disclosure;
 - ii. the name of the entity or person who received PHI and, if known, the address of the entity or person;
 - iii. a brief description of PHI disclosed; and
 - iv. a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.
10. Termination
CE may immediately terminate this BAA, and any related agreements, if CE determines that BA has breached a material term of this BAA. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.
11. Return of PHI
Upon termination of this BAA, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this BAA, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this BAA, and to limit any further use, access or disclosures.
12. Breach by the CE
Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's



obligations under this BAA, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this BAA.

14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under this BAA at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

15. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.



18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this BAA to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this BAA and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the BAA, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this BAA to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this BAA is intended to confer, nor shall



anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this BAA may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this BAA when and as necessary to comply with applicable laws. If either party does not agree to so amend this BAA within 30 days after receiving a request for amendment from the other, either party may terminate the BAA upon written notice. To the extent an amendment to this BAA is required by law and this BAA has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this BAA automatically and without further action required by either of the parties. Subject to the foregoing, this BAA may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this BAA shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this BAA or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this BAA.