

MASTER SERVICE AGREEMENT

This Master Service Agreement (“**Agreement**”), effective as of the date shown below (“**Effective Date**”), is made and entered into by and among California Hospital Quality Institute (“**HQI**”), a California not-for-profit corporation, and the County of San Bernardino, a political subdivision of the State of California operating a hospital or surgery center (“**County**”), on behalf of the hospital(s) listed in **Exhibit A** (whether single or multiple, hereafter, “**Hospital**”), which is a member of the California Hospital Association or one of its affiliates. (HQI and the County of San Bernardino are herein individually sometimes referred to as “**Party**” collectively as “**Parties.**”)

1. **Term of Agreement.** This Agreement shall take effect beginning on the Effective Date May 18, 2021 through and including Termination Date December 31, 2021, unless sooner terminated as set forth below. The Parties may mutually agree to extend this Agreement for up to five years from the Effective Date.
2. **Services Provided by HQI.** In consideration of the compensation described in Paragraph 3 below, HQI will provide the services and deliverables, if any, (individually and collectively “**Services**”) set forth in **Exhibit B (Services)** attached hereto and incorporated herein by this reference.
3. **Compensation.** HQI’s compensation for the Services, and HQI’s entitlement to reimbursement for expenses incurred in connection therewith, if any, are set forth in **Exhibit C (Compensation)** attached hereto and incorporated herein by this reference.
4. **HQI’s Standard of Conduct.** In performing Services under this Agreement, HQI shall conform to high professional standards of work and business ethics and shall act in compliance with all applicable federal, state, and local laws, regulations, and codes. HQI shall not use time, materials, or equipment of Hospital without the prior written consent of County. All Services must be satisfactory in the reasonable opinion of Hospital.
5. **Use of Outside Services.** HQI may use the services of any other person, entity, or organization (individually and collectively “**Third Party**”) in the performance of the Services, in which case HQI will require such Third Party to be bound by the applicable provisions of this Agreement, including the applicable provisions of its Confidentiality provision (below) and attendant Business Associate Agreement, attached to this Agreement as **Exhibit D** and incorporated herein by this reference. HQI has engaged ArborMetrix, Inc., to serve as such a Third Party with respect to the Services. The agreement between HQI and ArborMetrix, Inc., as amended, (“ArborMetrix, Inc. Master Consulting Services and Subscription Agreement”) is attached to this Agreement as **Exhibit E (ArborMetrix, Inc. Master Consulting Services and Subscription Agreement)**. County shall be a third party beneficiary to the ArborMetrix, Inc. Master Consulting Services and Subscription

Agreement and shall have the right to enforce such agreement directly to the extent it may deem such enforcement necessary or advisable to protect its rights hereunder.

6. **Confidentiality.** During and after the term of this Agreement, HQI agrees to maintain as strictly confidential, and not to disclose or use for the benefit of HQI or any third party, either directly or indirectly, any Confidential Information, as hereinafter defined, obtained from County pursuant to this Agreement or developed in the course of and by virtue of the Services.
 - 6.1. **Confidential Information.** “Confidential Information” means information not generally known and which is proprietary to County, including, without limitation, all data, proprietary information, trade secrets, reports, questionnaires, lists, concepts, techniques, materials, evaluations, processes, development or research work, or any other information or proprietary aspects of the business or activities of County provided by Hospital to HQI to assist in HQI’s performance of this Agreement.
 - 6.2. **Limitations on Confidential Information.** Confidential Information does not include information that is:
 - 6.2.1. Publicly known at the time of disclosure or subsequently becomes publicly known through no fault of HQI;
 - 6.2.2. Discovered or created by HQI before disclosure by Hospital;
 - 6.2.3. Learned by HQI through legitimate means other than from Hospital or Hospital representatives; or
 - 6.2.4. Disclosed by HQI with County’s prior written approval.
 - 6.3. **Property of County.** HQI agrees that all reports, manuals, documents, and specific material developed and delivered by HQI for Hospital in connection with the Services are and shall remain the property of County subject to any applicable intellectual property rights of HQI.
7. **[Intentionally left blank.]**
8. **Injunctive Relief.** The Parties acknowledge that the terms of paragraphs 6 and 7 of this Agreement are reasonably necessary to protect the legitimate interests of the respective Parties, are reasonable in scope and duration, and are not unduly restrictive. The Parties therefore agree that each shall be entitled to seek all equitable relief, including, but not limited to, injunctive relief, as well as any other remedy that may be available under any applicable law or this Agreement between the Parties.
9. **Independent Contractor.** HQI is an independent contractor and not an employee, partner, or co-venturer of, or in any other service relationship with, County. The manner in which HQI’s services are rendered shall be within HQI’s sole control and discretion. HQI

is not authorized to speak for, represent, or obligate County in any manner without prior express written authorization from an authorized representative of County.

- 9.1. **Taxes.** HQI shall be solely responsible for all taxes arising from compensation and other amounts paid under this Agreement, including, but not limited to, payroll taxes and fringe benefits of HQI's employees, if any. Neither federal, state, nor local income tax nor payroll tax of any kind, shall be withheld or paid by County on behalf of HQI or HQI's employees or contractors. HQI understands that HQI is responsible to pay, according to law, HQI's taxes, if any.
- 9.2. **Benefits.** HQI and HQI's employees and contractors, if any, will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan of County. No workers' compensation insurance shall be obtained by County covering HQI or HQI's employees or contractors, if any.
10. **Termination of Agreement.** During its term, this Agreement may be terminated as follows:
 - 10.1. Either Party may terminate the Agreement upon ten (10) business days' written notice to the other Party ("Breaching Party") in the event (1) the Breaching Party fails to perform, or has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants or representations under or in connection with this Agreement, and (2) the failure, inaccuracy, or breach continues for a period of seven (7) business days after the injured Party delivers notice to the Breaching Party reasonably detailing the breach.
 - 10.2. Either Party may terminate the Agreement with immediate effect upon giving written notice under the following circumstances:
 - 10.2.1. If the other Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation; or
 - 10.2.2. If any law or regulation exists or is enacted or issued that makes the performance of the terms of this Agreement illegal or otherwise prohibited or any governmental authority issues an order restraining or enjoining the activities contemplated under this Agreement.
 - 10.3. The Parties may terminate this Agreement at any time upon mutual agreement.
 - 10.4. [Intentionally left blank.]
 - 10.5. Either Party may at any time and for any reason, terminate this Agreement upon thirty (30) days' written notice to the other Party. Upon receipt of such notice by the receiving Party, HQI shall, unless the notice directs otherwise, immediately discontinue the work contemplated by the Agreement and the placing of orders or contracts for materials, facilities or services in connection with the performance of this Agreement.

11. **Equal Employment Opportunity.** This contract is subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a). This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.
12. **General Provisions.**
 - 12.1. **Construction of Terms.** This Agreement shall be deemed the joint work product of the Parties and may not be construed against either Party as drafted. Captions are for convenience only and shall not be construed to define, limit or affect the construction or interpretation of this Agreement. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.
 - 12.2. **Governing Law.** This Agreement is entered into and shall be performed in the State of California. This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws regarding conflict of laws) of the State of California.
 - 12.3. **Jurisdiction and Venue.** Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located within Sacramento County, State of California, in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement. Any arbitration in connection with this Agreement shall occur in Sacramento County unless the Parties jointly agree to another location.
 - 12.4. **Complete Agreement.** This Agreement constitutes the complete agreement and sole understanding of the Parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings with respect to the subject of this Agreement, whether written or oral.
 - 12.5. **Dispute Resolution.** Except for actions for equitable relief, or for infringement of intellectual property, or for enforcement of provisions of this section or for any dispute concerning an amount of less than \$10,000, any dispute or controversy between the Parties arising out of or relating to this Agreement may be arbitrated by the American Health Lawyers Association (“AHLA”) Dispute Resolution Services and conducted in accordance with the AHLA Rules of Procedure for Arbitration. All arbitration proceedings shall be conducted in San Bernardino County, California before one arbitrator, mutually agreed upon by the parties. Judgment on the award may be entered in any court having jurisdiction. This clause

shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. If any legal action is instituted to enforce any Party's rights under this Agreement, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under indemnification and insurance requirements.

- 12.6. **Modification.** No amendment, modification, or termination of this Agreement, or any provision thereof, shall be valid unless in writing signed by the Party against whom the same is sought to be enforced.
- 12.7. **Waiver of Breach.** The waiver by a Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any other or subsequent breach by the Party in breach.
- 12.8. **Successors and Assigns.** This Agreement may not be assigned by either Party without the prior written consent of the other Party. The benefits and obligations of this Agreement shall be binding upon and inure to the Parties hereto, their successors and assigns.
- 12.9. **Insurance.** HQI shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and in accordance with the requirements set forth in Exhibit F, as attached hereto and incorporate herein.
- 12.10. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, this Agreement is executed by each of the Parties as of the date set forth below:

**COUNTY OF SAN BERNARDINO on
behalf of Arrowhead Regional Medical
Center**

HQI:

By: _____
Curt Hagman



By: _____
Robert Imhoff

Its: Chairman, Board of Supervisors

Its: President

Date: _____

Date: _____

EXHIBIT A

[illegible]

EXHIBIT B

Services

Statement of Work Number: 01

Project Name: Hospital Quality Improvement Platform (HQIP)

Date: May 18, 2021 (“Effective Date”)

This Statement of Work is entered into in connection with the Master Services Agreement between HQI and the County of San Bernardino (“**County**”) on behalf of Hospital effective May 4, 2021 (the “**Agreement**”). Capitalized terms not defined here shall have the meaning set forth in the Agreement. Incorporated in the Agreement as **Exhibit D (Business Associate Agreement)** is a Business Associate Agreement (the “**BAA**”) pursuant to which HQI and its subcontractor(s) (each a “**Vendor**”; currently, the only Vendor is ArborMetrix, Inc., with the option to change to, or to add, other Vendors) serve as business associates of Hospital under the Agreement.

SUMMARY OF WORK AND STEPS TO BE PERFORMED FOR THE SERVICES:

1. County has engaged HQI to utilize HQI’s data collection, quality analysis, health service analysis, reporting (including to third parties as permitted) and evaluation services (the “**Services**”) in an effort to improve the quality of care delivered at the Hospital, and ultimately improving the patient care delivery system and/or public health in general.
2. Hospital will use best efforts to cooperate with HQI’s data collection in connection with the Services, including, but not limited to, enrolling in the Hospital Quality Improvement Platform (“**HQIP**”) developed by HQI and Vendor to remove Prohibited Information, as defined below, and to provide statistical analyses reports to Hospital. The data described in subsections 3.a (AB 2876 Data) and 3.b (MIRCal Data), below, are collectively referred to as the “**Data**”.
3. AB 2876 Data and MIRCal Data:
 - a. **AB 2876 Data:** Upon Hospital’s enrollment in HQIP, Hospital shall request from the California Office of Statewide Health Planning and Development (“OSHPD”) confidential Hospital Discharge Abstract Data Records for inpatient discharge, emergency department, and ambulatory surgery collected in the Medical Information Reporting for California (“**MIRCal**”) format (“**AB 2876 Data**”) for the most recent three (3) years, for a total of nine (9) data files. In making such request to OSHPD, Hospital shall provide to OSHPD a copy of the Agreement and the BAA which will permit Hospital to provide AB 2876 Data to Vendor. Each year thereafter, Hospital shall request and obtain from OSHPD the AB 2876 Data released by OSHPD, for a total of three (3) data files per year. Hospital then

shall disclose to Vendor the AB 2876 Data pursuant to Assembly Bill 2876 and Health and Safety Code § 128766.

- b. **MIRCal Data:** Upon Hospital's enrollment in HQIP, Hospital shall disclose to Vendor all Hospital Discharge Abstract Data Records for inpatient discharge, emergency department, and ambulatory surgery collected in the MIRCal format that Hospital has already sent to OSHPD ("**MIRCal Data**"). The first such submission shall be for the period from the date of the last AB 2876 Data released by OSHPD through Hospital's date of enrollment in HQIP. Thereafter, Hospital shall disclose to Vendor all MIRCal Data following every subsequent submission of MIRCal Data to OSHPD. Hospital shall disclose to Vendor inpatient discharge data files at least every six (6) months and emergency department and ambulatory surgery data files at least every three (3) months, for a minimum of ten (10) files per year. Hospital shall not send to Vendor any MIRCal Data that is less than 90 days old in compliance with the August 1996 Statements of Antitrust Enforcement Policy in Health Care issued by the Department of Justice and Federal Trade Commission.
- c. Given that the AB 2876 Data and the MIRCal Data contain Protected Health Information ("PHI") and other confidential information, whose use may be restricted pursuant to federal, state and other regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), HQI will not receive the AB 2876 Data and the MIRCal Data directly from Hospital, but will receive it through Vendor, which will remove all PHI which is not minimally necessary to HQI's legitimate purposes, as well as all ICD-9 and ICD-10 codes for HIV disease and all prenatal blood test results (collectively, the "Prohibited Information").
- d. Pursuant to the BAA, County will permit Vendor to act on County's behalf to remove the Prohibited Information and non-minimally necessary PHI before delivering it to HQI. Pursuant to Vendor's own agreement with HQI, Vendor is contractually bound to uphold HQI's business associate obligations to County.
- e. Vendor will be the first recipient of the Data from Hospital.
- f. Vendor will store the Data on a secure database and perform so-called "Data Conditioning" to remove the Prohibited Information and non-minimally necessary PHI from the Data. The Data Conditioning process is described in additional detail in HQI's agreement with Vendor.
- g. HQI will receive only AB 2876 Data and MIRCal Data that has undergone Data Conditioning (the "**Processed Data**").

- h. Processed Data will be available to HQI only after Vendor transfers it to the HQI Report Server.
- 4. Other Data Sources As Applicable:
 - a. **NHSN Data:** Hospital shall join HQI's National Healthcare Safety Network ("NHSN") group (Group ID: 56370; Group Name: HQI_CA) to allow HQI to access County's hospital-level data (the "**NHSN Data**") for use in HQIP. HQI shall access the NHSN Data on a quarterly basis, shall process the NHSN Data, and shall upload the NHSN Data to Vendor for inclusion in HQIP.
 - b. **CALNOC Data:** County shall permit the Collaborative Alliance for Nursing Outcomes ("**CALNOC**") to release data to HQI on the Hospital's behalf on a quarterly basis, or otherwise Hospital will upload these data directly to HQI when provided to CALNOC. HQI will then process the CALNOC data and upload it to Vendor for inclusion in HQIP.
 - c. **CMQCC Data:** County shall permit the California Maternal Quality Care Collaborative ("**CMQCC**") to release data to HQI on the Hospital's behalf at least once per year. HQI will then process the CMQCC data and upload it to Vendor for inclusion in HQIP.
 - d. **Vital Statistics Data:** County shall permit the California Department of Public Health ("**CDPH**") to release data to HQI on the Hospital's behalf on a quarterly basis. HQI will then process the CDPH data and upload it to Vendor for inclusion in HQIP.
- 5. The disclosure of the Data is pursuant to the BAA.
- 6. Pursuant to its agreement with HQI, Vendor is prohibited from sharing raw Data with HQI. Also, HQI will take all reasonable steps to restrict its employees, agents and other vendors from accessing the Data.

OBLIGATIONS AND RESTRICTIONS:

- 1. HQI shall use the Processed Data only as permitted or required by the Agreement, BAA, and applicable law, each of which permits HQI to use the Processed Data to create one or more limited data sets.
- 2. HQI may disclose the Processed Data only for the purpose of performing HQI's obligations under the Agreement and BAA, and as permitted by applicable law.

3. Such permitted disclosures may include disclosure by HQI of one or more limited data sets to Inland Empire Health Plan in accordance with 45 C.F.R. §164.514(e), if the limited data set is limited to patients who are members of Inland Empire Health Plan on the date of the original Data that Hospital provides to Vendor. Such permitted disclosures also may include disclosure by HQI of one or more limited data sets to the California Hospital Association and/or its affiliate(s) in accordance with 45 C.F.R. §164.514(e). The agreement between HQI and Inland Empire Health Plan, as well as between HQI and the California Hospital Association's affiliate regional associations is hereby attached to this Agreement as **Attachment 1 (Data Use Agreements for Limited Data Sets(s))**. Although not a party to it, County hereby consents to the existence and terms of the **Data Use Agreements for Limited Data Sets(s)**.
4. HQI shall not use or disclose Processed Data for fundraising or marketing purposes, except as provided under the Agreement and consistent with the requirement of 42 U.S.C. 17936 and HIPAA.
5. HQI shall implement reasonable and appropriate safeguards to prevent the use or disclosure of Processed Data other than as provided for by the Agreement and BAA.
6. HQI will require the Vendor to remove HIV testing or results, including HIV ICD-9 and ICD-10 codes, from the Data. HQI personnel shall not access the Data prior to the Vendor's removal of the HIV codes.
7. Hospital will not transmit data on prenatal blood test results to any Vendor. In the event of a production by Hospital of such information to any Vendor, HQI will require the Vendor to remove such information from the Data. HQI will take reasonable steps to segregate its personnel from the Data prior to the Vendor's removal of the prenatal blood test results.
8. HQI may receive from Hospital substance and alcohol abuse treatment data under 42 C.F.R. Part 2 ("Part 2") pursuant to HQI's status as a qualified service organization under 42 CFR § 2.12(c)(4). HQI will use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information in accordance with 42 C.F.R. § 2.11 and the BAA.

ATTACHMENT 1

Data Use Agreements for Limited Data Sets(s)

http://www.hqinstitute.org/sites/main/files/file-attachments/attachment_1_duas_4_association_20190221.pdf

https://www.hqinstitute.org/sites/main/files/file-attachments/iehp_dua.pdf

EXHIBIT C

Compensation

Services are included in the membership benefits secured by Hospital's membership in and dues payment to the California Hospital Association or its affiliate. The dues include quality and patient safety activities through HQI.

EXHIBIT D

Business Associate Agreement

[http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit e 3 baa arbormetrix hqi-amx 20190221.pdf](http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_3_baa_arbormetrix_hqi-amx_20190221.pdf)

EXHIBIT E

ArborMetrix, Inc. Master Consulting Services and Subscription Agreement

[http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit e 1 msa hqi amx 20190221.pdf](http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_1_msa_hqi_amx_20190221.pdf)

[http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit e 2 hqi-amx 2nd amendment msa20190221.pdf](http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_2_hqi-amx_2nd_amendment_msa20190221.pdf)

EXHIBIT F

Insurance Requirements

HQI agrees to provide insurance set forth in accordance with the requirements herein. If HQI uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, HQI agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, HQI shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
 - 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 providing services on behalf of HQI and all risks to such persons under this Agreement. If HQI has no employees, it may certify or warrant to the 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.
 - b. Commercial/General Liability Insurance – HQI shall carry General Liability Insurance covering all operations performed by or on behalf of HQI 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:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – 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 HQI is transporting one or more non-employee passengers in performance of Agreement 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 HQI owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. 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.

- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Agreements with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

- f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

2. **Additional Insured.** All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, and agents 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 the County to vicarious liability but shall allow coverage for the 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.
3. **Waiver of Subrogation Rights.** HQI shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit HQI and HQI’s employees or agents from waiving the right of subrogation prior to a loss or claim. HQI hereby waives all rights of subrogation against the County.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
5. **Severability of Interests.** HQI 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 HQI and the County or between the County and any other insured or additional insured under the policy.

6. **Proof of Coverage.** HQI shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and HQI shall maintain such insurance from the time HQI commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, HQI shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** 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, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by HQI or County payments to HQI will be reduced to pay for County purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department 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 the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. HQI agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the 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 the County.

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into as of May 18, 2021 (the "Effective Date") by and between the County of San Bernardino, a political subdivision of the State of California operating a hospital or surgery center, on behalf of Arrowhead Regional Medical Center (whether single or multiple, hereafter, "Covered Entity") and the Hospital Quality Institute, a tax-exempt organization formed collectively by various hospital associations, having its principal place of business at 1215 K Street, Suite 800, Sacramento, California 95814 ("Business Associate").

WHEREAS, reference is made to the Service Agreement between Covered Entity and Business Associate dated May 18, 2021, as may be amended from time to time (the "Service Agreement"), pursuant to which Business Associate performs certain activities or functions on behalf of Covered Entity which may include quality and health services analyses and may involve Business Associate's access to Protected Health Information, as hereinafter defined;

WHEREAS, Covered Entity and Business Associate desire to protect the privacy and security of such Protected Health Information (as hereinafter defined) as required by state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-05, and regulations promulgated, or to be promulgated, thereunder (collectively "HIPAA"), as may be amended from time to time;

WHEREAS, in order for Covered Entity and Business Associate to comply with HIPAA, Business Associate must agree to certain provisions designed to preserve the privacy and security of Protected Health Information obtained by Business Associate in the course of providing services to or on behalf of Covered Entity;

WHEREAS, when applicable, Covered Entity must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"); and

WHEREAS, Business Associate is also a Qualified Service Organization ("QSO") under Part 2 and must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Compliance with Law. In providing services under the Service Agreement and hereunder, Business Associate shall ensure that it acts in compliance with all applicable federal and state laws and regulations including, without limitation, HIPAA, as in effect or as amended, and, if applicable, the Confidentiality of Medical Information Act (Cal. Civ. Code § 56, et seq.).
2. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:
 - 2.1. *Breach.* "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402, as in effect or as amended.

- 2.2. *Electronic Protected Health Information.* “Electronic Protected Health Information” (EPHI) shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, as in effect or as amended.
- 2.3. *PHI.* “PHI” shall mean PHI created or received by Business Associate from or on behalf of Covered Entity.
- 2.4. *Individual.* “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 as in effect or as amended, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g), as in effect or as amended.
- 2.5. *Personal Information.* “Personal Information” shall mean a patient’s first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that “Personal information” does not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.
- 2.6. *Privacy and Security Rule.* “Privacy and Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information and the Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. part 160 and part 164, as in effect or as amended.
- 2.7. *Protected Health Information.* “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as in effect or as amended. Also, PHI shall include the term “patient identifying information” under the Confidentiality of Substance Use Disorder Patient Records at 42 C.F.R. § 2.11. For the purposes of this Agreement, PHI and EPHI are collectively referred to as “PHI,” unless otherwise specified.
- 2.8. *Secretary.* “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.9. *Security Incident.* “Security Incident” shall mean the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

All other capitalized terms used in this Agreement but not otherwise defined will have the same meaning as those terms in the Privacy and Security Rule.

3. Permitted Uses and Disclosures.

- 3.1. Business Associate may use or disclose PHI only as permitted or required by this Agreement or as required by law. To the extent Business Associate carries out any of Covered Entity’s obligations under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of such obligations.

- 3.2. Business Associate may use or disclose PHI for the following purposes only:
- (a) To fulfill its obligations under the Service Agreement and this Agreement;
 - (b) If necessary, for its proper management and administration or to carry out its legal responsibilities. Disclosure pursuant to this Section 3.2(b) is permissible only if
 - (i) the disclosure is Required by Law; or
 - (ii) Business Associate makes the disclosure pursuant to an agreement consistent with Section 8 of this Agreement or Business Associate makes the disclosure pursuant to a written confidentiality agreement under which the recipient of the PHI is required to (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which it was disclosed to the recipient, and (3) notify Business Associate of any acquisition, access, use, or disclosure of PHI in a manner not permitted by the confidentiality agreement.
 - (c) To report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
 - (d) To create one or more limited data sets and disclose such limited data set(s) to the California Hospital Association or one of its affiliates in accordance with 45 C.F.R. § 164.514(e) and in accordance with the applicable data use agreement between and among those parties.
- 3.3. Business Associate shall not, and shall assure that its employees, other agents and contractors do not, use or disclose PHI in any manner which would violate the Privacy and Security Rule if so used or disclosed by Covered Entity.
- 3.4. Business Associate shall, to the extent required by the “minimum necessary” requirements of HIPAA, request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. To the extent practicable, Business Associate shall not request, use or disclose any Direct Identifiers (as defined in the limited data set standard of HIPAA) and shall comply with the minimum necessary guidance to be issued by the Secretary pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-05.
4. Safeguarding PHI. Business Associate shall comply with the HIPAA Security Rule with respect to EPHI. Business Associate agrees that it will use appropriate safeguards to prevent the use or disclosure of PHI in a manner contrary to the terms and conditions of this Agreement and will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Such safeguards shall include, but not be limited to those required by applicable law, including, but not limited to, the Privacy and Security Rule. Business Associate shall ensure that: only those employees and agents of Business Associate that have a business need to know PHI are provided with access to it; access is limited to the minimum amount necessary to accomplish the intended purpose of the access; all employees and agents of Business Associate handling PHI are educated on how to maintain its

confidentiality and the requirements of this Agreement; and all PHI is stored and transmitted in a secure environment and in a manner that prevents its inadvertent disclosure.

5. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure, including a Breach, of PHI by Business Associate in violation of this Agreement or HIPAA.
6. Reporting Requirements.
 - 6.1. Business Associate shall, without unreasonable delay, but in no event later than five (5) business days after becoming aware of any acquisition, access, use, or disclosure of Protected Health Information in violation of this Agreement by Business Associate, its employees, other agents or contractors or by a third party to which Business Associate disclosed PHI (each, an "Unauthorized Use or Disclosure"), report such use or disclosure, in writing, to Covered Entity. Without limiting the foregoing, Business Associate shall report to Covered Entity any acquisition, access, use, or disclosure that is potentially reportable under Sections 6.1-6.4 of this Agreement, even if it determines that there is a low probability that the PHI or Personal Information, as applicable, has been compromised.
 - 6.2. Business Associate shall, without unreasonable delay, but in no event later than five (5) business days after becoming aware of any Security Incident report it, in writing, to Covered Entity.
 - 6.3. Business Associate shall, without unreasonable delay, but in no event later than five (5) business days after becoming aware of an Unauthorized Use or Disclosure(whether secure or unsecured), report such Breach, in writing, to Covered Entity in accordance with 45 C.F.R. § 164.410.
 - 6.4. Business Associate shall, without unreasonable delay, but in no event later than five (5) business days after becoming aware of a Security Incident report such Breach of Security, in writing to Covered Entity.
 - 6.5. Business Associate shall reimburse Covered Entity for all costs, expenses (including reasonable attorneys' fees), damages and other losses resulting from any breach of this Agreement, Unauthorized Use or Disclosure, Security Incident, or Breach involving Protected Health Information and/or Personal Information maintained by Business Associate, including, without limitation: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to Individuals or government agencies; credit monitoring for affected Individuals; or other mitigation steps taken by Covered Entity to comply with HIPAA or state law.
7. Personal Information. To the extent that Business Associate has access to Personal Information, Business Associate agrees that it has implemented and maintains appropriate security measures for the protection of Personal Information in accordance with HIPAA or state law.
8. Subcontractors. Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate. Business Associate

shall ensure that the written agreement with each Subcontractor does the following: (a) obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Business Associate under this Agreement; and (b) prohibits Subcontractor from sharing with Business Associate the raw data files provided to Subcontractor by Covered Entity.

9. Access to PHI. At the request of Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set as directed by Covered Entity, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524. Covered Entity shall designate the time and manner in which this requirement must be met at the time of the request.
10. Amendment of PHI. Business Associate shall provide to Covered Entity any PHI in a Designated Record Set requested by Covered Entity for amendment as required by 45 C.F.R. § 164.526 within ten (10) days of receipt of such request. Business Associate shall make any amendments to PHI as directed by Covered Entity within thirty (30) days of Covered Entity's request for such amendment, and shall notify Covered Entity, in writing, when such amendment has been completed.
11. Audit and Inspection of Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity to Covered Entity, or to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary's determining Covered Entity's and/or Business Associate's compliance with the Privacy and Security Rule. Business Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or other review to determine Covered Entity's or Business Associate's compliance with the Privacy and Security Rule, and shall retain any and all such records, and submit such compliance reports, as may be required by the Secretary or the Privacy and Security Rule.
12. Documentation of Disclosures. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, as in effect or as amended.
13. Accounting of Disclosures. Business Associate shall provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, such information collected in accordance with Section 12 above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate shall provide, at a minimum, the following information for each disclosure: (a) the date of the disclosure; (b) the name and, if known, address of the entity or person who received PHI; (c) a brief description of PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate shall provide information to Covered Entity pursuant to this subsection for all disclosures made within six (6) years prior to the date on which the accounting of disclosures was requested.
14. Ownership of PHI. Business Associate hereby acknowledges that all PHI shall be and remain the sole property of Covered Entity, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to this Agreement.
15. Requests for PHI. Business Associate agrees to notify Covered Entity within five (5) business days of Business Associate's receipt of any request, subpoena, or judicial or administrative order

for PHI. To the extent Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to cooperate fully with Covered Entity in such challenge.

16. Electronic Data Interchange. To the extent applicable, Business Associate represents and warrants that it shall conduct only as Standard Transactions, as defined in 45 C.F.R. Part 162, any electronic transactions that Business Associate conducts on behalf of a Covered Entity with other Covered Entities or with any entity that requests a transaction be conducted as a Standard Transaction.

17. Obligations of Covered Entity.

- 17.1. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 17.2. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 17.3. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity, other than as expressly permitted in Sections 3.2(b) and 3.2(c) of this Agreement.

18. Qualified Service Organization.

- 18.1. To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits PHI that is protected by Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by Part 2; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by Part 2. This includes the processing of raw data by Business Associate's Vendor as defined in the Service Agreement. Business Associate shall ensure its Vendor is subject to a written agreement that requires Vendor to comply with Part 2 use and disclosure restrictions.
- 18.2. Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
- 18.3. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

19. Term and Termination.

- 19.1. This Agreement shall commence as of the Effective Date, and shall continue in effect until such time as:

- (a) all PHI provided to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity;
- (b) if it is infeasible to return or destroy PHI, as determined in accordance with Section 20.3 of this Agreement, protections are extended to such PHI in accordance with the terms of this Agreement; or
- (c) the Service Agreement is terminated, subject to the provisions of this Agreement related to the Effect of Termination.

19.2. In the event Business Associate commits a material breach of the terms of this Agreement, Covered Entity may, in its sole discretion, either (a) provide Business Associate with fifteen (15) days to cure such breach, and if Business Associate fails to cure such breach within such period, Covered Entity shall have the right to immediately terminate this Agreement and the Service Agreement; or (b) terminate this Agreement and the Service Agreement immediately, if cure is not possible, as determined by Covered Entity. Termination pursuant to this Section 19.2 shall be without prejudice to any other rights and remedies that Covered Entity may have for a breach of this Agreement. Business Associate acknowledges and agrees that if termination or cure are not feasible, Covered Entity shall report the violation to the Secretary.

20. Effect of Termination.

20.1. Upon the expiration of this Agreement or in the event of the termination of this Agreement for any reason, each party shall be released from all obligations and liabilities to the other under this Agreement and the Service Agreement occurring or arising after the date of such event, except that the expiration or termination of this Agreement shall not relieve Business Associate of Business Associate's obligations under this Section 20, nor shall it relieve Business Associate or Covered Entity Health from any liability arising from any breach of this Agreement. The Service Agreement shall also terminate concurrently with the termination or expiration of this Agreement, subject to the survival provisions of that Service Agreement.

20.2. Immediately upon expiration or termination of this Agreement for any reason, Business Associate shall return, or at Covered Entity's request destroy, all PHI in its possession without retaining copies thereof, and shall provide to Covered Entity upon request a certificate as to the return or destruction of such PHI. Business Associate shall also be responsible for ensuring the return or destruction of PHI in the possession of Business Associate's subcontractors or agents in accordance with this Section.

20.3. In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

21. Insurance. Business Associate shall procure and maintain during the term of this Agreement liability insurance in accordance with the Service Agreement. Business Associate shall notify

Covered Entity immediately in the event of a lapse, cancellation, or material modification of such coverage as provided in the Service Agreement.

22. Injunction. Business Associate hereby agrees that Covered Entity will suffer irreparable damage upon Business Associate's breach of this Agreement, and that such damages shall be difficult to quantify. Business Associate hereby agrees that Covered Entity may seek an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy that they may have.
23. Relationship of the Parties. It is expressly understood that Business Associate and Business Associate's employees and agents, if any, are not agents or employees of Covered Entity and have no authority whatsoever to bind Covered Entity, by contract or otherwise.
24. Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, not shall anything herein confer, upon any person or entity other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.
25. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 18 shall survive the termination of this Agreement and any existing agreement, including the Service Agreement between Covered Entity and Business Associate.
26. Notice. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:

To Covered Entity:

Arrowhead Regional Medical Center

400 N. Pepper Avenue

Colton, CA 92324

Attn: Hospital Director

To Business Associate:

Hospital Quality Institute

1215 K Street, Suite 800

Sacramento, California 95814

The above addresses may be changed by giving notice of such change in the manner set forth in this Section.

27. Amendment. 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 HIPAA or other applicable law; provided, however, that any regulations applicable to Business Associate or to Covered Entity with respect to Business Associate promulgated following the Effective Date of this Agreement shall be deemed incorporated into this Agreement until such time as the parties enter into an appropriate amendment. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with HIPAA.
28. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA or other applicable law.

29. Effect. The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent terms in the Service Agreement. All other terms of the Service Agreement between Covered Entity and Business Associate shall remain in full force and effect.

COVERED ENTITY:

**County of San Bernardino on behalf of
Arrowhead Regional Medical Center**

By: _____

Name: Curt Hagman

Title: Chairman, Board of Supervisors

Date: _____

BUSINESS ASSOCIATE:

Hospital Quality Institute



By: _____

Name: Robert Imhoff

Title: President

Date: _____

ATTACHMENT A

Hospital Name	OSHDP ID	CMS CCN	NHSN ID