

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Business Associate Agreement") is entered into in connection with certain professional tasks or services, for either monetary charge or at no monetary charge, (the "Services") to be performed by Prism Software Corp. ("Provider") a California corporation with a business address of 184 Technology Drive, Suite 201, Irvine, CA 92618, and San Bernardino County on behalf of Arrowhead Regional Medical Center ("Covered Entity"), a government entity with a business address of 400 North Pepper Ave, Colton, CA 92324. This Business Associate Agreement is effective as of date of full execution (the "Effective Date").

### RECITALS

WHEREAS, The Services require Provider to have access to and/or to collect or create Protected Health Information ("PHI") in order to carry out Provider's functions on behalf of Covered Entity;

WHEREAS, Covered Entity and Provider intend to protect the privacy and provide for the security of PHI disclosed, collected or created by Provider in connection with the Services in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and the regulations promulgated thereunder, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 (the "Privacy Rule"), and other applicable laws, in each case, as amended from time to time; and

WHEREAS, the Privacy Rule requires Covered Entity to enter into an agreement with Provider containing certain requirements with respect to the use and disclosure of PHI and which are contained in this Business Associate Agreement.

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

1. Definitions.

a. Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Privacy Rule.

2. Obligations of Provider.

a. Permitted Uses and Disclosures. Provider shall not use or disclose PHI except for the purpose of performing Provider's Services obligations and as permitted in connection with the Services and under the terms of this Business Associate Agreement or as required by law. Notwithstanding this Business Associate Agreement, Provider (and its agents and subcontractors) acknowledge and agree that this Business Associate Agreement is not sufficient or effective to permit Covered Entity to disclose PHI to Provider or for Provider to collect or create PHI, in circumstances in which an authorization is required under the Privacy Rule, under other federal law or under California law. Further, Provider shall not use PHI in any manner that would constitute a violation of the Privacy Rule or other applicable federal or State law if so used by Covered Entity, except that Provider may use PHI (i) for the proper management and administration of Provider; (ii) to carry out the legal responsibilities of Provider; or (iii) for Data Aggregation purposes involving one or more Affiliate Entity (as defined herein) of Covered Entity for the Health Care Operations of Covered Entity. For purposes of this Business Associate Agreement, "Affiliate Entity" shall mean an individual or corporation, partnership or other legal entity that controls, is controlled by or under common control with Covered Entity.

b. Appropriate Safeguards. Provider shall implement appropriate safeguards to prevent the use or disclosure of PHI other than as contemplated by the Services. Provider shall maintain a written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Provider's operations and the nature and scope of its activities. Use and disclosure of de-identified PHI is not permitted by this Business Associate Agreement without the prior written consent of Covered Entity.

c. Duty to Mitigate. Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to

Provider of a use or disclosure of PHI by Provider in violation of the requirements of this Business Associate Agreement.

d. Reporting of Improper Use or Disclosure. Provider shall report to Covered Entity, by telephone, any use or disclosure of PHI other than as contemplated by the Services and this Business Associate Agreement within a reasonable time of becoming aware of such use or disclosure (but no later than 24 hours thereafter), in accordance with the notice provisions set forth herein. Such notice shall be confirmed, within 48 hours, in writing via facsimile transmission. Provider shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

e. Provider's Agents. To the extent that Provider uses one or more subcontractors or agents to provide services under the Services, and such subcontractors or agents receive or have access to PHI, Provider shall sign an agreement with such subcontractors or agents containing substantially the same provisions as this Business Associate Agreement (the "Subcontractor Agreement") and further identifying Covered Entity as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of the Subcontractor Agreement. Provider shall implement and maintain sanctions against agents and subcontractors that violate such restrictions.

f. Access to PHI. Within 10 days of receipt of a request, Provider shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an individual to enable Covered Entity to fulfill its obligations under Section 164.524 of the Privacy Rule. In the event that any individual requests access to PHI directly from Provider, Provider shall forward such request to Covered Entity. A denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

g. Amendment of PHI. Provider shall incorporate any amendment to PHI maintained in a Designated Record Set that Covered Entity directs or agrees to, within 10 days of receipt of a request therefore by Covered Entity or an individual to enable Covered Entity to fulfill its obligations under Section 164.526 of the Privacy Rule. If any individual requests an amendment of PHI directly from Provider, Provider must notify Covered Entity in writing within five days of the request. A denial of amendment of PHI maintained by Provider or its agents or subcontractors shall not be made without the prior written consent of Covered Entity.

h. Accounting Rights. Within 10 days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Provider and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under Section 164.528 of the Privacy Rule. In accordance with the Privacy Rule, Provider shall not include in such an accounting those disclosures made: (i) to carry out treatment, payment or health care operations, as provided in Section 164.502 of the Privacy Rule; (ii) to individuals of PHI about them as provided in Section 164.502 of the Privacy Rule; (iii) pursuant to an authorization as provided in Section 164.508 of the Privacy Rule; (iv) to persons involved in the individual's care or other notification purposes as provided in Section 164.510 of the Privacy Rule; (v) for national security or intelligence purposes as provided in Section 164.512(k)(2) of the Privacy Rule; or (vi) to correctional institutions or law enforcement officials as provided in Section 164.512(k)(5) of the Privacy Rule. Provider agrees to implement a process that allows for an accounting of disclosures of PHI to be collected and maintained by Provider and its agents or subcontractors. Further, Provider agrees that upon termination or expiration of the Services, Provider shall provide to Covered Entity an accounting of all such disclosures made since the compliance date of the Privacy Rule. At a minimum, such information 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 written request for disclosure. In the event that the request for an accounting is delivered directly to Provider or its agents or subcontractors, Provider shall, within five days of a request, forward it to Covered Entity in writing. It shall be Provider's responsibility to prepare, and Covered Entity's responsibility to deliver, any such accounting requested. Provider shall not disclose any PHI, except in accordance with this Business Associate Agreement.

i. Governmental Access to Records. Provider shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entity's compliance with the Privacy Rule. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by Covered Entity or

Provider by virtue of this section. Except to the extent prohibited by law, Provider agrees to notify Covered Entity of all requests served upon Provider for information or documents by or on behalf of the Secretary. Provider shall provide to Covered Entity a copy of any PHI that Provider provides to the Secretary concurrently with providing such PHI to the Secretary.

j. Minimum Necessary. Provider (and its agents or subcontractors) shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.

k. Data Ownership. Provider acknowledges that Provider has no ownership rights with respect to the PHI.

l. Audits; Inspection and Enforcement. Within 10 days of a written request by Covered Entity, Provider and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Business Associate Agreement for the purpose of determining whether Provider has complied with this Business Associate Agreement; Provided, however, that (i) Provider and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Provider to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Provider. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Provider's facilities, systems, books, records, agreements, policies and procedures does not relieve Provider of its responsibility to comply with this Business Associate Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Provider or require Provider's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Business Associate Agreement.

m. State Privacy Laws. Provider shall comply with state privacy laws to the extent that such state privacy laws are not preempted by HIPAA. Without limiting the generality of the foregoing, all of Provider's uses and disclosures of PHI shall be consistent with the California Confidentiality of Medical Information Act ("CMIA").

### 3. Termination.

a. Breach. A breach or violation by Provider of any provision of this Business Associate Agreement, as determined by Covered Entity, shall constitute a breach of the Services and shall provide grounds for immediate termination of the Services by Covered Entity.

b. Reasonable Steps to Cure Breach. If Covered Entity knows of a pattern of activity or practice of Provider that constitutes a material breach or violation of the Provider's obligations under the provisions of this Business Associate Agreement and elects not to first terminate the Services pursuant to Section 3.a., and then Covered Entity may take reasonable steps to cure such breach or end such violation, as applicable. If Covered Entity's efforts to cure such breach or end such violation are unsuccessful (in the sole judgment of Covered Entity), Covered Entity shall either (i) terminate the Services, if feasible or (ii) if termination of the Services is not feasible, Covered Entity shall report Provider's breach or violation to the Secretary.

c. Judicial or Administrative Proceedings. Covered Entity may terminate the Services, effective immediately, if (i) Provider is named as a defendant in a criminal proceeding for an offense related to healthcare or (ii) a finding or stipulation that Provider has violated any standard or requirement of any law or regulation relating to healthcare is made in any administrative or civil proceeding in which Provider has been joined.

d. Effect of Termination. Upon termination of the Services for any reason, Provider shall either return or destroy all PHI, as requested by Covered Entity, that Provider or its agents or subcontractors still maintain in any form and shall retain no copies of such PHI. If Covered Entity requests that Provider return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe, at no additional charge to Covered Entity. If return or destruction is not feasible, Provider shall continue to extend the protections of this Business Associate Agreement to such information, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible. If Provider is to destroy the PHI, Provider shall certify in writing to Covered Entity that such PHI has been destroyed.

#### 4. Indemnity.

Provider hereby agrees to indemnify and hold harmless Covered Entity and its affiliates, and their respective officers, directors, shareholders, employees and agents from and against any and all liability, loss, fines, penalties, damage, claims or causes of action and expenses Provided therewith (including, without limitation, court costs and attorneys' fees) caused directly by Provider's breach of its obligations under this Business Associate Agreement. Covered Entity may enforce Provider's obligations hereunder by seeking equitable relief, without bond, which remedy shall be nonexclusive.

#### 5. Insurance.

Provider shall provide appropriate liability insurance coverage during the term of this Agreement 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 Provider, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

#### 6. Disclaimer.

Covered Entity makes no warranty or representation that compliance by Provider with these Services, HIPPA, or the Privacy Rule will be adequate or satisfactory for Provider's own purposes. Provider is solely responsible for all decisions made by Provider regarding the safeguarding of PHI.

#### 7. Certification.

To the extent that Covered Entity determines it is necessary in order to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Provider's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Provider's security safeguards comply with HIPAA, the Privacy Rule or this Business Associate Agreement.

#### 8. Amendment.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Business Associate Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Provider that Provider will adequately safeguard all PHI. Upon the request of Covered Entity, Provider agrees to promptly enter into negotiations concerning the terms of an amendment to this Business Associate Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. Covered Entity may terminate the Services upon 30 days written notice in the event (i) Provider does not promptly enter into negotiations to amend this Business Associate Agreement when requested by Covered Entity pursuant to this Section 7 or (ii) Provider does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

#### 9. Assistance in Litigation or Administrative Proceedings.

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

10. No Third-Party Beneficiaries.

Nothing express or implied in the Services is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Provider and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever

11. Effect on Services.

Except to the extent inconsistent with this Business Associate Agreement, all other terms of the Services shall remain in force and effect.

12. Survival.

The provisions of this Business Associate Agreement shall survive the termination or expiration of the Services.

13. Interpretation.

The provisions of this Business Associate Agreement shall prevail over any provisions related to performing the Services or that may conflict or appear inconsistent with any provision in these Services. This Business Associate Agreement and the Services shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

14. Governing Law.

This Business Associate Agreement shall be construed in accordance with the laws of the State of California.

15. Notices.

All notices required or permitted under this Business Associate Agreement shall be in writing (except as otherwise required by Section 2.d.) and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission (solely with respect to notification pursuant to Section 2.d.), or personal or courier delivery:

If to Provider:

Attention: CEO  
184 Technology Drive, Suite 201  
Irvine, CA 92618  
Phone: 949-855-3100 ext. 201  
Fax: 949-855-6341

If to Covered Entity:

Arrowhead Regional Medical Center  
400 North Pepper Street  
Colton, CA 92324  
Attn: ARMC Chief Executive Officer  
Phone: (909) 580-1000

IN WITNESS WHEREOF, the parties hereto have duly executed this Business Associate Agreement as of the Effective Date.

By executing this Agreement, each signatory represents and warrants that such person is duly authorized to execute this Agreement on behalf of the respective party.

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 mail 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.

**Covered Entity: San Bernardino County on  
behalf of Arrowhead Regional Medical Center**

**Provider: Prism Software Corp.**

By:

By:

Name:

Name: David Ayres

Title:

Title: CEO

Date:

Date: