



Contract Number

25-402

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	Andrew Goldfrach
Telephone Number	909-580-6150
Contractor	Agiliti Health, Inc
Contractor Representative	Kimberly Vlasisavljevich
Telephone Number	(952) 893-3200
Contract Term	July 1, 2025 through June 30, 2030
Original Contract Amount	NTE \$7,669,326
Amendment Amount	
Total Contract Amount	NTE \$7,669,326
Cost Center	8720
Grant Number (if applicable)	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County ("County") desires to retain a vendor to provide patient bed/gurney maintenance and repair services to Arrowhead Regional Medical Center ("ARMC"); and

WHEREAS, the County conducted a competitive process through a request for Proposal ("RFP") to find a vendor to provide these services for ARMC, and

WHEREAS, based on the representations made by Agiliti Health, Inc. ("Contractor" or "Agiliti") in its proposal in response to the RFP, the County finds Contractor qualified to provide the Services to ARMC; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

A.1 ARMC or Arrowhead Regional: Refers to Arrowhead Regional Medical Center, a department of the County.

- A.2 Contract:** Refers to this contract, including all attachments referenced (all of which are incorporated herein), between County and Contractor.
- A.3 Effective Date:** Refers to the effective date of this Contract, which is July 1, 2025.
- A.4 Equipment:** Refers to all items (including, but not limited to beds, chairs, pumps, gurneys, cribs, and wheelchairs) listed on Attachment 1, attached hereto and incorporated herein by this reference.
- A.5 OEM or Manufacturer:** Original Equipment Manufacturer.
- A.6 Services:** The services to be provided by Contractor under this Contract.

B. CONTRACTOR RESPONSIBILITIES

Contractor will provide full service preventive maintenance and repair services for all of the Equipment ("Equipment Services") as set forth on Attachment 2 attached hereto. "Full service" includes Equipment Tracking, Electrical Safety, Preventative Maintenance and Repair Services on Equipment, and shall comply with all of the following requirements:

- B.1** All repairs for the Equipment shall be certified to meet the OEM specifications and shall be completed within a reasonable amount of time.
- B.2** All Equipment shall be serviced and maintained per OEM specifications and inspected, at a minimum, annually.
- B.3** Provide support to ARMC in the form of training materials or curriculum and ongoing communication providing support services to ARMC staff.
- B.4** As of the Effective Date, the Contractor will verify inventory of all Equipment to ensure that it matches Attachment 1.
- B.5** For the provision of preventive maintenance and repair services, Contractor shall only utilize technicians who are authorized and certified by the OEM to service the Equipment and order parts.
- B.6** Provide monthly reports to ARMC Nursing Administration due within one week of the end of each month. The reports shall include, at a minimum, units serviced vs. needing service, preventative maintenance compliance report and inventory of spare parts.
- B.7** Provide a quarterly dashboard report of all pertinent information pertaining to the safe and reliable upkeep of the Equipment.
- B.8** Provide quarterly update reports to ARMC Nursing Administration due within two weeks (fourteen days) of the end of each quarter, that includes work performed based on the management workplan and project schedule. Quarters will be based on a calendar year.
- B.9** Provide storage at Contractor's facility with a maximum capacity of 20 beds with two round trip delivery of such beds per month.
- B.10** Provide an onsite management program at ARMC that includes 24/7 staffing model for all Equipment (the "Onsite Managed Program Services"), as more fully set forth on Attachment 4 attached hereto, which shall include the following:
- a. Break-Fix Repair
 - b. Preventive Maintenance
 - c. Inspections
 - d. RFID tracking
 - e. Transport (pickup/delivery)

- f. Cleaning and storage (as specified in this Contract).
- g. Routine reporting on tracking, repairs, replacements, losses, transports, etc.
- h. Staffing to facilitate the program management.
- i. Working with ARMC contracted equipment rental companies to ensure beds are brought in and returned timely from and to the vendor.
- j. All services set forth in the Work Plan on Attachment 2, attached hereto and incorporated herein by this reference.

B.11 Contractor will comply with its obligations as set forth in Attachment 2 and Attachment 4 in the implementation of the Services.

B.12 All Contractor technicians and personnel providing the Services must register in the Reptrax system and check-in upon each visit to ARMC.

B.13 Contractor shall have readily available access to parts inventory of OEM replacement parts for the Equipment to ensure that each repair and preventive maintenance is completed within a reasonable time after the need for such service is determined.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the foregoing criteria shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to such Contract personnel to any County facility.

C.7 Change of Address Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10 Confidentiality

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall comply with the attached Business Associate Agreement (Attachment 5). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

C.11 Disclaimer of Warranties and Liability Limitation

Contractor is not a manufacturer of Equipment and disclaims all warranties, excluding warranties relating to Contractor's workmanship and the provision of parts for the Equipment. County's sole remedy for breach of a manufacturer's warranty is against the manufacturer.

CONTRACTOR MAKES ABSOLUTELY NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY, CONDITION OR PERFORMANCE OF EQUIPMENT OR PATENT INFRINGEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER WITH RESPECT TO CLAIMS MADE UNDER THIS AGREEMENT OR BY ANY CONSUMER OR OTHER USER OF EQUIPMENT OR SUPPLIES. CONTRACTOR'S LIABILITY FOR BREACH OF WARRANTY OF ITS WORKMANSHIP, AT CONTRACTOR'S OPTION, IS LIMITED TO REPERFORMANCE OF THE SERVICES OR A REFUND OF THE SERVICE FEE PAID BY COUNTY TO CONTRACTOR. THIS DISCLAIMER OF LIABILITY FOR ALL DAMAGES FOR A BREACH OF WARRANTY OF ITS WORKMANSHIP WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

C.12 Excusable Delays/Non-Performance

Any delay or failure in performance other than non-payment will be excused to the extent caused by an extraordinary event or occurrence beyond the reasonable control of the non-performing party, including without limitation, fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, mechanical breakdowns, power outages, interruptions in telecommunications, material shortages, acts of terrorism, wars and changes in law, policy or inflationary pressure that render performance of Services by Contractor commercially impracticable. The affected party will give the other party prompt notice of the delay or failure and the reason thereof and will exert commercially reasonable efforts to remove the causes or circumstances of non-performance with reasonable dispatch.

C.13 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.14 Reserved

C.15 County Representative

The ARMC Chief Executive Officer of his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.16 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents, only to the extent that such damages are caused by the willful or negligent acts of Contractor, its employees, or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence, provided that such 30-day window shall be extended if such repair is delayed for events not reasonably within Contractor's control and Contractor diligently pursues such repairs as soon as reasonably practicable. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C.17 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. Contractor shall promptly provide written notice to County in the event that it, or its principals or subcontractors, become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. County shall have the right to terminate this Contract, upon the provision of written notice to Contractor, in the event that Contractor is or becomes debarred, suspended, declared ineligible, or voluntarily excluded from participation this transaction by any federal department or agency.

C.18 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.18.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.18.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.18.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.19 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.20 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.21 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price.

C.22 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.23 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable

treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.24 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.25 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.26 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

Contractor shall be qualified/authorized by the OEM (i.e., Certified Agent of the OEM) in the repair of all Equipment. Certification of the OEM must be current at all times during the term of this Contract.

In the event that an approved subcontractor is used for the Services, the subcontractor must be a Certified Agent of the OEM and must be pre-approved in advance by the County. The County shall maintain the right to seek proof of qualification at any time.

Additionally, all individuals (including service technicians) who provide the preventive maintenance and repair services to the Equipment must be authorized and certified by the OEM to service the Equipment and order parts.

C.27 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.28 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to

exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.29 Nondisclosure

Each party shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by a party to the other party or an agent of the other party or otherwise made available to the other party or the other party's agent in connection with this Contract; or, (2) acquired, obtained, or learned by the other party or an agent of the other party in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data. Nothing in the foregoing shall prohibit the disclosure of any confidential information where required by law. In the event a recipient of confidential information is compelled by law to disclose confidential information, the recipient shall give the discloser advance written notice of the confidential information to be disclosed as far in advance of its disclosure as is reasonably possible, practicable and legally permissible.

C.30 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.31 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV—Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.32 Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

C.32.1 Such governmental body does not have and will not have in force any other contract for like purchases.

C.32.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

C.33 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.34 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.35 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.36 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.37 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

C.38 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.39 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C.40 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way

concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.41 Termination

Either party reserves the right to terminate this Contract for cause, including insolvency and material breach, provided the non-defaulting party gives the other party written notice detailing the nature of its material breach of the Agreement. If the material breach cannot be cured, the Contract shall be terminated on the date specified on the written notice, but in no event less than 30 days following the provision of the written notice. If the material breach can be cured and the breach remains uncured 30 days after notice to the breaching party, then the non-defaulting party may terminate this Agreement at any time by providing written notice of the date of termination to the other party. Notwithstanding the foregoing, provided that the Contract has been in effect for not less than eighteen (18) months, the County may terminate the Contract without cause upon thirty (30) days' prior written notice to Contractor.

If the County terminates the Contract hereunder, the County shall pay Contractor for all services rendered prior to the termination of the Contract. The County shall pay Contractor within thirty (30) days of invoice for any such fees.

The County may also remove any Equipment identified on Attachment 1 for any reason upon thirty (30) days written notice to Contractor. In the event of such removal, County shall pay Contractor for all Equipment Services rendered with respect to such Equipment up through the date of removal in accordance with the Fees set forth in Attachment 1. The total monthly fees thereafter shall be adjusted to reflect the removal of such Equipment.

C.42 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.43 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

C.44 Conflict of Interest

Contractor shall make commercially reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a commercially reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.45 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.46 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last seven years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last seven years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.47 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

C.48 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

C.49 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.50 Reserved.

C.51 California Consumer Privacy Act

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

C.52 Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Contract. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response.

C.53 Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439)

Contractor has disclosed to the County using Attachment 3 – Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439), whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or other County

elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

D. TERM OF CONTRACT

This Contract is effective as of July 1, 2025 ("Effective Date") and expires June 30, 2030 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

E.1 Coordinate with Contractor to provide Contractor, its employees, agents, and approved subcontractors reasonable access to ARMC's premises and the Equipment to perform the Services.

E.2 For the Services provided under this Contract, Contractor shall pay all undisputed invoices for the Services within 45 days of date of invoice.

E.3 In the event that any technician utilized by Contractor under this Contract engages in conduct that is violative of the policies provided in Section C.9 herein, the County reserves the right to request that the Contractor utilize a different technician for the Services.

E.4 County shall have those additional responsibilities as set forth in Attachment 2 with respect to the Equipment Services.

E.5 County shall have those additional responsibilities as set forth in Attachment 4 with respect to the Onsite Managed Program Services.

F. FISCAL PROVISIONS

F.1 Contractor shall invoice the County for the Services on a monthly basis in accordance with the fee schedule set forth on Attachment 1. Payment terms shall be Net 45 days after date of invoice. On ten (10) days' written notice to County, Contractor may suspend performance of Services for non-payment until a reasonable time after the non-payment is cured. There is no right of offset, and County will take no deductions, unless otherwise specified in this Contract or authorized to do so by Contractor through issuance of a credit memorandum. County will give Contractor written notice of any incorrect charges within 90 days of the Contractor invoice to which the claim relates. After 90 days, the originally invoiced amount will be deemed to be correct.

F.2 The fees set forth on Attachment 1 for each equipment is all-inclusive, meaning that it covers the total cost for all Services for the Equipment, including the provision of labor, parts, insurance, training, travel costs, chemicals, tools, and all other components necessary to accomplish the Services. The total payments under this Contract may not exceed \$7,669,326 of which \$7,669,326 may be federally funded, and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

- F.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- F.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract. County acknowledges that it may be responsible for all sales, use, or similar taxes and incremental third-party costs relating to the services performed hereunder and all such taxes and costs are County's sole responsibility.
- F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.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, 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 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.

G.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

G.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.

G.5 Severability of Interests

The 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 the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to Arrowhead Regional Medical Center evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, the Contractor shall use reasonable efforts to provide thirty (30) days written notice prior to the expiration or termination of such insurance to the County, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) business days of the commencement of this Contract, Contractor shall furnish a copy of the Certificates of Insurance for all applicable policies.

G.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".

G.8 Deductibles and Self-Insured Retention

Contractor represents that its deductibles or self-insured retentions are in excess of \$10,000.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract 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 contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.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.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. 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.

G.11 The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 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 the Contractor and all risks to such persons under this contract.

If Contractor 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.

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.

- G.11.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the 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:
- a. Premises operations and mobile equipment.
 - b. Products and completed operations. Products and completed operations may be written on a separate policy with policy limits no less than as set forth herein.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.

- G.11.3** 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 the 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.

- G.11.4** If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable. 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.

- G.11.5** Errors and Omissions or Professional Liability Insurance – Errors and Omissions or Professional Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

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 three (3) years after contract completion.

- G.11.6** 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.

H. RIGHT TO MONITOR AND AUDIT

H.1 The County, State and Federal government shall have absolute right to review and audit records, books, papers, documents, corporate minutes, and other pertinent items as such pertain to the services provided hereunder as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

H.2 All records pertaining to services delivered shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

I.1 In the event of a non-cured material breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. If the material breach may be cured, afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County, but in any event shall not be less than thirty (30) days; and/or
- b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach; and/or
- c. Terminate this Contract following the Contractor's failure to timely cure the breach and be relieved of the future payment of consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

Arrowhead Regional Medical Center
400 North Pepper Street
Colton, CA 92324
Attn: ARMC Chief Executive Officer

Agiliti Health, Inc.
11095 Viking Drive, Suite 300
Eden Prairie, MN 55344
Attn: Executive Vice President and
Chief Financial Officer

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

L. ELECTRONIC SIGNATURES

This Contract 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 Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (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 Contract upon request.

IN WITNESS WHEREOF, San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► Dawn Rowe

Dawn Rowe, Chair, Board of Supervisors

Dated: JUN 10 2025

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



AGILITI HEALTH, INC.

(Print or type name of corporation, company or partnership)

Kim

Vlaisavljevich

Date: 2025.04.25 13:00:50

-05'00'

By ► Vlaisavljevich

(Authorized signature - sign in blue ink)

Name Kimberly Vlaisavljevich

(Print or type name of person signing contract)

Vice President of Finance and Treasurer

Title (Print or Type)

Dated: _____

Address 11095 Viking Drive, Suite 300

Eden Prairie, MN 55344

FOR COUNTY USE ONLY

Approved as to Legal Form

► [Signature]

Charles Phan, Supervising Deputy County Counsel

Date 5/5/2025

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► [Signature]

Andrew Goldfrach, ARMC Chief Executive Officer

Date 5/7/2025

ATTACHMENT 1

The all-inclusive annual fee covers all Services for each Equipment, including, but not limited to the Onsite Management Program, Full-Service Maintenance, Repair, and Storage for 20 beds maximum with 2 round trips a month for delivery/pickup of beds. Anything beyond this is subject to space being available and additional costs (which shall require an amendment to the Contract). Fees are exclusive of exempt taxes. All non-exempt applicable sales, use, excise or similar taxes relating to the Services are County's sole responsibility. In the event the actual inventory does not match the Equipment listed below, the parties agree to enter into an amendment to this Agreement to reflect the actual inventory with appropriate adjustment in the Fees.

EQUIPMENT SERVICES FEES FOR FULL SERVICES MAINTENANCE:

Manufacturer	Model Name	Description	Agility Proposed Coverage	Quantity	PM Frequency	Per Device Annual Price	Extended Annual Price	Contract Specifics
Arjo	Citadel Plus	Bariatric Bed	FS	20	Annual	\$457.56	\$9,151.23	-
Linet	Ave-2	Bed L and D	FS	30	Annual	\$457.56	\$13,726.84	-
Striker	300553EX	Bed Mother Baby	FS	30	Annual	\$387.63	\$11,628.94	-
Linet	IMC 17350-400	Bed ICU	FS	60	Annual	\$315.91	\$18,954.56	-
Hard Manufacturing	Standard	Crib	FS	65	Annual	\$315.91	\$20,534.10	-
Linet	IMC 5A650-101	Med Surg Bed	FS	400	Annual	\$315.91	\$126,363.71	-
Hill Rom	Standard	Standard Gurney	FS	6	Annual	\$213.95	\$1,283.71	-
Striker/Hausted	Any	Standard Gurney	FS	100	Annual	\$213.95	\$21,395.12	-
Arjo	Sara Steady	Specialty Chair	FS	30	Annual	\$178.12	\$5,343.52	-
Linet	IVAKSB-0000PO	Mattress Pump	FS	120	Annual	\$58.59	\$7,031.25	-
Hill Rom	Rehab	Wheelchair	FS	6	Annual	\$58.59	\$351.56	-
BMB Medical	Any I-Move	Wheelchair	FS	85	Annual	\$58.59	\$4,980.47	-

The Monthly Base Fee for Full Service Maintenance of the foregoing equipment is \$20,062.08 per contract month for Services provided during Normal Working Hours (defined in Attachment 2).

ONSITE MANAGED PROGRAM SERVICES FEES:

SCOPE OF SERVICES

Prefix	Equipment Description	County Owned	Cleaning	Delivery	Pick-Up	Software Tracking Rounds	Inspection	Repair	Quantity
	ARJO Citadel Plus	X		X	X	X	X	X	20
	ARJO Specialty Chair	X	X	X	X	X	X	X	30
	Linet L&D Bed	X		X	X	X	X	X	30
	Linet ICU Bed	X		X	X	X	X	X	60
	Linet Med Surg	X		X	X	X	X	X	400
	Linet Mattress Pump	X	X	X	X	X	X	X	120
	Stryker Med Surg	X		X	X	X	X	X	30
	Stryker Standard Gurney	X	X	X	X	X	X	X	100
	BMB Medical Wheelchair	X	X	X	X	X	X	X	85
	Hill Rom Wheelchair	X	X	X	X	X	X	X	6
	Hill Rom Standard Gurney	X	X	X	X	X	X	X	6
	Crib	X		X	X	X	X	X	65

COVERAGES AND EQUIPMENT FEES

Item Code	Item Descriptions	Billing Type	Billing Rate Each
	Onsite Management Program	Monthly Management Fee	\$107,760
	Offsite Storage*	Additional Service Included	Additional Service Included

*Storage is included with the Onsite Management Program Fee. Storage is inclusive of space for up to 20 beds at the Contractor district office along with 2 round-trips for pick-up and delivery. Any storage services above this amount will have an additional charge.

For the purpose of clarity, the combined Monthly Fees of the Monthly Management Fee set forth in the Onsite Managed Program Services Fees section and the Monthly Base Fee set forth in the Equipment Services Fees for Full Service Maintenance section are \$127,822.09 as of the Effective Date of the Agreement.

Attachment 2

Work Plan and Schedule

for Equipment Services

Contractor will provide the Services described in this Attachment 2 on the County-owned Equipment identified in Equipment Services section of Attachment 1. Contractor will provide the Services, Monday through Friday, 8:00 am to 5:00 pm, excluding Contractor standard holidays ("Normal Working Hours") and will provide Services outside of Normal Working Hours as needed for additional Fees as set forth in the Non-Contracted Hourly Rates Section of the Equipment Services table of Attachment 1. Contractor's standard holidays as of the Effective Date are as follows: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; and Christmas Day. Contractor reserves the right in good faith to alter the Contractor standard holidays at its sole discretion upon written notice to the County.

1. **EQUIPMENT SERVICES**

Contractor will perform the following equipment tracking, electrical safety, preventative maintenance and repair services (collectively such services constitute a "Full Service" offering) on Equipment covered for such services as shown in the Equipment Services section of Attachment 1. Contractor will perform services in compliance with the applicable standards of The Joint Commission and the National Fire Protection Association ("NFPA 99"). To the extent there is a change in The Joint Commission and/or the NFPA 99 standards, or any other applicable standards, that results in a material change to the scope of Contractor's Services not contemplated by the Contract, the parties will mutually agree upon a corresponding adjustment in Contractor's Fees, notwithstanding anything to the contrary in this Contract, that shall be effectuated in the form of an Amendment to the Contract. If the parties are unable to come to an agreement as to the adjustment of such fees, either party shall have the right to remove the applicable Equipment from Attachment 1 upon thirty (30) days written notice to the other party. All fees thereafter shall be adjusted accordingly based on the removal of such equipment.

- 1.1. **Equipment Tracking.** For the Equipment covered for equipment tracking, Contractor will identify and input equipment detail into Contractor's Computerized Maintenance Management System (CMMS) on an annual basis.
- 1.2. **Electrical Safety.** For the Equipment covered for electrical safety, Contractor will provide electrical safety services, which include Equipment inspection and Equipment testing for electrical safety defects. Contractor will report identified defects to County. Repairs to correct defects are the sole responsibility of County, unless County purchased repair services for the Equipment.
- 1.3. **Contract Documentation.** Contractor shall provide the County with access to the CMMS via the MyAgility2.0 portal, which documents all Services provided under this Contract. County shall have access to records reflecting the Services provided by Contractor for each Equipment within 24 hours of completion of the service via the MyAgility2.0 portal.
- 1.4. **Preventative Maintenance.** For the Equipment covered for preventative maintenance, Contractor will provide preventative maintenance services. Preventative maintenance services include inspection for mechanical defects, performance verification of operator controls and adjustments, calibration verification, inspection for ground integrity and current leakage and documentation of results. Manufacturer's specifications and guidelines, when available, will be used as source documents for preventative maintenance services. Contractor will report identified defects to County. Repairs to correct defects are the sole responsibility of County unless this Agreement also includes repair services. Preventative maintenance does not include periodic Equipment overhauls, which involve equipment refurbishment or renovation, as recommended by a manufacturer.

If the Equipment is in use or cannot be found at the time Services are to be performed, County shall have an additional thirty (30) days to make the Equipment available for Service before Contractor considers the Equipment to be overdue for Services. The foregoing notwithstanding, if the Equipment is not found by the last day of the second month after the Equipment is overdue for Service, Contractor shall remove the Equipment from coverage under this Contract, with a corresponding reduction of fees. County acknowledges and accepts that the non-performance of scheduled maintenance Services on Equipment as provided for in this Contract may result in injury to others or damage to the Equipment beyond normal wear and tear to the Equipment. County releases Contractor from any and all damages, claims, loss and liabilities related to the non-performance of Services on the Equipment due to the Equipment being overdue for Services because the Equipment was in use or lost.

- 1.5. **Repairs.** For the Equipment covered for repairs, Contractor will provide repair services, which are performed so that the Equipment will function in accordance with manufacturer's specifications and guidelines. Repair services include, but are not limited to, the identification of factors contributing to the Equipment's

performance and operation, repairs for normal wear and tear, malfunctions, troubleshooting, parts, and labor, subject to the exclusions below. In performing repairs services, Contractor will consult with County's staff, as appropriate. If Contractor in good faith determines that certain repair services are impractical due to Equipment age, obsolescence, condition or limited availability of parts or Contractor in good faith determines that the repair costs are estimated to exceed 50% of the Equipment replacement cost, Contractor will discuss the practicality of Equipment repair and Equipment replacement with County.

2. EXCLUSIONS

The following are not covered Services or Equipment and are excluded under this Attachment 2:

2.1. The following:

2.1.1. County's instructions to perform services outside of manufacturer's specifications or guidelines or services necessitated by an earlier County directive to not perform certain services such as preventative services;

2.1.2. The failure of the County, its employees, or agents to follow Contractor or manufacturer's instructions;

2.1.3. Use of accessories or parts with the Equipment that are not provided by Contractor or the original equipment manufacturer;

2.1.4. Extraordinary events such as fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, power outages, interruptions in telecommunications, material shortages, acts of terrorism and wars; and

2.1.5. County's infrastructure, such as electrical surges, improper storage and improper installation by persons other than Contractor.

2.2. Refurbishments, restorations, overhauls and enhancements to Equipment, including without limitation, sharpening, welding, upgrades, modifications, and other service work that is beyond the scope of preventative maintenance to the Equipment and is not necessary to restore the Equipment to operation in accordance with manufacturer's specifications or guidelines.

2.3. Service required because of installation, relocation or certification surveys.

2.4. Service required under a manufacturer's warranty.

2.5. Service required due to physical damage. Physical damage is defined as damage to Equipment caused by incorrect handling or misuse, including but not limited to drops, collisions, punctures, and improper cleaning, by non-Contractor personnel (including without limitation County personnel and/or patients).

2.6. All disposables and consumables.

2.7. Replacement of accessories that are exchangeable or can be installed by users.

2.8. Replacement of batteries, power cells, arrays, and power cords.

2.9. Replacement of the entire unit(s) is excluded.

2.10 Other exclusions set forth in the Equipment Services table of Attachment 1.

3. COUNTY RESPONSIBILITIES

County will perform the following:

3.1. **Training.** When training is available to County from a manufacturer as part of an Equipment purchase or a service contract, County will invite Contractor personnel to participate as County's representatives. If the manufacturer charges a fee for the training, County will notify Contractor of the fee amount, in advance of the training, and if Contractor participates, Contractor will reimburse County for fees incurred as a result of Contractor personnel participation in the training.

3.2. **Service Manuals.** Providing a library of information regarding inspection, testing, and maintenance for County-owned medical equipment is the responsibility of the County. County will provide Contractor with access to manuals, procedures, technical bulletins and other information provided by the equipment manufacturer. In the event the customer does not have a required document, they will assist Contractor in the procurement of manufacturer's documentation for all Equipment required. The manuals will remain the

property of County.

- 3.3. **Manufacturer Repair.** County will obtain pre-approval from Contractor, which approval will not be unreasonably withheld, before requesting or obtaining service for Equipment by a manufacturer or other vendor. County is solely responsible for any manufacturer and other vendors that it hires without Contractor's prior written approval, and hiring a vendor to perform service on the Equipment may cause Contractor to, in its sole discretion, terminate this Contract or remove the Equipment from Attachment 1 upon thirty (30) days written notice to County.
- 3.4. **Equipment Preparation.** County will have Equipment in proper operating condition at the time Contractor begins to provide Services for such Equipment. Within 90 days of the Effective Date, Contractor will conduct an inspection of County's Equipment to confirm that all Equipment is in such proper operating condition and is compliant with all OEM inspection intervals. Equipment that does not meet manufacturer's specifications and guidelines will be deemed to be "not in proper operating condition." Within 30 days from the completion of Contractor's inspection, County may bring the Equipment up to proper operating condition or may contract with Contractor to do so. If County does not bring the Equipment up to proper operating condition, Contractor may remove such Equipment from Attachment 1 upon thirty (30) days written notice to County.
- 3.5. **Implementation Assistance.** In order to enable the parties to successfully implement the Services, County will timely provide Contractor without charge: (i) a reasonably satisfactory on-site work area; (ii) access to a secured network, either an enterprise-grade County network and/or a dedicated vendor secured network (Guest Wi-Fi access is not adequate); (iii) notification of connectivity changes (passwords, etc.) that may affect Contractor's connection prior to the changes to ensure ongoing operations; (iv) cooperation in the collection and analysis of data, including without limitation, vendor contracts, County credentialing and other HR requirements and other data necessary for the purpose of utilization and equipment usage review; (v) assistance in scheduling meetings with necessary County stakeholders as necessary to facilitate implementation; and (vi) cooperation in resolving connectivity gaps identified by Contractor, which will be shared with the County. The parties will work together in good faith to establish an implementation timeline as of the Effective Date, to meet the requirements outlined in this section.
- 3.6. **Equipment Decontamination.** County will notify Contractor of any Equipment exposed or suspected to be exposed to contamination. County must decontaminate all such Equipment and dispose of all contaminated accessories prior to handing the Equipment over to Contractor and will provide proof or documentation of such decontamination or disposal. County is responsible for all expenses associated with decontaminating or disposing the Equipment.
- 3.7. **Reasonable Assistance.** County will provide Contractor with reasonable access to the Equipment and a suitable work area on County's premises and will provide Contractor with reasonable cooperation in its performance of Services. County will provide a final inventory, in Contractor's requested format prior to the commencement of Contractor's Services hereunder. County will notify Contractor of the failure of any Equipment to perform in accordance with manufacturer's specifications or guidelines, regardless of whether patient injury results. County will endeavor to give the notice within 24 hours of discovering the failure and will include sufficient details to permit the parties to collaborate on developing an investigation plan.

After the Effective Date, Contractor will complete an inventory reconciliation ("Reconciliation"). The Reconciliation will compare the contracted inventory and coverage levels to the existing inventory and coverage levels. Upon delivery of the Reconciliation, County will have 30 days to dispute any discrepancies. Following Reconciliation, adjustments will be implemented for inventory and coverage changes in the form of a written amendment, signed by the parties.



ATTACHMENT 3

Levine Act –

Campaign Contribution Disclosure

(formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Agiliti Health, Inc.

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5 No ☒ X

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: Not Applicable

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
Not Applicable	

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
Not Applicable		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
Not Applicable		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
Not Applicable	

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If no, please skip Question No. 10.

Yes ☐ If yes, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.

Attachment 4

Work Plan and Schedule

for Onsite Managed Program Services

ONSITE MANAGED PROGRAM SERVICES

County retains Contractor to improve the management of medical equipment used by County. Contractor will provide County the Services described in this Attachment 4 for the equipment identified in the Onsite Managed Program Services table in Attachment 1.

1. CONTRACTOR SERVICES

1.1 Scope of Services. Contractor will provide on-site personnel to manage Equipment utilization. The exclusive responsibilities of the on-site personnel are as set forth in the Onsite Managed Program Services section of Attachment 1.

1.2 Maintenance; Inspections; Repair. Contractor will perform functional and electrical inspections of Equipment in accordance with manufacturer's guidelines, Contractor's customary practices and the procedures and intervals listed in the Contractor functional check out procedures and in compliance with the applicable standards of The Joint Commission ("TJC") and the National Fire Protection Association ("NFPA 99"). Contractor will repair or replace, at Contractor's option, any Equipment or part of any Equipment that County identifies as nonfunctional. County is responsible for any continued use of Equipment after identifying it as nonfunctional.

1.3 Staffing Schedule. The initial schedule for the on-site personnel is set forth below and is subject to change by Contractor, based upon Contractor's reasonable determination of the demand for Onsite Managed Program Services:

STAFFING SCHEDULE

Contractor Employee	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Hours
Total Coverage	24x7	24x7	24x7	24x7	24x7	24x7	24x7	360

1.4 Reporting. Contractor shall provide County with access to the CMMS reflecting all repairs completed by Contractor on the Equipment. County shall have access to all records relating to repairs for any Equipment within 24 hours after completion of repairs via the MyAgility2.0 portal. Contractor shall also assist County with known reporting standards including, without limitation, those established by or under TJC and the Safe Medical Device Act.

1.5 Equipment Tracking Software. Contractor will use its CMMS equipment tracking system to track location, utilization, availability and patient use of Equipment. Contractor shall provide County with access to the CMMS. County will provide Contractor with sufficient support in order to access the CMMS from County's systems. Contractor will not be responsible for any expenses incurred by County related to setting up this access. Contractor does not warrant that the operation of the CMMS will be uninterrupted or error free.

Contractor is not responsible for County's billing or the accuracy of County's accounting system or any obligations beyond those specifically enumerated herein.

1.6 Business Associate Agreement. In connection with the use of the Software, Contractor acknowledges that it will serve as a business associate to County, a covered entity, within the meaning of the Health Insurance Portability and Accountability Act and will comply with the Business Associate Agreement attached hereto as Attachment 5 and incorporated herein by this reference.

1.7 County Equipment. When the Services contemplated in this Attachment 4 end, Contractor will return to County any County Equipment in its possession. Contractor's tracking and reporting Services help protect against Equipment loss, but are not a guarantee that loss will not occur. Accordingly, Contractor is not responsible for the loss of County Equipment, including accessories, unless such loss occurs while the County Equipment is in the care, custody and control of Contractor and is due to the negligence or willful misconduct of Contractor.

2. CUSTOMER RESPONSIBILITIES

2.1 Equipment Investigational Analysis. County will notify Contractor of the failure of any Equipment to perform in accordance with manufacturer's specifications or guidelines, regardless of whether patient injury results. County will promptly give notice after discovering the failure and will include sufficient details to permit the parties to collaborate on developing an investigation plan. Contractor shall not be responsible for any damages whatsoever resulting from County's failure to timely notify Contractor of a failure.

2.2 Equipment Decontamination. County will notify Contractor of any Equipment exposed or suspected to be exposed to contamination. County must decontaminate all such Equipment and dispose of all contaminated disposables prior to handing the Equipment over to Contractor and will provide proof or documentation of such decontamination or disposal upon reasonable request. County is responsible for all expenses associated with decontaminating or disposing the contaminated Equipment or disposables.

2.3 Certain Software Fees. Unless specifically identified as covered in the Onsite Managed Program Services table in Attachment 1, all software fees (other than Contractor CMMS fees), including without limitation, installation, maintenance and upgrade fees for software for the Equipment, are the sole responsibility of County.

2.4 Implementation Assistance. In order to enable the parties to successfully implement the Services, County will timely provide Contractor without charge: (i) a reasonably satisfactory on-site work area; (ii) access to a secured network, either an enterprise-grade County network and/or a dedicated vendor secured network (Guest Wi-Fi access is not adequate); (iii) notification of connectivity changes (passwords, etc.) that may affect Contractor's connection prior to the changes to ensure ongoing operations; (iv) cooperation in the collection and analysis of data, including without limitation, vendor contracts, County credentialing and other HR requirements and other data necessary for the purpose of utilization and equipment usage review; (v) assistance in scheduling meetings with necessary County stakeholders as necessary to facilitate implementation; and (vi) cooperation in resolving connectivity gaps identified by Contractor, which will be shared with the County. The parties will work together in good faith to establish an implementation timeline as of the Effective Date, to meet the requirements outlined in this section.

ATTACHMENT 5
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) 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 Agiliti Health, Inc. (hereinafter Business Associate). This Agreement 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 Agreement 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. Breach shall not include "Unsuccessful Security Incidents," which shall include, but are not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as such incidents do not result in unauthorized access, use, or disclosure of PHI, this section shall serve as notice of such Unsuccessful Security Incidents and no further report shall be required.
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. Business Day(s), for purposes of this Agreement, refers to Monday through Friday, excluding County-observed holidays.
4. 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.
5. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
6. 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.
7. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.

8. 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.
9. 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.
10. 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.
11. 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 Agreement 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)]

BA and CE agree to accept encrypted electronic communications, including email, from each other. These communications may include PHI.

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement 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 Agreement.

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 Agreement.

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 as soon as practicable, but no later than five (5) Business Days 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) Business 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 five (5) Business 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 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. In the case of a request by CE, CE shall give at least thirty (30) Business Days' notice to BA of any such request, and CE shall not in any event make more than one (1) request in any twelve (12)-month period unless such request is necessitated by an investigation by state or federal agencies. In the case of an investigation and analysis by CE, such investigation and analysis shall be conducted during normal business hours and in a manner not to disrupt BA's ordinary

business operations. BA shall take reasonable efforts to support a CE investigation and analysis, taking into consideration the constraints imposed by BA's ordinary business operations and other CE activities.

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) Business 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 promptly 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, but in no event shall BA make any amendment(s) contemplated herein in a time and manner not permitted by applicable law.

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 Agreement, and any related agreements, if BA has breached a material term of this agreement. CE shall, to the extent the breach may be reasonable cured, 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 Agreement, BA shall return or destroy, at BA's option, 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. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible; BA shall provide a written assurance signed by an officer of BA stating that BA 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 not feasible, for so long as BA maintains such PHI. 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 Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, 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 Agreement, 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 Agreement.

14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach by BA or a Breach of BA's systems. Costs shall be based upon the required notification type as deemed appropriate and necessary by CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs upon written notice to, and consent of, BA. Costs shall incur at the current rates and may include, but are not limited to the following, as reasonably applicable under the circumstances:

- 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 reasonable and applicable 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 cyber liability insurance coverage in accordance with the terms of the Contract 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 Agreement 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 Agreement, 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 Agreement 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 Agreement 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 Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. Subject to the foregoing, this Agreement 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 Agreement 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 Agreement 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 Agreement.