

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into as of date of full execution (“**Effective Date**”), by and between Mercury Healthcare, Inc. dba WebMD Ignite, with its principal place of business at 283–299 Market Street, 2 Gateway Center, 4th Floor, Newark, NJ 07102 (“**WebMD Ignite**” or “**Business Associate**”), and San Bernardino County on behalf of Arrowhead Regional Medical Center, with its principal place of business at 400 North Pepper Avenue, Colton CA 92324, (“**Client**” or “**Covered Entity**”). WebMD Ignite and Client may be referred to individually as a “**Party**” and collectively as the “**Parties**.”

I. Scope.

This BAA is entered into to ensure compliance with the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”), in connection with services (the “**Services**”) provided by Business Associate to Covered Entity under an existing agreement (the “**Agreement**”) that may involve the use, disclosure, or maintenance of Protected Health Information (“**PHI**”). The Parties acknowledge that Business Associate may, from time to time, receive, create, maintain, or transmit PHI on behalf of Covered Entity, and agree to the terms of this BAA to satisfy their respective obligations under HIPAA.

II. Permitted Uses and Disclosure of PHI.

- a. Use and Disclosure. Business Associate shall not use or disclose PHI except as permitted by this BAA, required by law, or compelled by court order.
- b. Permitted Uses by Business Associate. Business Associate may use or disclose PHI as necessary to perform the Services, except as otherwise limited by this BAA. Business Associate shall not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity, except that Business Associate may also use or disclose PHI to: (i) perform its own management and administration; (ii) fulfill its legal obligations; (iii) provide data aggregation services to Covered Entity as defined in 45 C.F.R. § 164.501; and (iv) de-identify PHI in accordance with 45 C.F.R. § 164.514, solely for purposes of performing the Services, developing or improving Business Associate’s products or models, or other internal business operations. Any disclosure to a third party must be required by law or subject to reasonable assurances that the recipient will (a) maintain the information in confidence and use it only for the intended purpose or as required by law, and (b) notify Business Associate of any known breach of confidentiality.

III. Responsibilities of Business Associate.

- a. Safeguards. Business Associate shall implement administrative, physical, and technical safeguards in accordance with applicable HIPAA security requirements to protect the confidentiality, integrity, and availability of electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
- b. Agents and Subcontractors. Business Associate shall ensure that any subcontractor or agent that creates, receives, maintains, or transmits PHI on its behalf agrees in writing to restrictions and obligations that are substantially the same as those that apply to Business Associate under this BAA.
- c. Access for Regulatory Oversight. Upon request by Covered Entity or the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), Business Associate shall make available its

internal practices, books, and records relating to the use or disclosure of PHI, as necessary for the Secretary to determine compliance with HIPAA by Covered Entity or Business Associate.

d. Individual Right of Access. If Business Associate maintains PHI in a Designated Record Set (as defined in 45 C.F.R. § 164.501) on behalf of Covered Entity, Business Associate shall provide access to such PHI to Covered Entity within ten (10) business days of receiving a written request, as necessary to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If an Individual submits a request for access directly to Business Associate, Business Associate shall promptly notify Covered Entity, which shall be responsible for responding to the request.

e. Individual Right of Amendment. If Business Associate maintains PHI in a Designated Record Set (as defined in 45 C.F.R. § 164.501) on behalf of Covered Entity, Business Associate shall make such PHI available to Covered Entity within ten (10) business days of receiving a written request, as necessary to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. If an Individual submits a request for amendment directly to Business Associate, Business Associate shall promptly notify Covered Entity, which shall be responsible for responding to and, if applicable, denying such request.

f. Accounting of Disclosures. If Business Associate is required to maintain information regarding disclosures of PHI to assist Covered Entity with responding to an individual's request for an accounting under 45 C.F.R. § 164.528, Business Associate shall provide such information to Covered Entity within ten (10) business days of receiving a written request. If an Individual submits a request for an accounting of disclosures directly to Business Associate, Business Associate shall promptly notify Covered Entity and provide the required documentation. Covered Entity shall be responsible for responding to the Individual.

g. Minimum Necessary. Business Associate shall use or disclose only the minimum necessary PHI to accomplish the intended purpose, in accordance with 45 C.F.R. § 164.502(b).

h. Delegated Privacy Rule Obligations. If Business Associate is delegated any of Covered Entity's obligations under the HIPAA Privacy Rule (45 C.F.R. Part 160 and Subparts A and E of Part 164), Business Associate shall comply with the applicable requirements in performing such obligations.

i. Reporting. Business Associate shall promptly report to Covered Entity any (i) Security Incident (as defined in 45 C.F.R. § 164.304), (ii) Breach of Unsecured PHI (as defined in 45 C.F.R. § 164.402), or (iii) access, use, or disclosure of PHI not permitted by this BAA, in each case to the extent Business Associate becomes aware of such occurrence. If the incident involves a Breach of Unsecured PHI, Business Associate shall notify Covered Entity without unreasonable delay and in no event later than five (5) business days following discovery, and shall include, to the extent available, the information required under 45 C.F.R. § 164.410, including the identities of affected individuals, a description of the incident and its discovery, the types of PHI involved, and a summary of mitigation and remediation efforts. Notwithstanding the foregoing, Business Associate is not required to report unsuccessful Security Incidents (i.e., activity that does not result in unauthorized access, use, or disclosure of Electronic PHI), such as pings, port scans, unsuccessful login attempts, denial-of-service attacks, or similar technical events.

j. Breach Response and Mitigation. In the event of a Breach of Unsecured PHI caused by Business Associate's failure to comply with this BAA, Business Associate shall: (i) cooperate with Covered Entity in investigating the breach and determining its scope; and (ii) provide reasonable assistance to Covered Entity in preparing any required notifications to individuals or regulators. If Covered Entity reasonably

determines that the Breach presents a material risk of identity theft or financial fraud, Business Associate shall reimburse Covered Entity for the actual cost of providing credit monitoring to affected individuals for a period not to exceed twelve (12) months. Business Associate's obligations under this Section shall be subject to the limitation of liability set forth hereunder.

IV. Responsibilities of Covered Entity.

- a. Notification Requirements.** With respect to Business Associate's use or disclosure of PHI, Covered Entity shall:
- i. Obtain any consent, authorization, or other permission required by HIPAA or other applicable law before disclosing PHI to Business Associate;
 - ii. Not disclose PHI to Business Associate that is subject to any restriction or agreement (including those under 45 C.F.R. § 164.522) that limits use or disclosure, unless Business Associate has been notified of and agreed to such restriction;
 - iii. Notify Business Associate of any change in Covered Entity's policies, practices, or legal obligations that would materially affect Business Associate's permitted uses or disclosures of PHI;
 - iv. Notify Business Associate of any change in, or revocation of, an authorization provided by an Individual under 45 C.F.R. § 164.508, to the extent such change affects Business Associate's use or disclosure of PHI; and
 - v. Notify Business Associate of any amendment to PHI agreed to by Covered Entity under 45 C.F.R. § 164.526, if the amendment affects PHI Business Associate relies on to perform the Services.
- b. Minimum Necessary.** Covered Entity shall disclose to Business Associate only the minimum necessary PHI required for Business Associate to perform the Services, in accordance with 45 C.F.R. § 164.502(b).
- c. Part 2 PHI.** Covered Entity shall not disclose to Business Associate any records or information subject to 42 C.F.R. Part 2 ("Part 2 PHI"), unless and until the Parties enter into a written agreement that expressly addresses such data, such as an amendment to this BAA or a Qualified Service Organization Agreement. Business Associate shall have no obligations under 42 C.F.R. Part 2 with respect to any Part 2 PHI unless and until such agreement is executed.
- d. No Impermissible Requests.** Covered Entity shall not request that Business Associate use or disclose PHI in any manner impermissible under HIPAA if done by Covered Entity.
- e. Breach Notification Responsibility.** Covered Entity shall be solely responsible for providing any notices to individuals, government authorities, or other third parties required by HIPAA or other applicable law in the event of a breach of PHI.
- f. Compliance with Law.** Covered Entity shall not take any action or fail to act in a way that would cause Business Associate to violate HIPAA or this BAA.

- V. Audit.** Upon reasonable prior written request, Covered Entity may audit Business Associate's compliance with this BAA no more than once annually and during normal business hours. For routine audits, Business Associate shall satisfy such requests by providing responses to a reasonable security questionnaire and relevant supporting documentation made available through our security and

compliance portal. In the event of a suspected breach or material noncompliance, the Parties will cooperate in good faith to address Covered Entity's reasonable requests for additional access to relevant records or evidence of compliance.

VI. Indemnification and Limitation of Liability.

- a. Indemnification.** BA shall indemnify and hold harmless CE and its affiliates, officers, directors, employees, and agents from and against any third-party claims, liabilities, damages, or expenses (including reasonable attorneys' fees and court costs) arising from BA's material breach of this BAA. Covered Entity shall be fully responsible for its acts and omissions in connection with this Agreement, to the extent permitted by law.
- b. Limitation of Liability.** Each Party's total aggregate liability under this BAA shall not exceed Seven Hundred and Fifty Thousand Dollars (\$750,000). Neither Party shall be liable to the other for any indirect, incidental, consequential, special or punitive damages of any kind, whether arising in contract, tort or otherwise, even if advised of the possibility of such damages. Business Associate shall not be liable for damages resulting from: (i) Covered Entity's disclosure of more than the Minimum Necessary PHI; or (ii) Covered Entity's disclosure of PHI subject to 42 C.F.R Part 2 without an amendment to this BAA or a separate agreement expressly authorizing such disclosure.

VII. Term and Termination.

- a. Term.** This BAA takes effect on the Effective Date and remains in force until all PHI received or created by Business Associate on behalf of Covered Entity is returned or destroyed.
- b. Termination for Cause.** If either Party determines that the other has materially breached this BAA, it shall provide a reasonable opportunity to cure the breach or, if cure is not feasible, may terminate this BAA and any portion of an Ordering Document that cannot be performed without a valid business associate agreement.
- c. Effect of Termination.**
 - i. Upon termination of this BAA or the Agreement, Business Associate shall return or destroy all PHI, if feasible.
 - ii. If return or destruction of PHI is not feasible, Business Associate shall continue to protect the PHI in accordance with this BAA and may use or disclose it only for the limited purposes that make return or destruction infeasible, consistent with 45 C.F.R. § 164.504(e)(2)(ii)(J). Business Associate shall retain such PHI only for as long as necessary to fulfill those purposes or as required by applicable law.
 - iii. Upon termination of this BAA, any portion of an Ordering Document under the Agreement that requires the use or disclosure of PHI and cannot lawfully be performed without a business associate agreement shall also terminate.

VIII. Miscellaneous.

- a. Definitions.** Capitalized terms used but not defined in this BAA shall have the meanings given to them under 45 C.F.R. Parts 160 and 164. Capitalized terms defined in the Agreement may also be used in this BAA with the same meaning, unless otherwise specified.

- b. Entire Agreement. This BAA constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior business associate agreements between the Parties relating to such subject matter.
- c. Amendments. This BAA may be amended only by a written agreement signed by both Parties. The Parties agree to cooperate in amending this BAA as necessary to comply with changes to HIPAA or other applicable law.
- d. Relation to Agreement. In the event of a conflict between this BAA and the Agreement, the terms of this BAA shall control.
- e. No Third-Party Beneficiaries. Nothing in this BAA shall be construed to create rights or obligations in any person other than the Parties and their permitted successors and assigns.
- f. Counterparts. This BAA may be executed in counterparts, each of which shall be deemed to be an original. Electronic copies shall be valid and enforceable.
- g. Survival. Any provisions of this BAA that by their nature should survive termination shall so survive.
- h. Independent Contractors. The Parties are independent contractors, and nothing in this BAA shall be construed to create a partnership, joint venture, or agency relationship.
- i. Waiver. No waiver of any provision of this BAA shall be deemed a continuing waiver or a waiver of any other provision.
- j. Binding Agreement. This BAA shall be binding upon the Parties and their successors and permitted assigns.
- k. Governing Law. This BAA shall be governed by and construed in accordance with the governing law provision set forth in the Agreement.

The Parties have executed this Business Associate Agreement as of the Effective Date.

MERCURY HEALTHCARE, INC. DBA WEBMD IGNITE

BUSINESS ASSOCIATE

By: _____
 Name: Ann Bilyew
 Title: President
 Date: _____

SAN BERNARDINO COUNTY COVERED ENTITY

By: _____
 Name: Dawn Rowe
 Title: Chair, Board of Supervisors
 Date: _____