

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

23-410

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Ability Network, Inc.
Contractor Representative	Kristin Henry
Telephone Number	(612) 277-1499
Contract Term	5 years from date of execution
Original Contract Amount	\$83,955
Amendment Amount	
Total Contract Amount	\$83,955
Cost Center	

Briefly describe the general nature of the contract: Services Agreement with Ability Network Inc. for secure exchange server access to Medicare and Medicaid services in the amount of \$83,955 for the contract period of sixty months beginning February 1, 2023 thereafter automatically renewing until terminated by the County or Ability Network Inc.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Supervising Deputy County Counsel

Date 1-9-2023

Reviewed for Contract Compliance

►
Date _____

Reviewed/Approved by Department

► *William L. Gilbert*
William L. Gilbert, Director

Date 1/10/23

**Order Information**

Order Number Q-112971
 Offer valid through 12/31/2022
 Prepared By Kristin Henry
 Manager Larry Cross

Customer Information

Account Name SAN BERNARDINO COUNTY on
 behalf of Arrowhead Regional
 Medical Center

Account Number 19413

Physical Address 400 N Pepper Ave
 Colton, CA 92324-1801
 US

Billing Address 400 N Pepper Ave
 Colton, CA 92324-1801
 US

Business Contact

Alicia Ramos
 (909) 777-0774
 alicia.ramos@armc.sbcounty.gov

Technical Contact

Alicia Ramos
 (909) 777-0774
 alicia.ramos@armc.sbcounty.gov

Billing Contact

Yesenia Contreras
 (909) 387-0725
 AccountsPayable@armc.sbcounty.gov

Order Details

Billing Frequency Annual

Fee Type	Quantity	Service	Service Description	Sales Price	Total Price
Recurring	1	ABI-FACILITY-L1	Multi-Facility Charge	\$4,065.60	\$4,065.60
Recurring	1	ABI-SERVER-L4	Secure Exchange Server with IVANS NOW	\$12,725.05	\$12,725.05

Annual Recurring Amount: \$16,790.65

If taxable, invoice will include applicable Sales Tax

Order Notes

This order form ("Order Form") is entered into by ABILITY Network Inc. ("ABILITY") and SAN BERNARDINO COUNTY on behalf of Arrowhead Regional Medical Center ("Customer") as of the date of Customer's signature below ("Effective Date").

Service Period Date: 02/01/2023

Services. Customer will utilize the services defined below (each a "Service" and collectively the "Services"):

- **Multi-Facility Charge:** A monthly recurring service fee for the provision of the services contained herein for 2-5 facilities.
- **Secure Exchange Server with IVANS NOW:** Service delivered via the secure exchange server that allows Customer unlimited access to Medicare DDE, PPTN (as applicable), RHII DDE, and DME CSI for unlimited workstations. Customer will host Enterprise Managed Service on a dedicated server.

Term. This Order Form shall have an initial sixty (60) month term, which shall begin on the Service Period Start Date as stated herein ("Initial Term") and shall thereafter automatically renew for successive twelve (12) month terms (each a "Renewal Term") unless Customer provides written notice to ABILITY of their intent to terminate the Services at the end of the then current term at least sixty (60) days prior to the end of the Initial Term or Renewal Term, as applicable. If the Services are terminated prior to the end of the Initial Term or any Renewal Term either improperly by Customer or by ABILITY, due to Customer's breach of the Agreements or this Order Form, Customer agrees to pay ABILITY, upon receipt of an invoice, the total of the then applicable Monthly Recurring Amount multiplied by the number of months remaining in the then current term as of the effectiveness of such termination.

Authorization to Use Services. Customer is authorized to make the Services listed on this Order Form available only to Authorized End Users. Customer is not authorized to use the Services for purposes outside of the rights granted herein. Authorized users shall include Customer's personnel and contracted third parties (e.g. agency, temporary, subcontracted, or consulting staff) acting on behalf of Customer.

Invoicing. The Annual Recurring Amount will be invoiced as of the Service Period Start Date.

Failed Transactions. ABILITY shall not be responsible for any Transactions that fail due to incorrect or invalid data. Correction and resubmission of Transactions are the sole responsibility of the Customer and/or Authorized End Users. Such failed Transactions shall be included in any count of Transactions and Per Transaction Fees are payable on all Transactions even if such Transactions fail due to incorrect or invalid data (including a failure to enroll with a Payer).

Confidentiality. Except as otherwise required by law, Customer agrees to keep in confidence the terms of this Order Form, including any information concerning price, except where applicable to Authorized End Users so long as such Authorized End Users in turn agree to the confidentiality of such information.

NOTE: ALL PAGES OF THIS DOCUMENT MUST BE SUBMITTED TOGETHER TO CONSTITUTE A COMPLETE ORDER.

THIS IS A BINDING AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS OF THE SERVICE AGREEMENT AND BUSINESS ASSOCIATE AGREEMENT EXECUTED BY THE PARTIES ("AGREEMENTS"). THE AGREEMENTS ARE INCORPORATED HEREIN AND MADE A PART OF THIS ORDER FORM. IN THE EVENT OF A CONFLICT IN TERMS BETWEEN THIS ORDER FORM AND THE AGREEMENTS, THE TERMS OF THIS ORDER FORM SHALL CONTROL; OTHERWISE, THE TERMS OF THIS ORDER FORM ARE IN ADDITION TO AND SUPPLEMENT THE TERMS OF THE AGREEMENTS.

Payment is due within Net 45 days of the invoice date regardless of whether usage has begun for any or all Services listed on this Order Form.

Tax Status: Taxable

If exempt (Non Taxable), a state tax exemption certificate is required with this signed Order Form.

Customer hereby authorizes ABILITY to provide the Services as described above and warrants and represents that the authorized representative signing below has the requisite authority to legally bind and approve payment of forthcoming invoices.

AGREED AND ACCEPTED

SAN BERNARDINO COUNTY on behalf of
Arrowhead Regional Medical Center


Authorized Signature

Dawn M. Rowe

Printed Name

Chair, Board of Supervisors


Title

JAN 24 2023

Date

ABILITY Network Inc.

DocuSigned by:



F79518E1AB9E4C9...
Authorized Signature

Thomas Schultz

Printed Name

SVP Sales

Title

12/5/2022

Date

ABILITY Network Inc. Service Agreement

THIS SERVICE AGREEMENT ("AGREEMENT") IS ENTERED INTO AS OF THE LAST DATE OF SIGNATURE BELOW ("EFFECTIVE DATE") BY AND BETWEEN ABILITY NETWORK INC. ("ABILITY") AND COUNTY OF SAN BERNARDINO ON BEHALF OF ARROWHEAD REGIONAL MEDICAL CENTER ("CUSTOMER") WHO EACH AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, SUBJECT TO THE ORDER FORM FOR THE SERVICE(S).

c) Locations. ABILITY shall adjust the Fee as Customer adds locations. Customer shall provide ABILITY prior written notice of any additional locations and ABILITY shall have the right to audit Customer's Service usage and locations.

5. INTELLECTUAL PROPERTY RIGHTS.

a) **Ownership.** Customer acknowledges that ABILITY and its licensors retain all intellectual property rights and title (including any patent, copyright, trademark and other rights) in and to all Services, Software and Documentation and their related Confidential Information, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, comprising, embodied in, or practiced in connection therewith, including, without limitation, all modifications, enhancements, configurations, upgrades, and interfaces thereto ("Works"). ABILITY reserves and retains all intellectual property rights and title associated with Works and derivatives of Works. The Software, including its operation, code, architecture and implementation, as well as the look and feel of the Software, is the valuable intellectual property of ABILITY. The Software is protected by United States copyright laws and international treaty provisions. This Agreement does not give Customer any intellectual property rights in the Software. In connection with Customer's use of the Services, Customer will not disassemble, decompile, reverse engineer or make any other attempt by any means to discover or obtain the Software or its source code and ABILITY shall have the right to terminate this Agreement immediately upon notice to the Customer in any such event. In the event any modifications are made to the Services by anyone other than ABILITY, all warranties with respect to the Services shall immediately terminate.

b) **Proprietary Markings.** Customer will not remove or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within any Software or Documentation. The placement of a copyright notice on Software or Documentation shall not constitute publication or otherwise impair the confidential or trade secret nature of the Software or Documentation.

c) **Use of Data.** Any access, use or disclosure of protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act will be governed by the Business Associate Agreement (the "BAA") in effect between the parties. ABILITY may De-identify any Protected Health Information that it receives from or creates for Customer and may use or disclose such De-identified information in any manner permitted by applicable law. Such de-identified information shall not be subject to the terms and conditions of the business associate agreement in effect between the parties.

d) **Third Party Websites.** The Services may contain links to third party websites ("Websites"). Such links are provided for convenience only and Websites are not under ABILITY's control. ABILITY is not responsible for the content of any Websites, and ABILITY does not review, approve, monitor, endorse, warrant or make any representation with respect to Websites. In no event will ABILITY be responsible for the information contained in any Website or for Customer's use thereof. Websites may have terms and privacy policies different from those of ABILITY, and ABILITY is not responsible therefor.

6. CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION. The Services and Documentation, including, without limitation, trade secrets, performance data, design, features, layouts, configurations, processes, formulae, specifications, programs, test results, technical know-how, methods and procedures of operation and other information relating to or obtained therefrom, by use, examination or otherwise, which is not generally publicly known are the valuable information of ABILITY and its licensors, and shall be deemed to be confidential information of ABILITY ("ABILITY Confidential Information"). In addition, any information or materials disclosed or provided by one party to the other party or its personnel and specified as confidential or proprietary or marked as confidential or proprietary shall be deemed to be confidential information of the disclosing party ("Confidential Information"). Each party shall use the same degree of care to protect the Confidential Information from improper use or non-disclosure as it would use with respect to its own information of like importance which it does not desire to have published or disseminated, but in any event no less than reasonable care. Neither party will use any Confidential Information for any purpose not expressly authorized under this Agreement and will not disclose to third parties any such Confidential Information, unless otherwise permitted herein. If the receiving party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other disclosing party, the receiving party will, to the extent legally permissible, promptly notify the disclosing party and provide reasonable assistance, to the extent requested by the disclosing party, in seeking an order protecting the information from public disclosure. Unless the subpoena or process is timely limited, quashed or extended, the receiving party will then be entitled to comply with the request to the extent permitted by law. "Confidential Information" shall also include all nonpublic information, whether disclosed by a party or its affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250). Confidential Information includes:

7. TERM AND TERMINATION.

a) **Term.** Each Service shall have an initial one (1) year term (the "Initial Service Term") from the commencement of the service period and shall thereafter renew for successive one (1) year terms upon mutual written agreement of the parties, unless a different term is specified in the Order Form. Any unused base transactions expire as of any renewal or termination date. After the Initial Service Term, either party may terminate this Agreement with no less than sixty (60) days prior written notice. Services may only be terminated at the end of a month. Therefore, the Agreement and related Services will be terminated on the last day of the month that occurs at least sixty (60) days after receipt of such notice.

1. DEFINITIONS.

"ABILITY" – ABILITY Network Inc. and its affiliates and subsidiaries.

"Connections" - the number of electronic pathways Customer may establish for the Services as set forth in the Order Form.

"Connection Change Fee" – the fee associated with a change in Connection pathways requested by Customer or necessitated by a change in connectivity.

"Documentation" – the technical manuals made generally available by ABILITY to enable Customer to use and reasonably understand the Service.

"Order Form" – the fully executed ABILITY Services Order Form representing Customer's purchase of Services.

"Service(s)" – the services specified in the Order Form, and any Value Added Services provided by ABILITY pursuant to this Agreement.

"Software" – software products used by ABILITY as part of the Services or otherwise, in object code, machine readable format or pursuant to a software-as-a-service model, and any updates, revisions, improvements or materials (if any) subsequently provided to ABILITY. Software may include programs of third parties which ABILITY is authorized to include as part of the Software.

"Value Added Services" - those additional services provided from time to time by ABILITY, including, but not limited to (i) providing messages regarding disease and treatment education, treatment alternatives, clinical trial education and opportunities, patient reminder information, industry news, insurance information, and such other general information that may be relevant to the Customer and/or its patients; (ii) data aggregation services; and (iii) data analytical services.

2. PERMITTED USE. The Documentation and any accompanying materials are protected, among other ways, by federal copyright law and international treaties. Customer may, on a nonexclusive basis, directly or indirectly, use the Service only for the processing of Customer's own information and data, and such customer data as Customer normally processes in the ordinary course of Customer's business. Customer shall not itself, or through any affiliate, agent or third party (i) sell, lease, license or sublicense the Documentation or the Services; (ii) use the Services to provide processing services to third parties or otherwise use the Services on a service bureau basis; or (iii) remove any trademark, copyright or other proprietary notices, labels or marks on or in the Documentation. Customer will promptly notify ABILITY of any unauthorized disclosure, reproduction, use or distribution of the Documentation or the Services, which comes to Customer's attention, or which Customer reasonably suspects. Customer is solely responsible for obtaining all equipment and for the compatibility thereof with the Services, and for paying all fees including, without limitation, all applicable taxes and Internet access fees, necessary to use the Services.

3. SUPPORT AND RESTRICTIONS

a) **Support.** ABILITY shall provide 1) configuration and ongoing management of Connections, 2) ongoing monitoring of Service to ensure reliable and efficient operations, 3) troubleshooting, advice and assistance in the form of telephone or e-mail support, and 4) modifications, incremental enhancements, and updates to the Services; as ABILITY, at its option, may elect to offer its customers.

b) **Restrictions.** The purchase of Service shall not entitle Customer to receive any custom modifications or custom updates of the Service. Such services may be provided by ABILITY under separate agreement.

c) **Coverage.** ABILITY will provide telephone or on-line support during ABILITY's normal business hours. ABILITY will provide support to evaluate and assist in the resolution of problems related to Customer's use of the Services.

4. FEES AND PAYMENT.

a) **Fees.** Any fees shall be set forth in the Order Form (the "Fee"). After the Initial Service Term, Fees shall be subject to adjustment by ABILITY on sixty (60) day written notice to the Customer effective any time one (1) year after the commencement of the service period, provided that any increase in third party charges, such as tariffs or government fees, shall be immediately passed through to Customer. In the event a change in Connections is requested by Customer or is necessitated by a change in connectivity, the Connection Change Fee shall be based on the then current ABILITY standard price list. Customer shall pay directly or reimburse ABILITY for all sales, use or related taxes, exclusive of income taxes.

b) **Payment.** The Fee shall be payable by Customer subject to the terms of the Order Form. The fee is non-refundable except as provided in the Order Form. Unpaid fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less. Customer shall notify ABILITY within thirty (30) calendar days of the invoice date of any disputed charges (the "Dispute Notification Period"). Such notification shall include written documentation identifying and substantiating the disputed amount. Nevertheless, Customer shall submit to ABILITY, by the Invoice Due Date, full payment of the undisputed portion of any ABILITY invoice. In the event Customer fails to notify ABILITY within the Dispute Notification Period, Customer will promptly pay ABILITY the full value of the invoice, including any disputed charges, and waive any and all rights to such disputed charges. In the event Customer improperly terminates or attempts to terminate this Agreement, ABILITY shall have the right, without limiting its other remedies, to accelerate and declare due and payable in full all remaining undisputed amounts due from Customer to ABILITY under this Agreement.

DocuSign Envelope ID: 24159A0D-E424-412D-90D8-E6D1261EEC61 under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the breach. If the breach is not cured within the thirty (30) day period to the reasonable approval of the non-breaching party, the non-breaching party shall provide notice of the issues that remain uncured and may immediately terminate this Agreement. Upon termination for any reason, ABILITY shall disable all Connections, and Customer shall destroy all copies of the Documentation, unless required to retain such information by law.

c) **Insolvency.** This Agreement shall terminate if either party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by or against a party seeking relief, reorganization or arrangement under any laws relating to insolvency, or any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of any of the party's property or assets, or the liquidation, dissolution or conclusion of the party's business.

d) **Effect of Termination.** Upon expiration or termination of the Agreement for any reason, all use of the Services by Customer shall cease, and Customer shall pay to ABILITY all accrued Fees and other amounts owed up to the effective date of termination.

e) **Survival of Certain Terms.** The provisions of Sections 4, 5, 6, 7, 8, 9(b), 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 shall survive expiration or termination of this Agreement.

8. **REACTIVATION.** Customer may reactivate Service, with the prior written consent of ABILITY, at any time after its expiration, by payment to ABILITY of the Fee then in effect. ABILITY may, at its discretion, refuse to allow such reactivation of Service or charge a reactivation fee.

9. WARRANTIES

a) ABILITY warrants that i) its Services will be of professional quality and will conform to generally accepted professional standards; ii) its personnel shall be competent and qualified to perform the tasks to which they are assigned; and iii) it has the right to grant the licenses provided herein. If the Services fail to comply with such warranty, ABILITY will repair or replace the Services if notified by Customer within ninety (90) days of initial receipt by Customer. These remedies are provided on the condition that ABILITY is promptly notified in writing of the particular defects or nonconformance as delivered by ABILITY and examination by ABILITY discloses that such deficiencies actually existed. The foregoing states Customer's sole and exclusive remedy and ABILITY's sole and exclusive liability for breach of warranty.

b) THE FOREGOING WARRANTIES ARE IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PART OF ABILITY AND ITS SUPPLIERS. ABILITY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. ALL THIRD PARTY SOFTWARE INCLUDED IN THE SERVICES IS PROVIDED WITHOUT WARRANTY OF ANY KIND AND CUSTOMER IS RESPONSIBLE FOR THE ENTIRE RISK WITH RESPECT TO THE QUALITY AND PERFORMANCE OF SUCH THIRD PARTY SOFTWARE INCLUDED IN THE SERVICES.

10. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ABILITY OR ITS SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, OR INDEMNITY, EVEN IF ABILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ABILITY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAYABLE PURSUANT TO ABILITY'S APPLICABLE INSURANCE POLICIES.

11. **U.S. GOVERNMENT RIGHTS.** If Customer is the U.S. Government or an agency thereof, Customer (a) with respect to civilian agencies, will grant protection for any software included in the Services as "commercial computer software" and related documentation in accordance with the terms of 48 C.F.R. 12.212 of the Federal Acquisition Regulations; and (b) for use by or on behalf of the Department of Defense, will grant protection for any software included in the Services as "commercial computer software" and related documentation in accordance with the terms of 48 C.F.R. 227.7202-1 of the DoD FAR Supplement. The Software and Services may include Commercial Software/Data, including CPT codes and description licensed from the American Medical Association, 515 North State Street, Chicago, Illinois, 60610, and other third party licensors. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the Commercial Software/Data are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 5.227-14 (June 1987) and FAR 52.227.19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

12. **EXPORT.** Customer will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export, of the Services to any country for which the United States Export Administration Act, or any similar United States law or regulation requires an export license or other U.S. Government approval, unless the appropriate export license or approval has first been obtained.

13. **NOTICES.** Unless otherwise specified in this Agreement, all notices, requests, demands and other communications (other than routine operational or administrative communications) required or permitted under this Agreement shall be deemed to have been delivered to a party at the address indicated in the Order Form: (a) when actually received in the case of hand delivery as evidenced by a signed receipt or applicable Order Form; (b) the business day after being given to a reputable

overnight courier service, with a reliable system for tracking delivery, for delivery the following day; (c) when sent by confirmed facsimile with a copy sent by United States mail within two (2) business days of the transmission; or (d) within six (6) days of deposit if sent by United States Postal Service first class mail. A party may from time to time change its address, facsimile number or designee for notification purposes by giving the other party prior written notice of the new address, facsimile number or designee and the date upon which such change will become effective.

14. **CHOICE OF LAW, DISPUTE RESOLUTION, VENUE.** This Agreement is governed by the laws of the State of Minnesota without regard to its conflict of laws rules and principles. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement.

15. **NO LIMITATION.** Nothing in this Agreement shall, or is intended to, limit the ability of ABILITY to develop or enhance its Service in any manner whatsoever, including use of knowledge gained as a result of the performance by ABILITY of its obligations hereunder, provided that ABILITY does not use or disclose Customer's confidential information identified as such by Customer in writing.

16. **BINDING UPON SUCCESSORS; ASSIGNMENT.** Neither Party may assign any rights, nor may it delegate its duties, under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, except that either Party may assign this Agreement without the consent of the other Party to an affiliate or in conjunction with a merger, reorganization, consolidation, change of control or sale of all or substantially all of its assets. This Agreement will be binding upon and inure to the benefit of each Party's authorized successors and assignees.

17. **SEVERABILITY; ENFORCEMENT; NO WAIVER.** The unenforceability of any provision of this Agreement shall not impair the enforceability of any other part of this Agreement. If any provision of this Agreement shall be deemed invalid or unenforceable, in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties. The failure of a party, at any time or from time to time, to require performance of any obligations of the other party hereunder shall not be deemed a waiver and shall not affect its right to enforce any provision of this Agreement at a subsequent time.

18. INDEMNIFICATION.

a) Customer shall defend, indemnify, and hold harmless ABILITY and third party licensors from and against any claims, loss, liability, or damages (including reasonable attorneys' fees) arising out of Customer's unauthorized use of the Services, including any improper disclosure of PHI.

b) ABILITY shall defend, indemnify, and hold harmless Customer from and against any claims (including reasonable attorneys' fees) arising out of Customer's proper operation or use of the Services alleging that Customer's use of the Services infringes patent, copyright, or trademark rights or is a misappropriation of trade secrets. Customer shall provide ABILITY prompt notice of any such claim and ABILITY shall have the right to assume the defense thereof. In the event Customer's use of the Services is determined by ABILITY to be likely to be enjoined, ABILITY shall, at its option, modify the Services so that it is non-infringing or terminate this Agreement.

19. **CERTIFICATE AUTHORITY.** Customer acknowledges that ABILITY may obtain for one or more employees of Customer a digital certificate to be issued in connection with the services provided by ABILITY hereunder. Customer warrants that all facts and information provided by such employees will be accurate, current and complete, that such employees are and will be authorized to receive such digital certificates, accept the personal identifying information to be contained in such certificates, and comply with the responsibilities associated with holding such a certificate, including the terms and conditions found in the Neutralus Certification Practices Statement (CPS) (<https://www.abilitynetwork.com/wp-content/uploads/2014/12/Neutralus-CP-4-04-13.pdf>), and the Neutralus Certificate Policy (<https://www.abilitynetwork.com/wp-content/uploads/2014/12/Neutralus-Cert-Policy-4-04-13.pdf>). Furthermore, Customer shall cause such employees to represent themselves accurately in all communications using such certificates, to protect their private keys therefor at all times and to notify immediately the authority issuing such certificates if they suspect their private key has been compromised, stolen or lost.

20. **INDEPENDENT PARTIES.** The relationship of ABILITY and Customer is that of independent contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have any authority to bind the other party by contract or otherwise.

21. **COMPLETE AGREEMENT.** This Agreement, together with the Order Form and the BAA, constitutes the complete and exclusive agreement between the parties and supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this Agreement.

22. **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.

23. **INSURANCE REQUIREMENTS.** ABILITY shall secure and maintain throughout the term of this Agreement insurance in accordance with the requirements set forth in Attachment A, as attached hereto and incorporated herein.

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

SAN BERNARDINO COUNTY

ABILITY Network, Inc.

►

Dawn M. Rowe

Chair, Board of Supervisors

DocuSigned by:

By ►

Rob Martin

CE00533CDB87403

(Authorized signature - sign in blue ink)

Dated:

JAN 21 2023

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

Name

Rob Martin

(Print or type name of person signing contract)

Title

Vice President

(Print or Type)

By



Deputy

Dated:

1/17/2023

Address

ATTACHMENT A
INSURANCE REQUIREMENTS

1. ABILITY shall secure and maintain, throughout the term of the Agreement, the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of ABILITY and all risks to such persons under this Agreement. If ABILITY has no employees, it may certify or warrant to Customer 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 Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial General Liability Insurance – ABILITY shall carry Commercial General Liability Insurance covering all operations performed by or on behalf of ABILITY with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. The policy coverage shall include:
 - i. Premises operations.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements.
 - d. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.
 - e. If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of two (2) years after the expiration or termination of the Agreement.
 - f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.
 - g. Proof of Coverage. Upon Customer's request, ABILITY shall furnish Certificates of Insurance to Customer evidencing ABILITY's insurance coverage at the time the Agreement is executed.
 - h. 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".
 - i. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Customer.



This Business Associate Agreement ("BAA") and the terms and conditions contained herein apply to Customer's use of those services specified within an Order Form entered into by and between ABILITY Network Inc. ("ABILITY") and SAN BERNARDINO COUNTY on behalf of Arrowhead Regional Medical Center ("Customer"), as expressly incorporated into and made a part of the Order Form by reference therein. By way of execution of the Order Form, both ABILITY, as a Business Associate of Customer, and Customer, as a Covered Entity, have agreed to be bound by this BAA, which shall be effective as of the last date of signature by a party herein ("Effective Date").

ABILITY provides services to Customer pursuant to one or more underlying Order Forms and the associated service agreement incorporated by reference therein by and between ABILITY and Customer ("Service Agreement"), pursuant to which ABILITY may create, receive, maintain, or transmit Protected Health Information ("PHI") of Customer in order to enable ABILITY to perform one or more services for Customer related Customer's Treatment, Payment or Health Care Operations.

Pursuant to HIPAA and the HITECH Act, ABILITY shall fulfill the responsibilities of this BAA 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 Customer under HIPAA.

Unless otherwise specified herein, capitalized terms used in this BAA shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time. This BAA applies to uses and disclosures of all PHI that ABILITY creates for or on behalf of, or receives from or on behalf of, Customer.

ABILITY and Customer hereby agree as follows:

1. Permitted Uses and Disclosures. ABILITY may use and disclose PHI: (i) in the course of performing services for or on behalf of Customer; (ii) as required or permitted by law, regulation, regulatory agency or by any accrediting body to whom Customer or ABILITY may be required to disclose such PHI; (iii) as set forth in an authorization that complies with HIPAA and HITECH, or (iv) to provide Data Aggregation services, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

Except as otherwise limited in this BAA, ABILITY may use PHI for the proper management and administration of ABILITY or to carry out the legal responsibilities of ABILITY.

Except as otherwise limited in this BAA, ABILITY may disclose PHI for the proper management and administration of ABILITY, provided that disclosures are required by law, or ABILITY obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the ABILITY of any instances of which it is aware in which the confidentiality of the information has been breached.

If ABILITY discloses PHI to a third party, ABILITY must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify ABILITY 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)]

ABILITY shall not use, access or further disclose PHI other than as permitted or required by the Service Agreement or this BAA or as required by law. Further, ABILITY shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. ABILITY shall disclose to its employees, subcontractors, agents, or other third parties, and request from Customer, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

ABILITY shall not use or disclose PHI for fundraising or marketing purposes.

ABILITY 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).)

ABILITY shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Customer 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 Customer to ABILITY for services provided pursuant to this BAA.

2. ABILITY's Obligations. ABILITY shall:

- a. ensure, through a written contractual agreement that complies with 45 C.F.R. § 164.314, that its agents and Subcontractors to whom it may provide PHI agree to the same terms and conditions as are applicable to ABILITY;
- b. implement appropriate and reasonable safeguards to prevent 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 ABILITY creates, receives, maintains, or transmits on behalf of the Customer, in accordance with 45 C.F.R. § 164.308,



- 164.310, 164.312, 164.314, and 164.316, and comply, as applicable, with the requirements of 45 C.F.R. Part 164, Subpart C;
- c. make available to the Secretary of Health and Human Services, ABILITY's internal practices, books and records relating to the use or disclosure of PHI for purposes of determining Customer's compliance with HIPAA;
 - d. report to Customer and mitigate, to the extent practicable, any harmful effect that is known to ABILITY of uses or disclosures of PHI of which ABILITY becomes aware that do not comply with the terms herein, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware; Notwithstanding, Customer acknowledges and agrees that this section constitutes notice by ABILITY to Customer of the occurrence and/or ongoing existence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Customer shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on ABILITY's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
 - e. to the extent that Customer and ABILITY agree in writing that ABILITY shall maintain PHI as part of a Designated Record Set, ABILITY agrees to provide access to Customer, or to an Individual as directed by Customer, to PHI contained in a Designated Record Set. If an Individual request an electronic copy of PHI maintained electronically in a Designated Record Set, ABILITY agrees to provide access to Customer, or to an Individual as directed by Customer, to PHI in a readable electronic format as agreed to by Customer and the Individual, with respect to the PHI maintained electronically in a Designated Record Set;
 - f. make amendments to PHI contained in a Designated Record Set that Customer directs or agrees to pursuant to 45 C.F.R. § 164.526;
 - g. document uses and disclosures of PHI that would be required for Customer to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and, upon Customer's request, provide such information to Customer;
 - h. use Customer's EDI password only as expressly authorized by Customer and only for the submission and retrieval of Customer's EDI transactions. If Customer uses ABILITY for exchange of EDI transactions with their Medicare contractor, this paragraph grants this explicit authorization;
 - i. to the extent ABILITY is to carry out one or more of Customer's obligation(s) under 45 C.F.R. Part 164, Subpart E, ABILITY agrees to comply with the requirements of Subpart E that apply to Customer in the performance of such obligations; and
 - j. make uses and disclosures and requests for PHI consistent with Customer's minimum necessary policies and procedures.

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

Any Breach of Unsecured PHI shall be reported immediately, but no event later than ten (10) days after discovery, to Customer's Office of Compliance. Upon discovery of a Breach of Unsecured PHI, ABILITY shall complete the following actions:

- a. To the extent known, provide Customer's Office of Compliance with the following information:
 - Name and address of the facility where the breach occurred;
 - Date and time the Breach occurred;
 - Date and time the Breach was discovered;
 - Name of Individual(s) affected;
 - Number of potentially affected Individual(s) with contact information;
 - Description of how the Breach allegedly occurred; and
 - Description of the Medical Information that was Breached, including the nature and extent of the Medical Information involved, including the types of individually identifiable information and the likelihood of re-identification.
- b. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than fifteen (15) calendar days of discovery of the Breach to determine the following:
 - The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - The unauthorized person who had access to the PHI;
 - Whether the PHI was actually acquired or viewed; and
 - The extent to which the risk to PHI has been mitigated.
- c. Provide a completed risk assessment and investigation documentation to Customer's Office of Compliance within fifteen (15) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of Customer, additional information may be requested.
 - If ABILITY and Customer agree that a Breach has not occurred, notification to Individual(s) is not required.
 - If a Breach has occurred, notification to the Individual(s) is required and ABILITY must provide Customer with affected Individuals' names so that Customer can provide notification.
 - The risk assessment and investigation documentation provided by ABILITY to Customer shall, at a minimum, include a description of any corrective or mitigation actions taken by ABILITY.

4. Breach by the ABILITY.

Pursuant to 42 U.S.C. section 17934, subdivision (b), if Customer is aware of any activity or practice by ABILITY that constitutes a material breach or violation of the ABILITY's obligations under this BAA, Customer must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the Customer has the capability of mitigating said violation. If Customer is unsuccessful in eliminating the violation and ABILITY continues with non-compliant activity, the Customer must terminate the BAA (if feasible) and report the violation to the Secretary of HHS.

5. Costs Associated to Breach

If Customer is required to provide notice pursuant to 45 C.F.R. §§ 164.404 to 164.408 then, subject to the limitations of liability set forth in the Service Agreement, ABILITY shall pay the actual, reasonable costs incurred by Customer in providing such notifications to the extent that: (A) the Unsecured PHI was in ABILITY's possession, custody, or under ABILITY's control at the time of the Breach;



and (B) such Breach did not arise out of or in connection with any act or omission by Customer to comply with applicable laws and regulations.

6. Direct Liability.

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

7. Indemnification.

ABILITY agrees to indemnify, defend and hold harmless Customer from any and all third party claims that result in or could result in Customer incurring any losses, liabilities, costs attorneys fees and other expenses incurred as a result of or arising directly out of or in connection with the ABILITY's intentional or negligent breach of this BAA. ABILITY's responsibility for indemnification under this provision shall be in accordance with the limitation of liability set forth in the Service Agreement.

8. Judicial or Administrative Proceedings.

Customer may terminate this BAA, effective immediately, if (i) ABILITY 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 ABILITY has been joined that the ABILITY has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

9. Insurance.

ABILITY shall maintain insurance as provided for in the underlying Service Agreement during the term of this BAA.

10. Assistance in Litigation or Administrative Proceedings

ABILITY shall make itself, and any subcontractors, employees, or agents assisting ABILITY in the performance of its obligations under the BAA, available to Customer, at Customer's expense, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Customer, 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 ABILITY or its subcontractor, employee or agent is named as an adverse party.

11. Customer's Obligations. Customer shall:

- a. notify ABILITY of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ABILITY's use or disclosure of PHI;
- b. notify ABILITY of any changes in, or revocation of, permission by an individual to use or disclose PHI to the extent that such changes may affect ABILITY's use or disclosure of PHI;
- c. notify ABILITY of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ABILITY's use or disclosure of PHI; and
- d. request ABILITY to use or disclose PHI only in a manner permissible under HIPAA and HITECH if done by the Customer.

12. Term and Termination. The term of this BAA shall commence as of the Effective Date and shall terminate when all of the PHI provided by Customer to ABILITY, or created or received by ABILITY on behalf of Customer, is destroyed or, if it is infeasible to destroy the PHI, when protections are extended to such information, as provided herein. Customer may terminate this BAA if ABILITY fails to cure or take substantial steps to cure a material breach of this BAA within thirty (30) days after receiving written notice of such material breach from Customer. Upon termination of this BAA, ABILITY shall destroy all PHI required to be retained by ABILITY or its subcontractors, employees or agents on behalf of Customer. In the event that ABILITY determines that destruction of the PHI is not feasible, ABILITY shall provide Customer with written notification of the conditions that make destruction not feasible. Additionally, ABILITY 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 Customer a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. ABILITY further agrees to extend any and all protections, limitations, and restrictions contained in this BAA, to any PHI retained by ABILITY or its subcontractors, employees or agents after the termination of this BAA, and to limit any further use, access or disclosures.

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

14. Ownership. The PHI shall be and remain the property of Customer. ABILITY agrees that it acquires no title or rights to the PHI.

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

16. No Third-Party Beneficiaries. Nothing express or implied in the Service Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Customer, ABILITY and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.



17. Amendment. The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of this BAA may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this BAA when and as necessary to comply with applicable laws. If either party does not agree to so amend this BAA within thirty (30) days after receiving a request for amendment from the other and such amendment is required by applicable law, either party may terminate the BAA upon written notice. Subject to the foregoing, this BAA may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by ABILITY and Customer.
18. Interpretation. Any ambiguity in this BAA shall be resolved to permit Customer to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.
19. Compliance with State Law. In addition to HIPAA and all applicable HIPAA Regulations, ABILITY acknowledges that ABILITY and Customer may have confidentiality, privacy, and breach notification obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")) and 22 C.C.R. § 79001 et seq. 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/Medical Information and patient medical records, then ABILITY shall comply with the more restrictive requirements.
20. Survival. The respective rights and obligations and rights of Customer and ABILITY relating to protecting the confidentiality or a patient's PHI/Medical Information shall survive the termination of the Agreement or this BAA.
21. Agreement. This BAA constitutes the entire agreement between the parties concerning its subject matter.

ABILITY and Customer, intending to be legally bound, have caused their duly authorized representatives to execute and deliver this BAA.

ABILITY Network Inc.

SAN BERNARDINO COUNTY on behalf of
Arrowhead Regional Medical Center

By:	By:
DocuSigned by: <i>Thomas Schultz</i>	<i>Dawn M. Rowe</i>
Printed Name: Thomas Schultz	Printed Name: Dawn M. Rowe
Title: SVP	Title: Chair, Board of Supervisors