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SAN BERNARDINO COUNTY

Contract Number 21-103

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Corporation	San Bernardino Medical Orthopaedic Group, Inc. DBA Arrowhead Orthopaedic
Corporation Representative	
Telephone Number	909-557-1601
Contract Term	March 1, 2021 – February 28, 2023
Original Contract Amount	$44,100
Amendment Amount	
Total Contract Amount	$44,100
Cost Center	9186104200

PHYSICIAN EPIC CONSULTING CONTRACT

WHEREAS, the County of San Bernardino ("County") is the owner and operator of an acute care hospital located at 400 N. Pepper Avenue, Colton, CA 92324, known as Arrowhead Regional Medical Center ("ARMC" or "Hospital"); and

WHEREAS, the County on behalf of ARMC entered into a contract with Epic Systems Corporation ("EPIC") for, *inter alia,* the development and implementation of an electronic health records ("EHR") system for ARMC; and

WHEREAS, in order for ARMC and EPIC to establish suitable and appropriate interfaces and pathways in the EHR system for ARMC based on ARMC's operations, the County and EPIC require the input and advice of healthcare providers who are familiar with the services provided and functions performed at ARMC within the specialty of Orthopedic Surgery (the "Services"); and

WHEREAS, San Bernardino Medical Orthopaedic Group, Inc. DBA Arrowhead Orthopaedic ("Corporation") is a medical corporation, with healthcare providers licensed in the State of California, that is contracted with the County to provide healthcare services to the patients at ARMC in the specialty of Orthopedic Surgery ("Physician Services Agreement"), and is, therefore, uniquely qualified to provide the Services; and

WHEREAS, the County and ARMC understand that Corporation and its Providers (as defined herein) are not experts, specially skilled, or uniquely knowledgeable about EPIC EHR and make no representation or warranty of such expertise, and therefore, the County agrees that Corporation and its Providers are only providing input and advice to enable ARMC and EPIC to design and implement the EHR; and

WHEREAS, the scope of services in the Physician Services Agreement under which Corporation is contracted to provide is separate and apart from the scope of services contemplated under this Physician Epic Consulting Contract (the "Contract") herein, and therefore, nothing in this Contract is intended or should be construed to impair, modify, or amend the rights and the responsibilities of the Parties in the Physician Services Agreement; and

WHEREAS, the County desires Corporation to provide the Services and Corporation agrees to perform these Services as set forth below;

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

A. DEFINITIONS

A.1 CMO – Chief Medical Officer

A.2 CMIO – Chief Medical Information Officer

A.3 CMS – Center for Medicare and Medicaid Services

A.4 Medical Staff – refers to the medical staff at ARMC.

B. CORPORATION RESPONSIBILITIES

Upon the request of ARMC, Corporation shall provide or arrange for Corporation's Providers to provide the following Services to ARMC:

B.1 In conjunction with the CMIO, Corporation is to designate one or more physicians or other licensed health care provider, including but not limited to physician assistants, within the Corporation ("Providers") to provide professional healthcare expertise in the Specialty to assist with the implementation of the EPIC EHR.

B.2 Providers will be responsible to assist in various phases of EPIC Implementation for designing and validating specific workflows throughout ARMC in their Specialty.

B.3 Designing and validating Inpatient workflows and content and their Specialty or any specialty inpatient provider content that is needed.

B.4 Be responsible for making decisions and determining a direction for cross-role topics within the inpatient areas and organizational goals.

B.5 Providing advice relating to outpatient workflows and content and any specialty ambulatory provider content that is needed, including but not limited to workflows and content for specialty physicians and support staff, along with diagnostic testing.

B.6 As applicable, providing advice relating to Emergency Department (ED) provider, ED nursing, and Behavioral Health ED workflows. This will include screening, triage, clinical documentation, consult workflows, workspace configuration, ordering, diagnosing, ED hold, and handoff workflows in EPIC.

B.7 Designing and validating outpatient workflows and content and any specialty outpatient provider content that is needed.

B.8 Designing and validating workflows and content for specialty physicians (including subspecialties), and support staff, including in-office procedures, back-office imaging, and body-location specific documentation.

B.9 Validating workflows for electronic external communication via Care Everywhere and affiliate access, including determining use cases for Link, security for each user, user provisioning strategy, and marketing plans, if applicable.

B.10 Validating workflows with external data in patient care.

B.11 Involving operational experts designated by ARMC in the design and decision-making throughout the install.

B.12 Preparing organizational leadership designated by ARMC to recognize and mitigate the risks brought about by system and operational changes.

B.13 Educating Corporation staff about the tools and reports they will use post-live to identify risks and improve performance and outcomes.

B.14 Providing ARMC/EPIC project team with real-life knowledge of the work that is happening in their area on a current basis to ensure that the system is configured to best support their area in the future.

B.15 Assisting ARMC/Epic project team in providing information about organizational practices and needs and collecting data to assist with implementation.

B.16 Participating and attending workflow walkthrough sessions to review future state workflows and determine necessary next steps to manage operational change.

B.17 Participating in operational workgroups.

B.18 Assisting ARMC/EPIC project team with reviewing and validating clinical content, such as physician note templates, flowsheet content, curriculum review, conversion review, and order sets

B.19 Attending Readiness Sessions with end-user groups focused on change management, understanding, and go-live preparedness.

B.20 Assisting with specific department go-live readiness sessions and processes.

B.21 Performing other duties relating to the EPIC EHR system as requested by the ARMC Director and agreed upon by Corporation within Corporation's Specialty.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct, material conditions upon which the parties agreed to enter into this Contract, and therefore, are incorporated herein by this reference.

C.2 Contract Amendments

Corporation 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 Corporation and County.

C.3 Contract Exclusivity

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

Corporation will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

C.4 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 fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.5 Background Checks for Corporation Personnel

If requested to do so during the Term of this Agreement and after consultation with counsel for applicable law, Corporation 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, Corporation shall conduct a background check, at Corporation's sole expense, on all its personnel providing services. If requested by the County, Corporation shall provide the results of the background check of each individual to verify that the individual meets Corporation's standards for employment. Such background check shall be in the form generally used by Corporation 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. Corporation personnel who do not meet the County's hiring criteria, in County's sole discretion, 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 any of Corporation's personnel to any County facility.

C.6 Change of Address

Corporation shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.7 Choice of Law

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

C.8 Compliance with County Policy

Unless in conflict with the Physician Services Agreement, in performing the Services and while at any County facilities, Corporation 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 items addressed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Corporation or Corporation personnel or may be made available to Corporation or Corporation 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. Corporation shall be responsible for the promulgation and distribution of County Policies to Corporation personnel to the extent necessary and appropriate.

County shall have the right to require Corporation'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.9 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. Corporation shall execute and comply with the attached Business Associate Agreement (Attachment B). Corporation further agrees to comply with the requirements of other federal and state laws that apply to the information collected and maintained by Corporation for services performed pursuant to this Contract.

C.10 Primary Point of Contact
Corporation will designate a physician of the Corporation to serve as the primary point of contact for the Contract. Corporation or its designee must respond to County inquiries regarding the Services within two (2) business days. Corporation shall not change the primary contact without written notice to the County. Corporation will also designate a back-up point of contact in the event the primary contact is not available.

C.11 County Internship Initiative
Corporation agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Corporation's business. Corporation is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the ***County's Vision for a skilled workforce and jobs that create countywide prosperity***, and its ***goal to Create, Maintain and Grow Jobs and Economic Value in the County***. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Corporation remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at http://wp.sbcounty.gov/workforce/career-pathways/. Nothing in this Section C.11 requires Corporation to participate in the County's program. The parties agree that any solicitation of the Corporation will be directed to the Corporation's executives and not introduced into the workplace unless and until approved by the Corporation's Board of Directors.

C.12 County Representative
The Hospital Director or 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 by Corporation. 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, unless otherwise delegated.

C. 13 Debarment and Suspension
Corporation represents and warrants that it is not and at no time has been convicted of any criminal offense related to health care nor has been debarred, excluded, or otherwise ineligible for participation in any federal or state government health care program, including Medicare and Medicaid. Further, Corporation represents and warrants that no proceedings or investigations are currently pending or to Corporation's knowledge threatened by any federal or state agency seeking to exclude Corporation from such programs or to sanction Corporation for any violation of any rule or regulation of such programs.

C.14 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 Corporation agrees that the Corporation and the Corporation's employees, while performing service for the County, on County property, or while using County equipment, and to the extent allowed by applicable law:

C.14.1 Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

C.14.2 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.14.3 Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Corporation or Corporation's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Corporation 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 the Corporation has with the County, if the Corporation or Corporation's employees are determined by the County not to be in compliance with above.

C.15 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.16 Employment Discrimination
During the term of the Contract, Corporation 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. Corporation 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.17 Improper Influence
Corporation 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 Corporation or officer or employee of the Corporation.

C.18 Improper Consideration
Corporation 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.

Corporation shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Corporation. 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.219 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, in the event of nonpayment, 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.20 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.21 Licenses, Permits and/or Certifications
Corporation shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Corporation shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Corporation 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.

C.22 Material Misstatement/Misrepresentation
If during the Term of this Contract, the County determines that Corporation has made an intentional and willful material misstatement or misrepresentation that materially impairs the Services 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.23 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.24 Nondisclosure
Corporation shall hold as confidential and use commercially reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, County's confidential information that is either: (1) provided by the County to Corporation or a designated agent of Corporation or otherwise made available to Corporation or Corporation's designated agent in connection with this Contract; or, (2) acquired, obtained, or learned by Corporation or an agent of Corporation in the performance of this Contract. For purposes of this provision, County's confidential information means any County 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. If requested by County, Corporation and its agents and personnel providing the Services under this Contract shall sign an acknowledgment of ARMC's policies relating to confidentiality of ARMC's records and the requirement to comply with such policies.

C.25 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 by the Corporation, that party shall, within twenty-four (24) hours or as soon as practical after determining the facts of the situation, give notice thereof, including all relevant information with respect thereto, to the other party.

C.26 Ownership of Documents
All documents, data, products, graphics, computer programs and reports for the Services prepared by Corporation for the purposes of 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 Article D–Term of the Contract. Unless otherwise directed by County, Corporation may retain copies of such items.

C.27 RESERVED

C.28 Records
Corporation shall maintain all records and books pertaining to the delivery of the Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Corporation's personnel, Corporations, 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.

C.29 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. In the performance of this Contract, Corporation, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Corporation concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Corporation shall follow the direction of the County concerning the end results of the performance.

C.29 Release of Information
No news releases, advertisements, public announcements or photographs arising out of the Contract or Corporation's relationship with County may be made or used without prior written approval of the County.

C.30 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.31 Subcontracting
If requested to do so, Corporation 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, Corporation 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. Corporation 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 Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Corporation Personnel.

For any subcontractor, Corporation shall:

31.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

31.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

31.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Corporation 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. Corporation agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with County.

C. 32 Subpoena
In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Corporation 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. Corporation 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 Corporation for County.

C.33 Termination for Convenience
The County and the Corporation each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the Services described herein. Upon such termination, payment will be made to the Corporation for the Services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Corporation shall promptly discontinue the Services unless the notice directs otherwise. Corporation shall deliver promptly to County and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports prepared pursuant to this Contract.

C.34 Time of the Essence
Time is of the essence in performance of this Contract and of each of its provisions.

C.35 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, County of San Bernardino, 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, County of San Bernardino, San Bernardino District.

C.36 Conflict of Interest
Corporation shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Corporation shall make a reasonable effort to prevent officers, employees, subcontractors, 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. In the event the County determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Corporation'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.

Corporation understands per the attached Conflict of Interest and Political Reform Act Obligations (Attachment A) that the ARMC Director has determined Corporation meets Disclosure Determination number 1 and that no disclosure is required.

C.37 Former County Administrative Officials
Corporation agrees to provide, or has already provided, information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Corporation. 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 Corporation. 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.38 Disclosure of Criminal and Civil Procedures
County reserves the right to request the information described herein from Corporation. 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 Corporation also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

If requested to do so and after consultation with counsel concerning applicable law, Corporation may be 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 ten 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 ten 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 Corporation will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, if requested and after consultation with counsel, the Corporation may be 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 Corporation 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.39 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 from the Services under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material to the extent allowed by applicable law. All such materials developed from the Services under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Corporation as the creator of the publication. No such materials, or properties produced in whole or in part from the Services under this Contract shall be subject to private use, copyright or patent right by Corporation 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. Nothing in this section is intended or should be construed

to allow the County or ARMC access, use or ownership of Corporation's proprietary, confidential or financial information including but not limited to any intellectual property owned by the Corporation.

C.40 Artwork, Proofs and Negatives
All artwork, proofs, and/or negatives in either print or digital format for anything produced from the Services 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 Corporation. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, Corporation will be barred from all future solicitations, for a period of at least six (6) months.

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C.41 Errors, Omissions and/or Conflicts

Corporation shall be responsible for the integrity of the Services used for all design and research studies prepared or approved by the Corporation.

C.42 Regulatory Agencies
Except for emergencies, or except for situations where contact is required by law or relevant professional cannons of ethics (in which case Corporation will use its professional efforts to notify and confer with the County before such contact, the parties recognizing that there may not be time for such in an emergency), Corporation shall not contact the Local Enforcement Agency, South Coast Air Quality Management District or other regulatory agencies concerning any site that is the subject of this Contract without Arrowhead Regional Medical Center's prior approval.

C.43 Taxes
Corporation shall assume sole and exclusive responsibility for payment of its federal and state income taxes, its federal social security taxes, and for maintaining Workers' Compensation insurance as provided in this Contract. Corporation agrees that County shall not be responsible for providing for the above taxes and insurance on behalf of Corporation; and the Corporation agrees to defend, indemnify, and hold harmless County from any and all actions and/or claims which seek to collect said taxes and insurance from County.

D. TERM OF CONTRACT
This Contract is effective as of March 1, 2021 through February 28, 2023 but may be terminated earlier in accordance with the provisions of this Contract.

E. COUNTY RESPONSIBILITIES
E.1 For the services provided by Corporation under this Contract, County shall pay Corporation $210 per hour, up to a maximum of 210 hours, in accordance with Section F of this Contract.

E.2 The County shall provide Corporation and its authorized agents reasonable access to all necessary data, database, documents, and information necessary for Corporation to perform it services under this Contract.

F. FISCAL PROVISIONS
F.1 The total amount of payments under this Contract shall not exceed $44,100. The consideration to be paid to Corporation, as provided herein, shall be in full payment for all Corporation's services and costs/expenses incurred in the performance hereof.

Corporation bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Corporation be entitled to receive compensation for any item of work required of Corporation under the terms of the Contract, that is not performed by Corporation (including Corporation's agents and approved subcontractors).

F.2 Only consulting services (approved by ARMC in advance or requested in writing from a member of the ARMC/EPIC project team) of Corporation and approved subcontractors are billable under this Contract. Travel to and from ARMC is not billable or payable under this Contract. Work that is secretarial or clerical in nature, or costs and expenses that are part of Corporation's general overhead expenses are not billable or payable under this Contract. Additionally, services provided by Corporation under this Contract shall be billable only under this Contract and not under the Physician Services Agreement.

F.3 Timesheets and Invoices

For every week where work is performed under this Contract, the Parties agree that Corporation shall use best efforts to electronically submit weekly timesheets, in the format of Attachment C to this Contract, to EPICProjects@armc.sbcounty.gov by no later than the end of the day on Tuesday of the week following performance of the task and subject to the clinical schedule of Providers. ARMC shall provide Corporation notice of any deficiency or dispute in the timesheets by no later than the end of the day on Friday following receipt of the Tuesday timesheets. All disputes regarding timesheets or the timeliness thereof shall be resolved through an in person, meet and confer between the Parties.

For services provided under this Contract, Corporation shall submit to County itemized monthly invoices in arrears, matching hours on the electronically submitted weekly timesheets. The County shall make payment to Corporation within sixty (60) working days of all undisputed amounts after receipt of invoice or within sixty (60) days of the resolution of any disputed timesheet or invoice.

F.4 Corporation shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Corporation's designated checking or other bank account. Corporation shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

F.5 County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Corporation 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.

F.6 Costs for services under the terms of this Contract shall be incurred during the Term of the Contract, except as approved by County.

F.7 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. Corporation 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. Corporation 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

Subject to the terms, limitations, exclusions and conditions of this Contract, each party (the "Indemnifying Party") shall at all times defend, indemnify, and hold harmless the other party and its employees, directors, officers, agents, and volunteers (collectively, the "Indemnified Parties") from and against any and all claims, lawsuits, causes of action, liabilities, damages, penalties, losses, including all costs and reasonable attorneys' fees, resulting from or relating to (whether directly or indirectly) any allegation regarding: (i) any negligent, willful, reckless, or wrongful act or omission of the Indemnifying Party, its employees, representatives, contractors or agents; (ii) any breach of, or inaccuracy in, any representation and/or warranty made by the Indemnifying Party herein including, without limitation,

claims for personal injury, death or damage to property or other demands; (iii) any breach or failure to perform by the Indemnifying Party, or any defect in said party's performance of, its obligations and duties pursuant to this Agreement; or (iv) any alleged violation by the Indemnifying Party of any law, statute, regulation, or ordinance; provided, however, in no event shall Corporation be liable to County for any amount in excess of the amounts received by Corporation from County for Services provided by Corporation for Services under this Contract

Without in any way affecting the indemnity herein provided and in addition thereto, the Corporation shall secure and maintain throughout the contract term the following Workers' Compensation/Employers Liability insurance with limits as shown:

Workers' Compensation/Employers 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 two hundred and fifty thousand dollar ($250,000) limits, covering all persons, including volunteers, providing Services on behalf of the Corporation and all risks to such persons under this Contract.

If Corporation has no employees, it may certify or warrant to 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.

H. SUCCESSORS AND ASSIGNS

H.1 This Contract shall be binding upon County and Corporation and their respective successors and assigns.

H.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Corporation without the prior written consent and approval of County.

H.3 Death or Incapacity: If the Corporation transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Corporation and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Corporation herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Corporation.

I. RIGHT TO MONITOR AND AUDIT

I.1 The County, State and Federal government shall have a right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items related to performance of, and payments made for, the Services upon reasonable request and at no expense to Corporation and shall have a right to monitor the performance of Corporation in the delivery of the Services provided under this Contract. Corporation shall cooperate, in any auditing or monitoring conducted. Corporation 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.

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

J. CORRECTION OF PERFORMANCE DEFICIENCIES

J.1 Failure by Corporation to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

J.2 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. Afford Corporation thereafter a reasonable time period within which to cure the breach; and/or
b. Withhold funds pending duration of the breach; and/or
c. Terminate this Contract immediately. In the event of such termination, County may proceed with the work in any manner deemed proper by County.

J.3 Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statue or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

K. 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 by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

Arrowhead Regional Medical Center
400 North Pepper Avenue
Colton, CA 92324
Attn: Hospital Director

San Bernardino Orthopaedic Group, Inc. DBA
Arrowhead Orthopaedics
1801 Orange Tree Lane, Suite 240
Redlands, CA 92374
Attention: President

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

L. 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 email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

M. ENTIRE AGREEMENT

This Contract, including all Attachment, 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.

[SIGNATURE PAGE FOLLOWS]

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

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: FEB 09 2021

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 County of San Bernardino

By _____
Deputy

SAN BERNARDINO MEDICAL ORTHOPAEDIC GROUP, INC. DBA ARROWHEAD ORTHOPAEDIC

By _____
(Authorized signature – sign in blue ink)

Name Nabil Razzouk

Title CEO
(Print or Type)

Dated: 01_25_2021

Address 1801 Orange Tree Lane, Ste 240
Redlands, CA 92374

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Charles Phan, Deputy County Counsel		
Date 1/229/2021	Date	Date 1/26/2021

ATTACHMENT A

CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS

Corporation 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 Corporation or officer or employee of the Corporation.

During the term of this Contract Corporation shall not act a Corporation or perform services of any kind for any person or entity whose interests conflict in any way with those of the County. Corporation shall at all times comply with the terms of the Political Reform Act and the local conflict of interest code. Corporation shall immediately disqualify itself and shall not use its official position to influence in any way, any matter coming before the County in which the Corporation has a financial interest as defined in Government Code section 87103. Corporation represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the County.

"Corporation" means an individual who, pursuant to a contract with a state or local agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the County to enter into, modify, or renew a contract provided it is the type of contract that requires County approval;
5. Grant County approval to a contract that requires County approval and to which the County is a party, or to the specifications for such a contract;
6. Grant County approval to a plan, design, report, study, or similar item;
7. Adopt, or grant County approval of, policies, standards, or guidelines for the County, or for any subdivision thereof; or

(B) Serves in a staff capacity with the County and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the County that would otherwise be performed by an individual holding a position specified in the County's Conflict of Interest Code.

DISCLOSURE DETERMINATION:

☒ 1. Corporation will not be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B above. No disclosure required.

☐ 2. Corporation will be "making a government decision" or "serving in a staff capacity" as defined in either Section A or B above. As a result, Corporation shall be required to file a Statement of Economic Interest with the Clerk of the Board of Supervisors in a timely manner as required by law.

ATTACHMENT B
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the County of San Bernardino on behalf of Arrowhead Regional Medical Center (hereinafter Covered Entity) and San Bernardino Medical Orthopaedic Group, Inc. DBA Arrowhead Orthopaedic (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.
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. 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.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. 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.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. 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.

8. 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.

9. 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.

10. 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)]

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 immediately, but no later than one (1) business day 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) calendar 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 ten (10) calendar 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 CE or 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.

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) 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 immediately 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.

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 CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, 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 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. 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. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- 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 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 liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of 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. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. 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.

COUNTY OF SAN BERNARDINO

Curt Hagman, Chairman, Board of Supervisors

Dated: FEB 09 2021

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 County of San Bernardino

By _____
Deputy

SAN BERNARDINO MEDICAL ORTHOPAEDIC GROUP, INC. DBA ARROWHEAD ORTHOPAEDIC

By _____
(Authorized signature – sign in blue ink)

Name Nabil Razzouk

Title CEO
(Print or Type)

Dated: 01-25-2021

Address 1801 Orange Tree lane, Ste 240
Redlands, CA 92374

ATTACHMENT C

Below is just a snapshot of the format for Weekly Timesheets. All Timesheets are to be submitted electronically to EPICProject@armc.sbcounty.gov by no later than the end of the day each Saturday for each week where work is performed under this Contract.

Epic Meeting Attendance and Workgroup Exercise Time Sheet

Provider Details:	**Name**	**Email**	**Phone**
Department Details:	**Name**	**Approved by**	
Period Start Date	Period End Date		
Total Work Week Hours	**Total Hours Worked**	**Regular Hours**	**Overtime Hours**
40.00	0.00	0.00	0.00

Date(s)	Time In	Name of the activity	Notes	Time Out	Hours Worked
Date	Time In	Workgroup Meeting		Time Out	0.00
Date	Time In	Exercise		Time Out	0.00
Date	Time In	Review activity		Time Out	0.00
Date	Time In			Time Out	0.00
Date	**Time In**			**Time Out**	**0.00**