

Participant and Data Use Agreement

This Participant Agreement ("Agreement") is entered into effective 1st day August, 2021 ("Effective Date"), by and between **Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.)** ("Press Ganey"), an Indiana limited liability company with principal offices at 404 Columbia Place, South Bend, Indiana 46601, and **San Bernardino County on behalf of Arrowhead Regional Medical Center** ("Participant") physically located at 400 North Pepper Avenue, Colton, California 92324.

Whereas, Press Ganey owns the National Database of Nursing Quality Indicators Program® (the "NDNQI® Program"); and

Whereas, Press Ganey, desires to enlist Participant and Participant desires to be involved in the NDNQI Program to engage in self-evaluation for the purpose of analyzing and improving nursing services, patient care, and nurse satisfaction;

Now, therefore, the parties agree to the following terms and conditions:

1. SERVICES

In exchange for the annual fee paid by Participant, Participant shall be provided:

- 1.1 Data from facilities participating in the NDNQI Program, aggregated in groups with comparable institutions ("Comparison Data"). Participant's data are included in Comparison Data in accordance with NDNQI Program procedures. Press Ganey reserves the right to determine whether or not Participant's data are included in Comparison Data.
- 1.2 A Clinical and Staffing Measure report that includes information on trends and Comparison Data, provided data is received for the NDNQI nursing quality measures within the scheduled timeline; and
- 1.3 The opportunity to participate annually in the RN Survey on a first come, first serve basis with limited availability under the guidelines set forth by the NDNQI Program. RN Survey data reports that include Comparison Data, provided data is received by Press Ganey for the RN Survey within the scheduled timeline; and
- 1.4 Assurance of quality standards for data management through established standards of data collection, data reporting, and data security, in order to ensure data integrity and security. Press Ganey reserves the right to delete erroneous data.

2. SERVICE ASSURANCE

- 2.1. Press Ganey Hours of Operations. Press Ganey shall provide access to our associates Monday – Friday, 8:00 am – 5:00 pm EST.
- 2.2. Press Ganey Holidays. Press Ganey recognizes the following nine (9) holidays and all offices are closed on these days or their days of observance:
 - 2.2.1. New Year's Day (January 1)
 - 2.2.2. Martin Luther King Day (third Monday in January)
 - 2.2.3. Memorial Day (last Monday in May)
 - 2.2.4. Independence Day (July 4)
 - 2.2.5. Labor Day (first Monday in September)

- 2.2.6. Thanksgiving (fourth Thursday in November)
- 2.2.7. Day after Thanksgiving
- 2.2.8. Christmas Eve (December 24)
- 2.2.9. Christmas (December 25)

2.3. Federal Closures. Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. Information on these closures may be found at www.pressganey.com/terms.

2.4. Other Closures. There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. Information on these closures may be found at www.pressganey.com/terms.

3. PARTICIPANT RESPONSIBILITIES

Under this Agreement, Participant agrees to adhere to the following requirements:

3.1 General Requirements

Participant shall:

- a. Integrate data collection into the institutional infrastructure, accountabilities, and processes in order to optimize the collection of valid and reliable data for the NDNQI Measures, related definitions, and coding guidelines. For the purposes of this Agreement, “Measures” shall mean those variables, monitored over time, that focus on (i) how patients and their conditions are affected by their interaction with nursing staff, (ii) how care is delivered, (iii) staffing patterns expected to affect quality and quantity of care provided by nurses, and (iv) measurements of nursing satisfaction as described below;
- b. Identify data collection stakeholders within its institution and systematically negotiate their assistance and commitment to the success of the data collection and compilation;
- c. Identify a Site Coordinator for Participant. The Site Coordinator will (i) be responsible for data collection and timely submission, (ii) be available to answer questions from NDNQI Program staff and provide clarification on the data submitted, and (iii) distribute the NDNQI reports to responsible parties in the Participant organization;
- d. Identify and submit accurate data according to NDNQI specifications, respond to queries for clarification, and/or make data submission corrections within the prescribed timeframes. Participant understands and agrees that, in order to ensure data integrity, erroneous or invalid data may be deleted in accordance with NDNQI procedures;
- e. Adhere to the data use obligations as set forth in Section 9 (Database Use/Ownership/Intellectual Property); and

- f. Promptly notify Press Ganey NDNQI Program staff if the Participant is no longer able to continue participation.

3.2 Clinical and Staffing Measures

The NDNQI Clinical and Staffing Measures are nursing sensitive metrics that are collected on specific unit types. Participant shall complete the Clinical and Staffing Indicator collection process according to NDNQI specifications and submit the data on the NDNQI Database website as set forth in posted timelines.

3.3 RN Survey

Press Ganey offers the opportunity to measure RN satisfaction. If Participant enrolls in the RN Survey, Participant agrees to adhere to posted timelines and procedures for the RN Survey. This includes adhering to the NDNQI RN Survey Coordinator Data Collection Protocol and Participant's local Institutional Review Board requirements for human subjects protection.

Except for Section 3.1.e, Participant's failure to perform the functions listed in this Section 3 (or cause them to be performed) will not constitute grounds for termination by Press Ganey, *provided, however*, that Press Ganey's nonperformance of its obligations under this Agreement will be excused if and to the extent such nonperformance results from Participant's failure to perform its responsibilities.

4. CONSIDERATION/PAYMENT

In consideration for the participation in the NDNQI Program and the delivery of reports to Participant, Participant shall pay Press Ganey the annual fee as outlined in the Fee Schedule ("Annual Fee"). Press Ganey will invoice and Participant shall pay the applicable Annual Fee annually on each Anniversary of the Effective Date. Participant shall make payment within Net 60 days from the date of the invoice. If the Participant does not pay the Annual Fee as set forth in the applicable invoice for a given year, this Agreement will automatically terminate. Failure to provide payment will be considered written notice of termination by the Participant.

Payments shall be **made payable to Press Ganey Associates LLC**, referencing this agreement, and sent to a bank lockbox located at the following address:

Press Ganey Associates LLC
Box 88335
Milwaukee, WI 53288-0335

The annual fee will increase by 4% per year.

5. CONFIDENTIALITY

- 5.1 "Confidential Information" Defined. "Confidential Information" means (a) all data and information transmitted electronically by (or on behalf of) Participant or its employees to the NDNQI (regardless of whether or how marked), and (b) all data and information provided in writing or transmitted electronically to Participant (regardless of whether or how marked), including NDNQI benchmarks, Comparison Data, extensible markup language (XML), unique data identifiers, programs, educational materials, definitions, and other codes or algorithms.

- 5.2 “Confidential Information” does not include any particular information that the receiving party can demonstrate: (a) was rightfully in the possession of or known by, the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party; (b) was or has become generally available to the public other than as a result of disclosure by the receiving party or its agents; (c) after disclosure to the receiving party, was received from a third party who, to the receiving party’s knowledge, had a lawful right to disclose such information to the receiving party without any obligation to restrict its further use or disclosure; (d) was independently developed by the receiving party without use of or reference to any Confidential Information of the disclosing party; or (e) that the disclosing party has disclosed to unaffiliated third parties without similar restrictions.
- 5.3 Participant’s identity as a participant in the NDNQI Program, along with identity of Participant’s key contact personnel will be known by Press Ganey and NDNQI Program personnel. Press Ganey may disclose Participant’s participation in the NDNQI Program to outside entities; however, such disclosure will be limited to Participant’s participation in the NDNQI Program and will not affect Press Ganey’s obligations to maintain the confidentiality of Participant’s data. Participant’s participation in the NDNQI Program would generally be used to recognize Participant’s commitment to quality, including recognition that may be in the form of communication with the participants or recognition at meetings, and to provide speaking opportunities, publishing opportunities, access to marketing information about related products and services, and other similar activities. If Participant is located outside of the United States, annual fee payment information and the identity of Participant may be disclosed to United States authorities in accordance with any US federal and state reporting requirements to which Participant and/or Press Ganey are subject, e.g., the Internal Revenue Code and accompanying regulations.
- 5.4 Obligations of Confidentiality. The receiving party may only disclose Confidential Information to personnel who have a legitimate need to know the information for the purposes of this Agreement and who are obligated to protect the confidentiality of the information in a manner substantially equivalent to that required of the receiving party, or where disclosure is required by applicable law in accordance with Section 5.6. The receiving party will keep Confidential Information confidential and secure, and will protect it from unauthorized use or disclosure by using at least the same degree of care as the receiving party employs to avoid unauthorized use or disclosure of its own confidential information of a similar nature, but in no event less than reasonable care. If any unauthorized disclosure or loss of any Confidential Information occurs, the receiving party will promptly notify the disclosing party and will cooperate with the disclosing party and take all such actions as may be necessary or reasonably requested by the disclosing party to minimize the violation and any damage resulting from it.
- 5.5 No Implied Rights. Confidential Information will remain the property of the disclosing party. Nothing contained in this Section 5 (Confidentiality) will be construed as obligating a party to disclose Confidential Information, or as granting to or conferring on the receiving party, expressly or by implication, any rights or license to Confidential Information. Any such obligation or grant will only be as provided by other provisions of this Agreement.
- 5.6 Compelled Disclosure. If the receiving party is legally compelled to disclose any Confidential Information in a manner not otherwise permitted by this Agreement, the receiving party will (a) promptly notify the disclosing party, describing the subpoena, court order, or other similar process pursuant to which the receiving party is compelled to disclose the Confidential Information, (b) provide the disclosing party with documentation thereof, and (c) permit the disclosing party reasonable time to seek a protective order or other appropriate remedy to limit disclosure.

- 5.7 Duration of Confidentiality Obligations. Each party's obligations under this Section 5 (Confidentiality) apply to Confidential Information, whether disclosed to the receiving party before or after the Effective Date, and will continue during the Term and survive the expiration or termination of this Agreement.

6. TERM AND TERMINATION

- 6.1 The Term of this Agreement shall commence upon the Effective Date and continue until July 31, 2026.
- 6.2 In the case of material breach of the material terms of this Agreement, the non-breaching Party shall notify the breaching Party of the suspected breach in writing and provide a reasonably detailed description of the breach. The breaching Party shall have forty-five (45) days to cure the breach described in that notice unless such breach cannot be cured. In the event the breaching Party is unable to cure that breach within that forty-five (45) day period or the breach is incurable, the other Party may terminate this Agreement by providing a written termination notice to the breaching Party. In lieu of terminating this Agreement as provided for in this Section 6.2, Press Ganey may suspend the provision of the Services to Client until Client has cured the breach to Press Ganey's reasonable satisfaction.
- 6.3 Either party may terminate all or part of this Agreement for any reason by providing the other party thirty days (30) days written notice of termination by letter as outlined in Section 18 (Notices). In the event that Press Ganey terminates this Agreement, the funds paid by Participant shall be refunded to the Participant on a prorated basis, depending on the calendar quarter in which the termination occurs. Except in instances where the agreement is terminated by Participant due to a breach of the agreement by Press Ganey, no funds will be returned to Participant if Participant terminates this agreement.

7. INDEPENDENT CONTRACTORS

It is understood that in the performance of this Agreement, the parties, although cooperating on the Program, are acting solely as independent contractors and not as employees or agents, partners or joint ventures of the other.

8. USE OF NAME

Except as permitted pursuant to Sections 5.3, 5.6, this Section 8, and Section 9 (Database Use/Ownership/Intellectual Property), the parties agree that they will not use the other party's (or its employees, agents, investigators', or affiliates) name, symbols, trademarks, service marks or logos, including the Press Ganey and NDNQI names, symbols, marks, or logos (collectively the "Marks"), in any advertisement, promotion, brochure, solicitation or similar document or for any marketing, public relations, advertising, display or other business purpose, or any statement to the public, without the other party's prior written consent which may be given or withheld at the sole discretion of the party whose consent is sought. Notwithstanding the foregoing: (i) Participant may elect to disclose its participation in the NDNQI Program, including the RN Survey, and the parties shall have the right to refer to this Agreement as appropriate in the conduct of its business and in any filings required with any governmental agency or as otherwise required by law; and (ii) Participant grants Press Ganey the right to include Participant's name in Press Ganey's client list, including its list of participants in the NDNQI Program database, and list of award winners, when applicable. A party shall immediately cease using the Marks of the other party in any manner found

objectionable by that party. Each party shall retain all right, title and interest in and to its Marks, and each party's use of the other party's Marks shall inure to the benefit of such other party.

9. DATABASE USE/OWNERSHIP/INTELLECTUAL PROPERTY

- 9.1 Except as permitted pursuant to Section 5.3, neither Press Ganey nor its employees, agents, representatives, and investigators shall divulge any portion of the data or the analysis which reveals the identity of the Participant, its affiliates, or any survey respondent to any party other than as necessary to fulfill Program responsibilities and requests or as required by law or court order, without the express written consent of an authorized officer or representative of the Participant.
- 9.2 All data collected as a part of the NDNQI Program will become part of the total NDNQI Program databases, which are owned by Press Ganey. All data included in the NDNQI Program databases may be accessed and used by Press Ganey, or third parties authorized by Press Ganey to access such data. Except for technology-based vendors subject to the same confidentiality requirements as Press Ganey, no third parties shall have access to individual Participant data in a manner that could identify the Participant associated with that data. Notwithstanding the foregoing, data collected as part of the NDNQI Program may be accessed and used for research by Press Ganey or third parties authorized by Press Ganey. Comparison Data will be made available to facilities participating in the NDNQI Program and third parties authorized by Press Ganey.
- 9.3 Press Ganey retains all right, title and interest in and to the Measures used as part of the NDNQI Program and to the NDNQI Program database.
- 9.4 The parties acknowledge and agree that any Participant-specific reports (including quarterly reports and any report created by Participant using a Press Ganey online application) and Participant-specific data analyses created by Press Ganey for Participant under this Agreement (collectively, "Work Product") shall be owned by Participant. Subject to Section 9.5, below, all right, title and interest in the Work Product will vest in Participant and all Work Product will be deemed to be works made for hire for Participant.
- 9.5 Notwithstanding anything to the contrary in Section 9.4, Press Ganey owns, and reserves all rights in and to, the Press Ganey Knowledge Base Materials. The phrase "Press Ganey Knowledge Base Materials" shall mean any survey questions, methodologies, comparative and benchmark databases and any related documentation generated by or on behalf of Press Ganey or any Press Ganey personnel (including, without limitation, all de-identified survey-level responses and other measures of patient satisfaction or clinical performance) as well as any technology, software, code, processes, know-how, or tools that have independent value outside of the Work Product. In the event that the Work Product contains or references any Press Ganey Knowledge Base Materials, Press Ganey hereby grants to Participant a perpetual, non-exclusive, non-transferable, non-sublicensable, limited license to use or access those Press Ganey Knowledge Base Materials that may be contained in the Work Product solely for Participant's own internal purposes. Press Ganey will retain all right, title and interest (including, without limitation, all intellectual property rights) in and to the Press Ganey Knowledge Base Materials. Participant shall not, and shall not permit any third party to, (i) decompile, disassemble or reverse engineer the Press Ganey Knowledge Base Materials; (ii) modify the Press Ganey Knowledge Base Materials, or create any derivative product from any of the Press Ganey Knowledge Base Materials; (iii) use the Press Ganey Knowledge Base Materials except as incorporated into the Work Product; or (iv) market, sell or distribute the Press Ganey Knowledge Base Materials on a stand-alone basis or together with any other products or services. Any copy, modification, revision,

enhancement, adaptation, translation, or derivative work of or created from the Press Ganey Knowledge Base Materials shall be owned solely and exclusively by Press Ganey, as shall any and all patent rights, copyrights, trade secret rights, trademark rights, and all other proprietary rights, worldwide therein and thereto, and Participant hereby assigns to Press Ganey any and all of its interests, title or ownership in the Press Ganey Knowledge Base Materials or any modification to or derivative work of the Press Ganey Knowledge Base Materials.

- 9.6 Participant acknowledges and agrees that, pursuant to this Agreement, Participant has provided and continues to provide Press Ganey, or Press Ganey has otherwise collected or accessed and continues to collect or access on Participant's behalf, certain data (including, but not limited to, patient uploads and responses) (collectively, "Participant Data") in connection with Press Ganey's performance of the Services for Participant or the exercise of Press Ganey's rights under this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement or understanding between the Parties, and without limiting any other rights of Press Ganey with respect to Participant Data or PHI (as defined below) received from or created on behalf of Participant, Participant hereby authorizes Press Ganey to de-identify Participant Data and to use, disclose and include that de-identified Participant Data within the Press Ganey Knowledge Base Materials. The Parties acknowledge and agree that de-identified Participant Data shall immediately cease to be Participant Data and shall become part of the Press Ganey Knowledge Base Materials. The Parties further acknowledge and agree that de-identified Participant Data no longer meets the definition of PHI and is therefore not subject to the provisions of Section 11 ("Limited Data Set"). Participant shall not, and Participant shall not permit any third party to, attempt to re-identify any Press Ganey Knowledge Base Materials, including any de-identified Participant Data therein.
- 9.7 Participant acknowledges and agrees that electronic, raw data files containing patient-level responses, measurement or improvement scores or compilations thereof, that may be provided by Press Ganey to Participant ("Data Files") also contain Press Ganey proprietary information and intellectual property. Participant may request, and Press Ganey may agree to provide Participant with access to the Data Files in a manner determined by Press Ganey after the Parties enter into a separate data use agreement in the form and substance approved by Press Ganey. In the event that Press Ganey provides Participant with access to any Data Files, Participant agrees to: (i) only use the Data Files for its own internal purposes and not for the benefit of any third party; (ii) only share, disclose, or transmit the Data Files to a person who is an employee of Participant or has a written contractual relationship with Participant to provide further analysis of Participant's own internal business purposes; (iii) not, and Participant shall not permit any third party to, combine any of the information in the Data Files with other information to generate benchmarks; and (iv) not, and Participant shall not permit any third party to, share Data Files with any other entity that provides satisfaction/experience/engagement measurement reporting tools, services, or other activities or services similar or reasonably competitive to those offered by Press Ganey.

10. RESPONSIBILITY

Participant shall be responsible for the data collection and data integrity from its institution, including any privacy requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Notwithstanding anything to the contrary in this Agreement, all individually identifiable health information shall be treated as confidential by the parties in accordance with all applicable federal, state, or local laws and regulations governing the confidentiality and privacy of individually

identifiable health information, including but without limitation, HIPAA, HITECH and any regulations and official guidance promulgated thereunder, and the parties agree to take such additional steps and/or to negotiate such amendments to this Agreement as may be required to ensure that the parties are and remain in compliance with the above referenced laws, regulations and official guidance. Participant shall also adhere to posted Press Ganey computer standards, as amended from time to time, which may be found at www.pressganey.com/terms.

11. LIMITED DATA SET

For the purposes of this Agreement, the terms “Protected Health Information” and “Limited Data Set” shall have the same definitions as found in the HIPAA Privacy Rule 45 CFR 164.501 and 45 CFR 164.514(e)(2), as amended. All data included in the Program database constitute a Limited Data Set and the use thereof shall be permitted by Participant in accordance with the following terms and conditions:

- 11.1 The NDNQI Program collects nursing quality-related data including the month and quarter of individual subject's outcomes and neonate subject's ages, making the NDNQI Program a Limited Data Set pursuant to HIPAA regulations. A Limited Data Set is Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employer, or household members of the individual:
 - a. Names;
 - b. Postal address information, other than town or city, State, and zip code;
 - c. Telephone numbers;
 - d. Fax numbers
 - e. Electronic mail addresses;
 - f. Social security numbers;
 - g. Medical record numbers;
 - h. Health plan beneficiary numbers;
 - i. Account numbers;
 - j. Certificate/license numbers;
 - k. Vehicle identifiers and serial numbers, including license plate numbers;
 - l. Device identifiers and serial numbers;
 - m. Web universal resource locators (URLs);
 - n. Internet protocol (IP) address numbers;
 - o. Biometric identifiers, including finger and voice prints; and
 - p. Full face photographic images and any comparable images.
- 11.2 Except as otherwise specified herein, Press Ganey may make all uses and disclosures of the Limited Data Set necessary to conduct the NDNQI Program and affiliated research projects.
- 11.3 In addition to Press Ganey, the individuals, or classes of individuals, who are permitted to use or receive the Limited Data Set include: all NDNQI Program staff including researchers and subcontractors performing research and/or services on behalf of or in association with Press Ganey.
- 11.4 Press Ganey may make the Limited Data Set available to third parties for research approved by Press Ganey provided that (i) the data cannot be identified by the third party as data of the Participant, (ii) the data cannot be identified by the third party as data of an

individual subject, and (iii) the third party signs a data use agreement that complies with the HIPAA Privacy Rule.

- 11.5 Press Ganey agrees to not use or disclose the Limited Data Set for any other purpose other than as described herein or as required by law.
- 11.6 Press Ganey agrees to use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement. The NDNQI Program has implemented appropriate industry standard privacy and security safeguards including (i) encryption, (ii) user authentication, (iii) role based access controls, (iv) disaster recovery, (v) programmed back-up, (vi) virus protection, and (vii) secure firewall.
- 11.7 Press Ganey agrees to report to Participant within ten (10) business days of when Press Ganey becomes aware of any use or disclosure of the Limited Data Set not provided for by this Agreement.
- 11.8 Press Ganey agrees to ensure that any agent, including a subcontractor, to whom Press Ganey provides the Limited Data Set, agrees to the same restrictions and conditions that apply through this Agreement, with respect to such information.
- 11.9 Press Ganey agrees not to ascertain the identity or contact the subjects of the information.
- 11.10 Duration of Limited Data Set Obligations. The obligations under this Section 11 (Limited Data Set) will continue during the Term and survive the expiration or termination of this Agreement for as long as Press Ganey retains Participant Data.

12. WARRANTY

- 12.1 Participant and Press Ganey each hereby represents and warrants that it has obtained and shall continue to obtain and maintain throughout the term of this Agreement, all necessary and required licenses, permits, consents, authorizations, and/or approvals required by applicable laws, rules, regulations or policies to enable Press Ganey's delivery of services in accordance with those laws, rules, regulations or policies, including, but not limited to, any patient consents or authorizations necessary for Press Ganey to perform the services.
- 12.2 Press Ganey warrants that the services provided hereunder will be performed in a professional and workmanlike manner.
- 12.3 Press Ganey does not warrant or represent that the services provided pursuant to this Agreement will be capable of achieving any particular result in Participant's business, that all errors, defects or deficiencies can or will be found or corrected, or that the operation of any Work Product which is the subject of the task specifications will operate uninterrupted or error free.
- 12.4 THE WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO SECTION 12 (WARRANTY), ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Indemnification.

Press Ganey will indemnify, defend, and hold harmless Participant and its officers, employees, agents and volunteers, from any and all third party claims, costs (including reasonable and documented attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services provided by Press Ganey under this Agreement. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Participant, or Participant receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights (unless such alleged infringement is caused by the Participant), Participant will use best efforts to notify Press Ganey promptly of such lawsuit, claim or election. However, Participant's failure to provide or delay in providing such notice will relieve Press Ganey of its obligations only if and to the extent that such delay or failure materially prejudices Press Ganey's ability to defend such lawsuit or claim. Participant will give Press Ganey sole control of the defense (with counsel reasonably acceptable to Participant) and settlement of such claim; provided that Press Ganey may not settle the claim or suit absent the written consent of Participant unless such settlement (a) includes a release of all claims pending against Participant, (b) contains no admission of liability or wrongdoing by Participant, and (c) imposes no obligations upon Participant other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Press Ganey fails to or elects not to defend Participant against any claim for which Participant is entitled to indemnity by Press Ganey, then Press Ganey shall reimburse Participant for all reasonable and documented attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Participant. After thirty (30) days, Participant will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Participant to Press Ganey. This shall not apply to any judgment or settlement amount, which amounts Participant shall be entitled to notify, invoice or debit Press Ganey's account at any time; and Participant, at its sole discretion, may settle the claim or suit.

If, in Press Ganey's opinion, any goods or services provided by Press Ganey under this Agreement become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Press Ganey may, at its option: (i) procure for Participant the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Press Ganey, Participant shall cease use of the goods or services upon written notice from Press Ganey, and Press Ganey shall provide Participant with a pro-rata refund of the unearned fees paid by Participant to Press Ganey for such goods or services.

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

13.2 Limitation of Liability. Notwithstanding any other provision of this Agreement or where this exclusion or restriction of liability would be void or ineffective under applicable law, in no event will either party be liable to the other under, in connection with or related to this Agreement for any special, indirect,

consequential, exemplary or punitive damages (including, without limitation, loss of profits or revenues, loss of goodwill, penalties or withholding of reimbursement by a health care payer, state/federal agency or other entity) whether based on breach of contract, warranty, tort, product liability or any other legal theory, even if that party has been advised of the possibility of such damages. The parties further agree that, notwithstanding any other provision of this Agreement, each party's total cumulative liability to the other party under, in connection with or related to this Agreement or in furtherance of the Agreement's provisions or objectives, shall be limited to actual, direct damages not to exceed the greater of \$100,000 or two times (2x) the amount paid (less any refunds or credits) by Participant to Press Ganey during the twelve (12) month period preceding the date of the claim.

14. CHANGES IN AGREEMENT

Any changes to the terms of this Agreement in any way shall be valid if the change is made in writing and approved by the parties or, if after an appropriate 90-day notice of an NDNQI policy change, Participant continues to participate in the NDNQI Program.

15. ASSIGNMENT

Except as specified in this Section, the parties may not assign or transfer any of their rights or responsibilities under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, subject to notice to the other party, a party may assign this Agreement to any corporate affiliate, for purposes of any reorganization, or as may be required in connection with any tax-exempt bond financing. Such assignment shall not affect the ongoing confidentiality of data set forth in Sections 5 (Confidentiality), 9 (Database Use/Ownership/Intellectual Property), and 11 (Limited Data Set) of this Agreement as it applies to other external entities. According to the terms in Section 6 (Termination) and Section 18 (Notices), either party may terminate this Agreement with proper written notice. Notwithstanding any other provisions of this Section 15, neither party may assign its rights or obligations under this Agreement to any entity that is or has been convicted of any criminal offense related to healthcare or is or has been debarred, excluded, or otherwise ineligible for participation in any federal or state government healthcare program, including Medicare and Medicaid, any such assignment shall be void.

16. COMPLIANCE WITH LAW

The parties agree to comply with all applicable federal, state and local laws, regulations, ordinances and orders with respect to the performance of the NDNQI Program and this Agreement.

17. GOVERNING LAW

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

18. NOTICES

Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective two (2) days after they are delivered or when received, whichever occurs first, and shall be sufficient if given in writing, hand delivered, sent by overnight courier or First Class United States Mail, postage prepaid. Refusal to accept delivery will be deemed receipt. A party may change its notice address for purposes of this Agreement by giving written notice to the other party. Notice location for the Participant and Press Ganey shall be:

Press Ganey Associates LLC

404 Columbia Place
South Bend, IN 46601
Attn: Contracts Dept.

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

19. SEVERABILITY

If any portion or term of this Agreement shall for any reason be held invalid, illegal, or otherwise unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be construed as if such term or provision, to the extent the same shall have been held invalid, illegal, or unenforceable, had never been contained herein.

20. WAIVER

No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition, or of any other term, provision, or condition of this Agreement.

21. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, such as labor disputes or disturbances of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, acts of terror or other such occurrences.

22. 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.

23. VENUE

The parties acknowledge and agree that this Agreement 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 Agreement may 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 Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their commercially reasonable efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

24. DEBARMENT AND SUSPENSION

Press Ganey hereby 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, Press Ganey represents and warrants that no proceedings or investigations are currently pending or to Press Ganey's knowledge threatened by any federal or state agency seeking to exclude Press Ganey from such programs or to sanction Press Ganey for any violation of any rule or regulation of such programs.

25. INSURANCE

- 25.1 **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Participant and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Participant to vicarious liability but shall allow coverage for the Participant to the full extent provided by the policy.
- 25.2 **Waiver of Subrogation Rights.** Press Ganey shall require the carriers of required coverages to waive all rights of subrogation against the Participant, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Press Ganey and Press Ganey's employees or agents from waiving the right of subrogation prior to a loss or claim. Press Ganey hereby waives all rights of subrogation against the Participant.
- 25.3 **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Participant.
- 25.4 **Severability of Interests.** Press Ganey agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Press Ganey and the Participant or between the Participant and any other insured or additional insured under the policy.
- 25.6 **Proof of Coverage.** Press Ganey shall furnish Certificates of Insurance to the Participant Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided upon request of Participant. Press Ganey shall provide thirty (30) days written notice to the Department prior to any termination of such insurance, and Press Ganey shall maintain such insurance from the time Press Ganey commences performance of services hereunder until the completion of such services.
- 25.7 **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- 25.8 **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Participant has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the Participant will be promptly reimbursed by Press Ganey or Participant payments to Press Ganey will be reduced to pay for Participant purchased insurance.

- 25.9 Insurance Review. Insurance requirements are subject to periodic review by the Participant. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Participant.

Any failure, actual or alleged, on the part of the Participant to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Participant.

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

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

- 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 Press Ganey and all risks to such persons under this Agreement.

If Press Ganey has no employees, it may certify or warrant to the Participant 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 Participant'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.

- Commercial/General Liability Insurance – Press Ganey shall carry General Liability Insurance covering all operations performed by or on behalf of Press Ganey providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.
- Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or

Symbol 2/7/9. The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Press Ganey is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Press Ganey owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits. Any claims made insurance shall be maintained or “tail” coverage provided for a minimum of three (3) years after contract completion.
- **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Participant entities and cover breach response cost as well as regulatory fines and penalties.

26. ENTIRE AGREEMENT

This Agreement constitutes the entire and only Agreement between the parties relating to the NDNQI Program or nursing quality measurement and data services, including any services previously provided by CALNOC. As of the Effective Date, the terms of this Agreement replace and supersede any existing agreement between Press Ganey and Participant specifically the CALNOC Hospital / Health System Site Agreement effective August 23, 2016 between CALNOC and Arrowhead Regional Medical Center, including any payment obligations under that agreement for the period of time between August 1 through August 22, 2021. No agreements altering or supplementing the terms hereof may be made except by a written document signed by duly authorized representatives of the parties. By your acceptance of this Agreement, you attest that no modifications were made to this Agreement without written consent of Press Ganey. If modifications were made without authorization, this Agreement will not be binding on Press Ganey. You further attest that you have authority to bind Participant to the contractual terms of this Agreement.

27. SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other 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 Agreement upon request.

In Witness Whereof, the parties hereto agree to be bound by the terms herein effective on the Effective Date marked above.

Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.)	San Bernardino County on behalf of Arrowhead Regional Medical Center (PG Client ID 739)
By:	By:
Title:	Title:
Date:	Date:

2021 Fee Schedule

Payment of a Base Fee for service entitles a Participant to submit data, receive reports and to participate annually in the RN Survey under the guidelines set forth by National Database of Nursing Quality Indicators® (NDNQI®). Press Ganey reserves the right to increase the base fee for facilities joining the NDNQI program at any time.

1. Base Fee for Service:

Each Participant is required to pay an initial membership fee at the time of enrollment. This fee covers the Clinical and Staffing Measures and the NDNQI RN Survey including the optional Magnet® Module (Job Satisfaction or Practice Environment Scale).

Participant	Annual Fee
Arrowhead Regional Medical Center	\$12,919.87