

**JOINT COMMISSION RESOURCES  
MASTER SERVICES AND SUBSCRIPTION AGREEMENT**

This Master Services and Subscription Agreement (“Agreement”) is entered into on the last date this Agreement is executed (the “Effective Date”) by and between Joint Commission Resources, Inc. (“JCR”), an Illinois not for profit corporation, located at 1515 West 22nd Street, Suite 1300W, Oak Brook, Illinois 60523, USA, and San Bernardino County on behalf of Arrowhead Regional Medical Center, (“Organization”) on behalf of itself and its Affiliates, if any, the primary location of which is at 400 N Pepper Ave, Colton, CA, 92324, United States, (JCR and Organization each referred to herein as “Party” or collectively as “Parties”).

“Affiliate” is included in the term Organization, Party, or Parties, and means any business entity that, from time to time, is controlled by or under common control with Organization or is an Organization’s authorized agent to procure services and products under this Agreement.

WHEREAS, JCR’s mission is to continuously improve the safety and quality of health care in the United States and in the international community through the provision of education, publications, consultation, and evaluation services.;

WHEREAS, Organization wishes to purchase certain services and/or products from JCR to advance its quality improvement and patient safety activities (the “Services”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and in any Statement of Work issued hereunder, and for other good and valuable considerations, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. The Parties.**

- a. Organization may provide a list of Affiliates eligible to purchase Services under this Agreement. Affiliates may be added or removed from the list at Organization’s discretion, provided there is thirty (30) days advanced written notice, and all fees for Services delivered have been paid in full.
- b. An Affiliate may execute Statements of Work (SOW) pursuant to this Agreement. Such Affiliate accepts and agrees to the terms of the Agreement by submitting a valid, signed Statement of Work that references this Agreement. Organization guarantees the performance of any obligations undertaken by an Affiliate.
- c. Organization and Affiliates shall remain jointly and severally liable for the obligations imposed under this Agreement and applicable SOWs.

**2. Statement of Work.**

- a. JCR and Organization may enter into one or more Statements of Work or “SOW.” Each SOW may include, among other things, a description of the Services to be delivered, fees and fee structure, if any, any additional terms and conditions, and roles and responsibilities of the Parties. JCR will provide the Services as outlined in each properly executed SOW. Each SOW shall specifically identify this Agreement and indicate that it is subject to the terms hereof.

- b. Organization will provide JCR with the information necessary to fulfill JCR's obligations under this Agreement, with working space or equipment, as may be required for performance of the Services, and any other information or materials as agreed to under the SOW.
- c. A Statement of Work that is executed by the Parties with reference to this Agreement will be deemed an integrated part of this Agreement. The Parties may terminate any individual Statement of Work without affecting the remaining Agreement or any other Statements of Work.
- d. Except as otherwise provided for in this Agreement, if there is a conflict between the terms of this Agreement and any SOW, this Agreement will control.
- e. All statements and agreements concerning timing are good faith estimates based upon information available and circumstances existing at the time made, and each SOW is subject to equitable adjustment upon any material change in such information or circumstances, or upon modification of the scope, timing, or level of work to be performed by JCR. Either Party may propose changes. Should Organization request additional services outside the SOW, the terms of such Services will be negotiated at that time, and agreed to in writing by the Parties in an amendment or separate SOW. It is mutually acknowledged that any such change may affect the fees or charges payable to JCR and/or the project schedule. No Party shall have any obligation respecting any change until an appropriate change order or amendment to the applicable SOW is executed and delivered by the authorized Parties.

### **3. Compensation and Payment Terms.**

Unless otherwise provided for under the applicable SOW:

- a. JCR will submit an invoice for the fees, as provided for in the applicable SOW. Payment of all invoices is due within 30 days upon receipt of the invoice.
- b. Organization shall pay any and all applicable federal, state, and local sales, use, value added, excise, duty, and any other taxes of any nature (except any tax based on JCR's net income) assessed on the Services, including taxes any government agency assesses on tangible personal property acquired by JCR for use by Organization, such as, but not limited to, internet services and printing.
- c. In order to reduce expenses, JCR has agreements with several travel partners for corporate discount rates based on aggregate travel costs, and its travel coordinators endeavor to take advantage of economical fares. Except as reflected in such rates, travel expenses do not include discounts.

### **4. Virtual Services**

Organization understands that if JCR provides virtual services, JCR may utilize platform(s) powered by a third-party vendor for teleconferencing, audio, and/or video chat ("Platforms"). Organization agrees that it shall not hold JCR or its affiliates responsible for the Platforms' functionality or security, nor seek damages or make any claims against JCR or its affiliates for harms or damages caused by the use of the Platforms.

## **5. Term and Termination.**

- a. The term of this Agreement will commence on the Effective Date and will remain in full force and effect for a period of five years, unless earlier terminated.
- b. This Agreement may be terminated for convenience if either Organization or JCR provides sixty (60) days prior written notice to the non-terminating party of its plans to terminate.
- c. If this Agreement is terminated, then all underlying SOWs terminate at the same time unless the SOW states otherwise. If use and/or disclosure of PHI is required to perform the Services, and the Business Associate Agreement is terminated, then only the applicable SOW is terminated.
- d. Except as provided in any SOW, termination of any given SOW will not affect any other SOWs then in effect. Any non-terminated SOW will continue in effect solely for purposes of any Services ordered but not yet performed under that SOW.
- e. Even after termination or expiration, Organization shall pay any amounts it owes to JCR, including, but not limited to, payment obligations for Services already rendered, work already performed, products already delivered, or expenses already incurred up to the date of termination.

## **6. Intellectual Property.**

- a. The parties agree that Organization, upon full payment for all services under the applicable SOW, will own any deliverables developed by JCR specifically for Organization under this Agreement, in their final tangible form. Ownership of such deliverables excludes JCR Intellectual Property, as defined below, proprietary property, and any third party material or software, if any, that is incorporated into the Deliverables. JCR agrees to take, at Organization's cost and expense, all actions requested by Organization which are reasonably necessary to assure the conveyance to Organization of all right, title and interest in, to and under any Deliverables.
- b. JCR will retain all rights, title, and interest to any data, plans, documentation, proprietary software, methodologies, templates, tools, specifications, drawings, sketches, models, samples, records, works of authorship, creative works, ideas, knowledge, or other materials, originated or developed by JCR personnel, or JCR third party contractors, and any variations or derivatives thereof (collectively, "JCR Intellectual Property").
- c. Except as expressly provided for herein, the disclosure of JCR Intellectual Property under this Agreement does not create, grant, and shall not be construed as creating or granting any right, title, license, or interest in, the JCR Intellectual Property. Therefore, Organization agrees not to record, rebroadcast, or resell any Services provided under this Agreement.
- d. JCR grants Organization a fully revocable, non-exclusive, non-transferable, limited, worldwide, royalty-free license to use, display, or create limited copies of the JCR Intellectual Property, as embedded into any Services or materials, solely for internal purposes in order to advance quality improvement and patient safety activities. No portion of the JCR Intellectual Property may be unbundled or separated or used as a standalone product for any purpose whatsoever. Unless expressly agreed to by duly authorized binding

authorities of both Parties, in no event will JCR Intellectual Property be shared between the Affiliates or with any other third party.

## **7. Confidentiality.**

- a. In connection with the Agreement, each Party ("Disclosing Party") may make available its Confidential Information, as defined below, to the other Party ("Recipient"). Recipient shall only use Confidential Information for the limited express purposes of the Agreement. Except as specifically permitted in the Agreement, or as required by law, rule, or regulation (with reasonable prior notice to the Disclosing Party, unless prohibited by an order, to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent), Recipient shall not disclose any Confidential Information to any third party without the prior written consent of Disclosing Party. Recipient shall at all times keep the Confidential Information confidential and shall take all reasonable security precautions (and in any event at least as great as the precautions Recipient takes to protect its own comparable Confidential Information) to keep confidential and protect the Confidential Information from unauthorized access and use.
  - i. For the purposes of the Agreement, "Confidential Information" means any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, processes, tools, methods, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees (and other personnel), and business opportunities) disclosed by the Disclosing Party to Recipient either directly or indirectly in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually): (i) that has been marked as confidential or proprietary or by similar restrictive notation; (ii) whose confidential or proprietary nature has been made known by Disclosing Party, orally or in writing, to Recipient, and if orally, confirmed in writing as confidential or proprietary within ten (10) business days; or (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential or proprietary.
  - ii. The obligations hereunder for such Confidential Information shall not apply to information that:
    1. Is or becomes publicly available through no fault of the Recipient;
    2. Is disclosed to the Recipient by a third party entitled to disclose such information;
    3. Is already known to the Recipient as shown by its prior written records;
    4. Is independently developed by the Recipient as evidenced by written records; or
    5. Is required by law or court order to be disclosed; provided, however, that in such a case the Recipient shall give the Disclosing Party notice of such required disclosure (unless prohibited by such order) as soon as reasonably practicable so that the Disclosing Party may have an opportunity to contest such disclosure or obtain protective orders regarding such disclosure.

Notwithstanding the foregoing, JCR acknowledges that Organization is a public entity, subject to various sunshine laws, including, but not limited to the Ralph Brown Act, California Public Records Act, the sunshine ordinance in its County Code, and that this statement herein has satisfied the notice provision for disclosure where this Agreement, and only this Agreement, is disclosed as part of Organization's approval process for approval of this Agreement

- b. **Safety Clause.** Notwithstanding anything to the contrary contained herein, when a serious condition that appears to imminently jeopardize public safety or the safety of a patient is found in an Organization or Affiliate facility, and when this condition has been pointed out to the chief executive officer or equivalent, JCR may notify the authorities having jurisdiction.

#### **8. Business Associate Agreement.**

- a. Federal law and regulations require certain steps to be taken to help safeguard the privacy and security of "protected health information" under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). HIPAA obligations have been modified by subsequent laws and regulations, including provisions of the American Recovery and Reinvestment Act of 2009 and related regulations (the "HITECH Act"). These laws and regulations require a business associate agreement between a covered entity and any organization whose activity involves certain uses or disclosure of the protected health information of the covered entity's patients.
- b. If Organization is a covered entity (as defined in HIPAA) and JCR's Services to Organization involve the use and/or disclosure of protected health information, a business associate agreement is required. In order to satisfy this requirement, the Parties hereby agree to execute the Business Associate Agreement attached hereto as Exhibit A.
- c. This business associate agreement fully executed by the Parties is intended to apply to all current and future activities between JCR and Organization or Affiliates that require a business associate agreement during the term of this Agreement, so this requirement should be satisfied despite the termination of any SOW and the initiation of a new SOW under this Agreement.

#### **9. Firewall and Limitation on Services.**

- a. JCR is a corporate affiliate of The Joint Commission, and for clarity, JCR employees are not employees of The Joint Commission. A firewall exists which addresses the need to avoid any real or perceived conflict of interest between the receipt of consulting services and The Joint Commission accreditation activities. Therefore, JCR will not engage in any consultative technical assistance which could lead to a misunderstanding or a perception that consulting is necessary to achieve accreditation or that JCR clients are provided an undue advantage in the Joint Commission's accreditation process. To that end, JCR will not provide assistance in connection with: (1) challenging accreditation decisions or findings of The Joint Commission, such as (a) preparing evidence of standards compliance documents, (b) preparing letters that challenge Requirements for Improvement (RFIs), and (c) preparing reports, documents, or presentations to be used in connection with any review hearing or appeal; or (2) preparing root cause analyses for sentinel events, which are done in response to a request by The Joint Commission for a Joint Commission identified

Sentinel Event. However, if JCR has previously provided consultative technical assistance to Organization within the current accreditation cycle, at the request of Organization, JCR may review and comment on any responses, reports or other documents that Organization has prepared for The Joint Commission. No charge may be imposed for such services. Furthermore, JCR may assist Organization in conducting a root cause analysis (RCA) in response to an adverse event, when the RCA is being used for internal improvement purposes only, and when not under the circumstances provided for in part (2) above.

- b. Additionally, if Organization is accredited by The Joint Commission, the JCR consultant will be required to cease Organization communications and depart from the premises during The Joint Commission accreditation surveys and/or certification reviews. Nor can the JCR consultant communicate any organization specific information to Joint Commission accreditation personnel, or interact with The Joint Commission on behalf of Organization, or attend meetings or calls with the Organization, if The Joint Commission is a party to the meeting/call. After any Joint Commission visit JCR can continue to provide consulting services, subject to the terms of this Agreement.
- c. Organization shall not ask JCR to provide services involving any Human Resources, contracting or employment actions, nor shall Organization require JCR to provide management, supervisory, or oversight of Organization personnel. Consultant shall not be responsible for providing and shall not be asked to provide medical advice to Organization.

#### **10. Disclaimer.**

- a. **IT SHALL BE UNDERSTOOD BY ORGANIZATION THAT THE SERVICES PROVIDED BY JCR UNDER THIS AGREEMENT ARE ADVISORY IN NATURE AND DO NOT SERVE AS A SUBSTITUTE FOR ANY ORGANIZATION RESPONSIBILITIES RELATED TO THE SUBJECT MATTER OF THE AGREEMENT. NO REPRESENTATIONS OR WARRANTIES ARE MADE BY JCR CONCERNING THE EFFECT(S), IF ANY, OF THE SERVICES IT PROVIDES UNDER THE AGREEMENT ON THE QUALITY OF CARE, TREATMENT, OR THE OUTCOMES THEREOF, PROVIDED BY ORGANIZATION. THE SERVICES TO BE PROVIDED BY JCR UNDER THE AGREEMENT ARE SEPARATE FROM ANY ACCREDITATION OR CERTIFICATION ACTIVITY, AND JCR SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ORGANIZATION'S FAILURE TO MEET ACCREDITATION OR CERTIFICATION REQUIREMENTS.**
- b. **ORGANIZATION SHALL BE SOLELY RESPONSIBLE FOR MAINTAINING ITS OWN EFFECTIVE PROGRAMS, POLICIES, PROCEDURES, RECORDKEEPING, DECISION MAKING, AND MANAGEMENT FUNCTIONS. AS SUCH, ORGANIZATION SHALL BE SOLELY AND FULLY RESPONSIBLE UNDER THE AGREEMENT FOR (a) APPLYING INDEPENDENT JUDGMENT (b) MAKING ALL IMPLEMENTATION DECISIONS AND (c) DETERMINING FURTHER COURSES OF ACTION WITH RESPECT TO ANY MATTERS ADDRESSED IN JCR'S DELIVERABLES OR PROVIDED BY JCR EITHER ORALLY OR IN WRITING UNDER THE AGREEMENT. DUE TO THE ADVISORY NATURE OF THE SERVICES AND RESPONSIBILITIES OF ORGANIZATION DEFINED HEREUNDER, THE PARTIES AGREE THAT ORGANIZATION MAY NOT BRING SUIT, FILE A CLAIM AGAINST, OR SEEK DAMAGES FROM JCR RELATED TO ORGANIZATION'S RESPONSIBILITIES**

**AND OBLIGATIONS OUTLINED IN THIS SECTION (DISCLAIMER). THIS CLAUSE SHALL SUPERSEDE ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, OR UNDERSTANDINGS BETWEEN THE PARTIES WHETHER ORALLY, IN WRITING, OR OTHERWISE PROVIDED.**

**11. LIMITATION OF LIABILITY.**

EXCEPT FOR DAMAGES FINALLY AWARDED THAT ARE SOLELY ATTRIBUTABLE TO AND DIRECTLY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, THE MAXIMUM AGGREGATE LIABILITY OF JCR, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS TO ORGANIZATION FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND ORGANIZATION'S OR AFFILIATE'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE NO GREATER THAN TOTAL FEES PAID IN THE PREVIOUS TWELVE (12) MONTHS BY ORGANIZATION OR ITS AFFILIATES TO JCR FOR THE PORTION OF THE SERVICES PROVIDED UNDER THE RELEVANT SOW GIVING RISE TO ANY CLAIM. . IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED UNDER THE AGREEMENT, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**12. Insurance.**

JCR shall, at its own expense, for the duration of this Agreement maintain policies of general liability insurance in amounts reasonable for its operations, but at a minimum, in an amount of at least two million dollars (\$2,000,000) annual aggregate, workers' compensation with the applicable state statutory limits, and network security and privacy coverage at a minimum of one million dollars (\$1,000,000). JCR liability limits can be satisfied by umbrella, excess liability insurance, or self-insurance. Evidence of such coverage will be presented to Client upon written request.

**13. Privacy and Security.**

- a. The Parties shall ensure adequate Internet, data, information, and system security in accordance with industry standards. Firewalls and web servers shall meet or exceed applicable government minimum requirements for security.
- b. The Parties shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any JCR information as are necessary to prevent the use or disclosure of such information other than as permitted by this Agreement.
- c. The Parties will ensure personnel will only access and use computer equipment/systems as authorized, to maintain login and passwords in a confidential manner and not further disclose, to not disclose any portion of computerized system or information to unauthorized individuals. This includes but is not limited to design, programming techniques, flow charts, source code, screens, and documentation created by Organization under this

agreement or created by any JCR personnel to which Organization has been provided access.

#### **14. Compliance with Law and Regulation.**

- a. The Parties shall comply with applicable laws and regulations in the performance of this Agreement.
- b. The Parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.
- c. The Parties represent that personnel involved in any SOW for which a claim may be submitted to the government are not presently:
  - i. Debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
  - ii. Have not been found guilty of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; or
  - iii. Have not been found guilty of commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.
- d. The Parties agree to promptly provide notice of an imposition of any such sanctions or exclusion and of the initiation of any investigation or proceeding the result of which may include such sanctions or exclusion. A SOW shall be subject to immediate termination in the event a Party is subject to sanctions or exclusion.

#### **15. Miscellaneous.**

- a. **Independent Contractor.** JCR, and its personnel, shall remain independent contractors, and not agents, employees, joint venturers, or partners of Organization at all times during the term of this Agreement.
- b. **No Video and Audio.** No video or audio taping of any part of the Services provided under this Agreement is permitted without the express written permission of JCR.
- c. **Force Majeure.** The performance of this Agreement may be cancelled or reasonably delayed by either Party without penalty or damages for: acts of God, war, terrorism, government regulation, disease, disaster, fire, strikes, or civil disorder, which would make it illegal, impossible, or inadvisable to provide the Services, provided notice of the event requiring cancellation or delay is communicated in writing as soon as practically possible to the other Party.
- d. **Survival.** The Intellectual Property, Confidentiality, Limitation of Liability, Governing Law and Jurisdiction, and Disclaimer sections herein shall survive termination of this Agreement.



- e. **Governing Law and Jurisdiction.** The Parties agree to remain silent on the matter of governing law and jurisdiction.
- f. **Notice.** All notices under this Agreement shall be in writing. Notices may be given personally or sent by U.S. mail or private express courier and shall be deemed given upon delivery, if given personally, or when deposited with the private courier. If notice is sent by U.S. Postal Service with the proper postage affixed, then notice shall be deemed given two business days after it is sent by mail. Notices shall be addressed as follows:

**Notice to JCR\*:**

Joint Commission Resources  
1515 West 22<sup>nd</sup> Street, Suite 1300W  
Oak Brook, IL 60523  
Attn: Vice President Global Consulting Services  
\*with a required copy sent to the attention of “General Counsel”

**Notice to Organization:**

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

- g. **Assignment.** Neither Party shall assign this Agreement (directly, indirectly, or by operation of law as the result of a merger, sale of equity interest or otherwise) without the other Party’s written consent, and any attempt to do so absent written consent shall be void.
- h. **Waiver.** The terms or conditions of this Agreement may be waived only by a written instrument executed by the Party waiving compliance. Such waiver, or a failure by either Party to enforce its rights under this Agreement, shall not affect or impair any other available rights or remedies.
- i. **Entire Agreement.** This Agreement, in conjunction with an Exhibit A Statement of Work and, if applicable, the Business Associate Agreement, constitutes the entire understanding between Organization, its Affiliates, and JCR and supersedes all prior agreements or arrangements regarding the subject matter hereof.
- j. **Modifications.** No changes or modifications to this Agreement, including any SOW(s), are valid unless made in writing and signed by a duly authorized signatory of both JCR and Organization.
- k. **Severability.** If any term, condition, or provision of the Agreement shall, for any reason, be found or held invalid or unenforceable by a court of competent jurisdiction, or under any arbitration(s) provision or award, such invalidity or unenforceability shall not affect the remainder of the Agreement, and the Agreement shall survive and be construed as if such invalid or unenforceable term, condition, or provision had not been contained therein.
- l. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

- m. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall 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. This Agreement shall not become valid, effective, or binding on any Party until duly executed by both Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and represent that the persons whose signatures appear below are duly authorized to execute this Agreement.

**Joint Commission Resources, Inc.**

**San Bernardino County on behalf of  
Arrowhead Regional Medical Center**

By:



By:

Name: Kristine Slepicka

Name:

Title: Executive Director  
Global Consulting Services

Title:

Date: September 23, 2021

Date:

## **EXHIBIT A**

### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) supplements and is made a part of the Master Services and Subscription Agreement (Contract) by and between the San Bernardino County (hereinafter Covered Entity) and Joint Commission Resources, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

#### **RECITALS**

**WHEREAS**, Covered Entity (CE) may 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.].
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**

- i. BA shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R §164.502(b)) disclosed to it by the CE as necessary to perform its obligations under the Contract.

BA may disclose PHI:

- i. To use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of BA;
- ii. To a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA; provided, however, that the Disclosures are Required by Law or BA has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify BA of any instances of which it becomes aware in which the confidentiality of the information has been breached;
- iii. To aggregate the PHI with that of other CEs for the purpose of providing the CE with data analyses relating to the Health Care Operations of the CE. BA may not Disclose the PHI of one CE to another CE without the written authorization of the CEs involved; and
- iv. To de-identify any and all PHI created or received by BA under this Agreement; provided that the de-identification conforms to the requirements of the Privacy Rule.

### **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.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. 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 reasonable and 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).]

4. Subcontractors

BA shall require that any subcontractor that creates, receives, maintains or transmits PHI on behalf of BA agrees to the same restrictions and conditions that apply to BA with respect to such PHI in accordance with the applicable requirements of the Privacy Rule and the Security Rule.

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

- i. BA will report to the CE any Use or Disclosure of PHI not provided for by this Agreement of which BA becomes aware including Breaches of Unsecured PHI as required by 45 C.F.R. §164.410.
- ii. BA will promptly report to the CE any Breach of Unsecured PHI after its Discovery and any Security Incident with respect to Electronic PHI of which it becomes aware; provided, however, that unless specifically requested by the CE, BA shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks or services. To the extent a determination has been made that patient notification is required in a breach involving BA, both parties agree to cooperate on the notification language.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA agrees it will

- i. Within (15) days of receiving a request from the CE, make available the information necessary for the CE to make an accounting of Disclosures of PHI about an individual; and
- ii. Within ten (10) days of receiving a written request from the CE, make available PHI necessary for the CE to respond to Individuals' requests for access to PHI about them in the event that the PHI in BA's possession constitutes a Designated Record Set.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall, within fifteen (15) days of receiving a written request from the CE, make PHI available for amendment and incorporate any amendment to the PHI in accordance with the Privacy Rule .

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.

9. Termination for Breach

- i. The CE and BA may each terminate this Agreement, in whole or in part, by giving written notice as described below if either of them (the "Terminating Party") determines that the

other party (the “Non-Terminating Party”) has breached a material term of this Agreement. Alternatively, the Terminating Party may choose to provide the Non-Terminating Party with notice of the existence of an alleged material breach and provide the Non-Terminating Party an opportunity to cure the alleged material breach within a specified period.

- ii. If no cure period was provided or if the Non-Terminating Party fails to cure the breach to the satisfaction of the Terminating Party within the cure period provided, the Terminating Party may immediately thereafter terminate this Agreement with respect to, in its discretion, all underlying agreements or only the underlying agreement with respect to which the breach occurred. Such termination shall be effective as of the date specified in a written notice given by the Terminating Party to the Non-Terminating Party (the “Termination Notice”). The Termination Notice shall be given as required in the underlying agreement or by nationally recognized overnight courier, receipt requested, if no means of notice is set forth in the underlying agreement. The Termination Notice shall specify the extent of termination of this Agreement and which related underlying agreement(s) are terminated.

#### 10. Automatic Termination.

This Agreement will automatically terminate upon the termination or expiration of the Contract but only with respect to the PHI that was Used or Disclosed pursuant to the Contract that has expired or terminated.

#### 11. Effect of Termination.

If this Agreement is completely terminated, it will result in the termination of all underlying agreement(s) pursuant to which PHI was disclosed subject to this Agreement. If this Agreement is terminated only in part, then only the underlying agreements related to the terminated portion of this Agreement shall be terminated.

#### 12. Return of PHI

Upon termination of this Agreement or the Contract, to the extent that BA then retains any PHI, BA shall return or destroy all PHI received from the CE or created or received by BA on behalf of the CE with respect to the portion of this Agreement and the Contract being terminated and BA will retain no copies of such PHI; provided that if such return or destruction is not feasible, BA will extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

#### 13. Mitigation

BA shall, to the extent practicable, mitigate any harmful effect that is known to BA of a use, access or disclosure of PHI by BA in violation of the requirements of this Agreement.

### **C. Obligations of CE**

The CE agrees that it:

- i. Has included, and will include, in the CE’s Notice of Privacy Practices required by the Privacy Rule that the CE may Disclose PHI for Health Care Operations purposes.
- ii. Has obtained, and will obtain, from Individuals consents, authorizations and other permissions necessary or Required by Law applicable to the CE for BA and the CE to fulfill their obligations under the Underlying Agreement and this Agreement.

- iii. Will promptly notify BA in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the CE has agreed to that may affect BA's ability to perform its obligations under the Underlying Agreement or this Agreement.
- iv. Will promptly notify BA in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement or this Agreement.

#### **D. General Provisions**

##### **1. Remedies**

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

##### **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**

BA and CE agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the CE and/or BA to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and the HITECH BA Provisions as currently in effect and as they may be amended from time to time in the future, including any interpretations thereof under federal law (each a "Change in Law"). 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 written 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. Reporting**

Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent BA from fulfilling its obligation, if any, to make certain disclosures to public officials (including CMS), in cases of immediate jeopardy/imminent harm

or a good faith belief that the CE has engaged in conduct that is unlawful, violates professional or clinical standards or potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)).

8. No Third Party Beneficiaries

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

9. Independent Contractor

Unless and to the extent otherwise expressly provided in the Contract, BA is an independent contractor and not an agent of the CE. The parties note that this characterization of their relationship is consistent with the Omnibus Rule. (See commentary to the Omnibus Rule at 78 Fed. Reg. 5581-5582.)

10. Entire Agreement

This Agreement constitutes the entire understanding and obligation of the parties with respect to the subject matter hereof and supersedes any prior agreements, writings or understandings, whether oral or written with respect to the subject matter hereof.

11. 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.

**Joint Commission Resources, Inc.**

**San Bernardino County on behalf of  
Arrowhead Regional Medical Center**

By: 

By:

Name: Kristine Slepicka

Name:

Title: Executive Director, Global Consulting Services

Title:

Date: September 23, 2021

Date: