

CONSOLIDATED FIRE AGENCIES
CONTRACTING AGENCY AGREEMENT
(City of Ontario)

This Agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a joint powers authority duly authorized and existing under Government Code, § 6500 et seq., and the City of Ontario (“Contracting Agency”), a general law city duly formed and existing under Article XI, Section 7 of the California Constitution. CONFIRE and Contracting Agency may be individually referred to as a “Party” and collectively as the “Parties.”

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Services
- Exhibit B: Contributions
- Exhibit C: Effective Date and Term
- Exhibit D: General Terms and Conditions
- Exhibit E: HIPAA Business Associate Agreement
(Note: Same Agreement utilized by all Contractor Agencies)
 - Appendix 1 to Exhibit E: General Terms and Conditions to HIPAA Business Associate Agreement

2. INDEPENDENT CONTRACTOR

- a. Neither Contracting Agency, nor any of Contracting Agency’s employees, shall be considered officers, employees, agents, partner, or joint venture of CONFIRE; nor shall such persons be entitled to benefits of any kind or nature normally provided to employees of CONFIRE.
- b. Neither CONFIRE nor any of CONFIRE’s employees shall be considered officers, employees, agents, partner, or joint venture of Contracting Agency; nor shall such persons be entitled to benefits of any kind or nature normally provided to employees of Contracting Agency.

3. SERVICES

Contracting Agency shall benefit from the services and participate in the services described in Exhibit A (“Services”).

4. CONTRIBUTION

Contracting Agency shall make financial contributions for their participation in the Services as set forth in Exhibit B (“Contribution”).

5. EFFECTIVE DATE AND TERM

The Effective Date and Term are set forth in Exhibit C.

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit D.

7. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:

Consolidated Fire Agencies
Attn: Nathan Cooke, Director
1743 Miro Way
Rialto, CA 92376

To Contracting Agency:

City of Ontario
Attn: Scott Ochoa, City Manager
303 East B Street
Ontario, CA 91764
cc: Raymond J. Gayk, Fire Chief

8. HIPPA BUSINESS ASSOCIATE AGREEMENT

The “Business Associate Agreement by and between Contracting Agency and CONFIRE” is set forth in Exhibit E.

Note: Business Associate Agreement is consistent with the Agreement utilized by Contract Agencies for Dispatch Services.

The Parties have executed this Agreement on the dates indicated below.

Consolidated Fire Agencies

City of Ontario

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

EXHIBIT A
to CONTRACTING AGENCY AGREEMENT

SERVICES

Contracting Agency shall be a member of the CONFIRE EMS Division Subsidiary Committee as set forth in Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1**. As a member of the CONFIRE EMS Division Subsidiary Committee Contracting Agency shall share in the responsibility of the collaborative development and implementation of a regionally shared EMS delivery system, that provides Advanced Life Support and Basic Life Support Ground Ambulance Services. Contracting Agency shall also benefit from the regionally shared EMS delivery system, that provides Advanced Life Support and Basic Life Support Ground Ambulance Services.

EXHIBIT A-1
to CONTRACTING AGENCY AGREEMENT

CONSOLIDATED FIRE AGENCIES
MANUAL OF ADMINISTRATIVE COMMITTEE POLICIES

Policy: **6.002**

Title: **EMS Division Subsidiary Committee**

Adopted: **[09.13.2022]**

Revised: **[12.13.2022]**

EMS Division Subsidiary Committee

There is hereby established an EMS Division Subsidiary Committee, which shall be organized and be responsible for the collaborative development and implementation of a regionally shared EMS delivery system.

A. Definitions

1. **EMS:** Also known as Emergency Medical Services.
2. **EMS Division:** One of four divisions within CONFIRE, established by action of the Administrative Committee at its meeting on March 7, 2022.
3. **EMS Division Subsidiary Committee:** Also known as the EMS Division Committee, established by the Administrative Committee through this Policy.
4. **EMS Division Participants/Participant(s):** All CONFIRE Member Agencies and Contract Agencies that enter into an MOU with CONFIRE to participate in the EMS Division.
5. **Member Agency:** The Parties to the Third Amended and Restated Joint Powers Agreement for Consolidate Fire Agencies (CONFIRE), which are Apple Valley Fire Protection District, Chino Valley Fire District, City of Colton, City of Loma Linda, City of Redlands, City of Rialto, City of Victorville, Rancho Cucamonga Fire Protection District and San Bernardino County Fire Protection District. Additional Parties may be added upon amendment of the Joint Powers Agreement.
6. **Contract Agency:** An entity that has been sponsored by an existing Member Agency, approved by the Board of Directors according to terms acceptable to CONFIRE.
7. **Initial Membership Cost:** Payment that shall be made by a Contract Agency participating in the EMS Division, as set forth in this Policy.

B. Authority & Purpose

The EMS Division Committee shall meet regularly with the CONFIRE Director and Administrative Committee to provide advice and direction on matters related to the EMS Division, both operationally and administratively.

EMS Division Committee is responsible for all matters relating to the origination and operation of the EMS Division as delegated by the Administrative Committee. Such delegated responsibilities include but are not limited to:

- Establish the initial governance, EMS Division Operational Structure, financing and cost sharing methods of CONFIRE’s EMS Division. Present recommendation to the Administrative Committee and Board of Directors for approval.
- Establish an annual EMS Division Budget for presentation to and approval by the Administrative Committee and Board of Directors with the following priorities:
 - Priority 1 – Contractual obligations & Operational costs for the EMS Division
 - Priority 2 – Build reserves for the EMS Division
 - Priority 3 – System enhancements and system reinvestment
 - Priority 4 – If applicable, repayment of cost contributions by EMS Division Committee Participants or Private Ambulance Partner.
Note: Initial Membership Costs shall not be repaid.
 - Priority 5 – Equitable distribution of unused / unassigned fund balance to the Participants through FRALS agreements. FRALS agreements will be created based upon the ambulance contract between San Bernardino County and CONFIRE.
- Monitor fiscal and operational performance.
- Participate in annual CONFIRE audit.
- Develop policies for the operations and administration of the EMS Division.
- Evaluate need for ongoing governance model changes.
- Evaluate performance of Private Ambulance Partner.

C. Membership

Each Member, or Contract Agency of the EMS Division through MOU, shall be entitled to one (1) seat and one (1) alternate seat on the EMS Division Committee (“Participant”).

Participation on the EMS Division Committee is not mandatory. However, participation is required for those Member and Contract Agencies that intend to invest in the regionally shared EMS delivery System and realize any potential benefits derived from that investment. Each Participant assumes full risk and liability.

Contracting Agencies shall formally declare in writing their intent to participate in the EMS Division no later than December 31, 2022. Any city, district or agency who desires to participate at a later date will not have an opportunity to do so until such time as the JPA seeks contract extension with ICEMA anticipated to be at five years post the date of inception of services, currently anticipated to be in 2029. At that time, said entity shall declare their wishes to participate in the JPA EMS Division which will be considered by the CONFIRE Board of Directors and Administrative Committee.

Initial Membership Cost for a Contract Agency participating in the EMS Division is based on Total Cost divided by Total EMS Division Participants. Examples of EMS Division Initial Membership Costs are the following:

- Consulting Fees
- Legal Fees
- Reserves
- Other Related Fees

The Initial Membership Cost, is due no later than 60 days following the signing of a Memorandum of Understanding to participate as a Contracting Agency no later than February 28, 2023, unless extended by unanimous approval by the EMS Division Committee. The formula below outlines assumed costs for the formal response to San Bernardino County’s Request for Proposals for Ambulance Services, and shall serve as the baseline entry level fee for Contracting Agencies.

Initial Membership costs shall be based on the following formula:

Initial Membership Cost = $\frac{\text{Consulting Fees} + \text{Legal Fees} + \text{Reserves Expended} + \text{Other Related Costs}}{\text{Total Participants}}$

$$\text{Estimated Initial Costs} = \frac{(\$255,372 + 100,000 + 100,000)}{11 \text{ Participants}}$$

Note: The estimated costs assume 11 participants and provides a good faith estimate on the expected costs.

In the event that the Estimated Initial Cost is higher than estimated above, as determined by a formal review by the EMS Committee, the Initial Membership Cost will be increased accordingly. Any additional Initial Membership cost owed by a Contract Agency shall be paid within sixty (60) days.

The following EOAs and the prospective EMS Participant, are listed below:

EOA	General Area	EMS Participant(s) within EOA
1	Rancho Cucamonga, Upland, Mt. Baldy	RCF, BDC
2	Chino, Montclair	CHO, MTC
3	Chino Hills, Ontario	CHO, OTO
4	Fontana, Bloomington, Lytle Creek	BDC
5b	Unincorporated pockets in Rialto	BDC
6	Colton, San Bernardino, Muscoy, Devore	COL, BDC
7	Grand Terrace, Parts of Redlands, Highland, Parts of Colton	BDC, RED, HGH, COL
8	Redlands, Highland, Mentone, Yucaipa, Oak Glen	RED, HGH, BDC, YUC
9	Loma Linda	LOM

11	Waterman Canyon, San Bernardino National Forest Front Country	BDC
12a	Victorville, Adelanto, Apple Valley	VCV, BDC, APP

D. Meetings

Meetings of the EMS Division Committee will be called on an as-needed basis.

1. Quorum

While participation is not mandatory, two thirds of the Participants must be present for a recommendation to be brought forward to the Administrative Committee and/or Board of Directors of CONFIRE.

2. Voting

Each Participant shall cast one (1) vote. In order for the EMS Division Committee to bring forward a recommendation, a majority of the quorum must approve the action.

EXHIBIT B
to CONTRACTING AGENCY AGREEMENT

CONTRIBUTION

Contracting Agency's Contribution "Initial Contribution" and any subsequent Contribution shall be consistent with Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1.**

A. INITIAL MEMBERSHIP COST

1. In exchange for their initial membership Contracting Agency shall pay CONFIRE a sum of:

$$\text{Initial Membership Cost} = \frac{(\$255,372 + 100,000 + 100,000)}{11 \text{ Participants}}$$

TOTAL: \$41,397.45

EXHIBIT C
to CONTRACTING AGENCY AGREEMENT

EFFECTIVE DATE AND TERM

1. This Agreement is effective on January 1, 2023 (“Effective Date”).
2. Unless terminated as set forth below, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2029 (the “Term”).
3. **TERMINATION**

This Agreement shall automatically terminate in the event that CONFIRE and the County of San Bernardino do not enter into a contract for CONFIRE and its independent third party to provide EMS services to include Advanced Life Support and Basic Life Support Ground Ambulance Services, for the EOA’s identified in Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1**.

EXHIBIT D
to CONTRACTING AGENCY AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
2. **ASSIGNMENT AND SUCCESSORS.** Neither Party shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
3. **SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
4. **FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
5. **VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California. The venue of any action or claim brought by any Party to this Agreement shall be the County of San Bernardino.
6. **ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
7. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both Contracting Agency and CONFIRE.
8. **MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contracting Agency.
9. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
10. **AUTHORITY.** The individual executing this Agreement on behalf of Contracting Agency warrants that he/she is authorized to execute the Agreement on behalf of Contracting Agency and that Contracting Agency will be bound by the terms and conditions contained herein.
11. **HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.

12. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

13. **INDEMNIFICATION.**

- A. By CONFIRE. CONFIRE shall indemnify, defend and hold harmless Contracting Agency, and all of its employees, officials, and agents (“Contracting Agency Parties”), from and against any and all claims, demands, suits, judgments, expenses and costs of any and every kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees, insofar as it may legally do so, arising from the negligent or wrongful acts or omissions of CONFIRE’S officers, agents, volunteers or employees (“CONFIRE’s Parties”) arising out of, or in any way attributable to, the performance of this Agreement. CONFIRE shall not be held responsible or liable for any loss, damage, detention or delay caused by strike, lockout, fire, flood, act or civil or military authority, insurrection or riot, or by any other cause which is not foreseeably within its control. CONFIRE’s obligation to defend the Contracting Agency Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and/or costs.
- B. By Contracting Agency. Contracting Agency shall indemnify, defend and hold harmless CONFIRE Parties from and against any and all claims, demands, suits, judgments, expenses and costs of any and every kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees, insofar as it may legally do so, arising from the negligent or wrongful acts or omissions of Contracting Agency Parties arising out of, or in any way attributable to the performance of this Agreement. Contracting Agency shall not be held responsible or liable for any loss, damage, detention or delay caused by strike, lockout, fire, flood, act or civil or military authority, insurrection or riot, or by any other cause which not foreseeably within its control. Contracting Agency’s obligation to defend CONFIRE Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and/or costs.

14. **INSURANCE.**

- A. Each Party shall carry \$1,000,000/\$2,000,000 (occurrence/general and product/completed operations aggregate) of commercial general liability coverage (or participate in a public agency risk pool for such amount) and each Party agrees to give the other, its directors officers, employees, or authorized volunteers insured status under its policy using ISO “occurrence” form CG 00 01 or equivalent and to provide a certificate of insurance and additional insured endorsement. Commercial general liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- B. Each Party shall carry Workers' Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- C. Each Party shall carry Automobile Liability Insurance (or participate in a public agency risk pool for such amount) with coverage at least as broad as ISO Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the equivalent with minimum limits of \$1,000,000 each accident.

15. **ASSUMPTION OF UNFUNDED LIABILITIES ATTRIBUTABLE TO CONTRACTING AGENCY.**

- A. The Parties expressly acknowledge:
- (1) CONFIRE, in providing the Services in this Agreement, will incur otherwise unfunded liabilities, (e.g., continuing obligations to provide for the pensions CONFIRE staff hired to provide service to Contracting Agency) (“Unfunded Liabilities”);
 - (2) The Contribution set forth in the Agreement does not adequately compensate CONFIRE for such Unfunded Liabilities; and

- (3) The Parties intend this Section 15 to ensure that CONFIRE is held harmless from otherwise unfunded liabilities to the extent that those Unfunded Liabilities are attributable to Contracting Agency.
- (4) The Parties do not intend this Section 15 to apply to unfunded liabilities that are solely attributable to an increase in service level provided to all of CONFIRE's member agencies and contracting agencies.
- B. To the furthest extent permitted by applicable law, Contracting Agency shall indemnify CONFIRE from any and all liabilities of any kind, nature, and description directly or indirectly arising out of, connected with, or resulting from Unfunded Liabilities incurred by CONFIRE as a result of CONFIRE providing the Services to Contracting Agency, unless the liabilities are caused wholly by CONFIRE activities of general applicability to all of CONFIRE's member agencies and contracting agencies. By way of illustration and not by limitation, in the event that CONFIRE must hire staff to render the Services to Contracting Agency, and as a result of this Agreement's termination such staff must be laid-off, and as a result CONFIRE incurs unfunded pension liability, then Contracting Agency shall indemnify CONFIRE for such unfunded pension liability.
- C. The provisions of Section 15.A and 15.B shall not be applicable to a Contracting Agency who applies for, and is accepted for, membership status in the CONFIRE joint powers agreement. In such cases, the provisions of the CONFIRE joint powers agreement then in effect shall control all matters relating to unfunded liability.

EXHIBIT E
to CONTRACTING AGENCY AGREEMENT

**BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
CONTRACTING AGENCY AND CONFIRE**

This Business Associate Agreement (“BAA”) is entered into by and between Consolidated Fire Agencies (“Business Associate”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and the City of Ontario (“Covered Entity”), a general law city duly formed and existing under Article XI, Section 7 of the California Constitution. Business Associate and Covered Entity may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

Covered Entity is contracting with Business Associate for the performance of certain services (“Services”), as set forth in the Agreement to which this BAA is attached as Exhibit E;

Covered Entity is a covered entity as defined in 45 C.F.R. § 160.103;

Business Associate is a business associate, as defined in 45 C.F.R. § 160.103, of Covered Entity;

45 C.F.R. § 164.504 requires that covered entities enter into agreements with their business associates that satisfy the requirements of 45 C.F.R. § 164.504(e)(2); and

Business Associate and Covered Entity are both governmental entities for the purposes of 45 C.F.R. § 164.504 (e)(3)(i).

AGREEMENT

1. General Terms and Conditions

The General Terms and Conditions to this BAA are set forth in Appendix 1.

The Parties have executed this Agreement on the dates indicated below. The last of the two dates shall be the “Effective Date” of this BAA.

Consolidated Fire Agencies

City of Ontario

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

**APPENDIX 1 TO EXHIBIT E
to CONTRACTING AGENCY AGREEMENT**

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

- a. Generally. Capitalized terms used within the BAA without definition, including within this Appendix 1, shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act and 45 C.F.R. Part 160 and 164 (“HIPAA and HIPAA Regulations”), and the Health Information Technology for Economic and Clinical Health Act and 45 C.F.R. Part 170 (“HITECH Act and Regulations”), as applicable, unless otherwise defined herein. HIPAA and HIPAA Regulations and HITECH Act and Regulations are collectively referred to herein as “Applicable Law”.
- b. Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA and HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive,

- maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- e. Make available Protected Health Information in a Designated Record Set to Covered Entity or to an individual whose Protected Health Information is maintained by Business Associate, or the individual’s designee, and document and retain the documentation required by 45 CFR 164.530(j), as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526;
- g. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.528;
- h. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining Business Associate’s or Covered Entity’s compliance with HIPAA and HIPAA Regulations.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the Agreement(s).
- b. Business Associate may Use or Disclose Protected Health Information as required by law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity’s Minimum Necessary policies and procedures.

- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

- a. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

V. TERM AND TERMINATION.

- a. Term. This BAA is effective as of the Effective Date and will continue in force until terminated.
- b. Termination for Convenience. Either Party may terminate this BAA at any time, for any reason or for no reason, by giving the other Party at least thirty (30) days' prior written notice.
- c. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

VI. MISCELLANEOUS.

- a. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- b. Public Access and Ownership of Records. Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said records, including the right to secure and

maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.

- c. Minimum Necessary. To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes “minimum necessary” for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. State Privacy Laws. Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Effect on Underlying Arrangement. In the event of any conflict between this BAA and any underlying arrangement between

Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.

- g. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. Governing Law. This BAA shall be construed in accordance with the laws of the State of California.
- i. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. Severability. In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BAA.