

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN CONFIRE AND CARDO CONSULTING, INC.

This agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and Cardo Consulting, Inc. (“Contractor”), a California S Corporation (together, they are referred to as “Parties,” and individually, as a “Party”).

RECITALS

1. CONFIRE is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. CONFIRE is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by CONFIRE.
3. CONFIRE wishes to engage Contractor to provide the services described herein, on a limited term basis due to an unforeseen need, using Contractor’s existing employee.

AGREEMENT

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: Scope of Services
- Exhibit B: Payment
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance
- Exhibit E: Business Associate Agreement

2. EFFECTIVE DATE AND TERM

- a. This Agreement will be effective on January 1, 2024 upon approval by the Administrative Committee and the Consultant’s designated representative (“Effective Date”).

- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) January 1, 2025 (“Initial Term”).

3. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of CONFIRE, and are not entitled to benefits of any kind or nature normally provided employees of CONFIRE and/or to which CONFIRE’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor’s employees.

4. SCOPE OF SERVICES

Contractor shall furnish to CONFIRE the services described in Exhibit A (“Services”). Services shall be provided by Ray Gayk. Substitution by Contractor of another employee to provide Services will only occur with the written concurrence of CONFIRE.

5. PAYMENT

Contractor shall receive payment, for Services satisfactorily rendered pursuant to this Agreement, as specified in Exhibit B (“Payment”). In no event shall the total amount paid for the Services under this Agreement during the Initial Term of the Agreement exceed, \$372,320, without the written approval of the Parties in advance. Periodic payment shall be made within 30 days of a monthly invoice.

6. GENERAL TERMS AND CONDITIONS

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

7. INSURANCE

Exhibit D, entitled Insurance, is attached, and incorporated by reference.

8. HIPAA BUSINESS ASSOCIATE AGREEMENT

The "Business Associate Agreement" is set forth in Exhibit E.

9. 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, Interim Director
1743 Miro Way
Rialto, CA 92376

To Contractor:
Cardo Consulting, Inc.
Attn: Ray Gayk
30687 San Pasqual Rd.
Temecula, CA 92591

10. LIMITATION OF LIABILITY

Other than as provided in this Agreement, CONFIRE's financial obligations under this Agreement shall be limited to the payment provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall CONFIRE be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

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

CONSOLIDATED FIRE AGENCIES

CARDO CONSULTING, INC.

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Ray Gayk

Its: Interim Director

Its: Consultant

EXHIBIT A
to AGREEMENT FOR SERVICES

SCOPE OF SERVICES

Contractor, by and through Ray Gayk shall include:

1. Serve as the Incident Commander for the CONFIRE EMS Division Implementation Team.
 - a. Work with CONFIRE Staff and Implementation Team members to ensure all aspects of the County Ground Ambulance Contract (“Contract”) are fulfilled prior to implementation on October 1, 2024.
 - b. Coordinate and work with Priority Ambulance staff on all aspects of their obligations related to the requirements in the Contract, to ensure all obligations agreement prior to October 1, 2024.
 - c. Perform all duties and functions related to serving as the Incident Commander for the CONFIRE EMS Division Implementation Team.

EXHIBIT B
to AGREEMENT FOR SERVICES

COMPENSATION

A. Compensation

Not to exceed the sum of \$372,320 for the Initial Term through December 31, 2024, or annually.

\$179 (hourly rate) based on a 40-hour work week.

B. Payment

a. Schedule

- (1) To be billed in monthly installments
- (2) The Contractor will invoice CONFIRE in the amount that reflects actual hours provided for the service. Contractor shall provide applicable time sheets or other records used to develop the invoice available upon request.

b. Process

Payment shall be made within thirty (30) calendar days after the Contractor submits an invoice to CONFIRE for Services actually completed.

EXHIBIT C
to AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public agencies.
2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to CONFIRE and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by CONFIRE as a basis for such services.
3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of CONFIRE and cannot be used without CONFIRE's express written permission. CONFIRE shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of CONFIRE. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
4. **TERMINATION.**
 - a. **Without Cause by CONFIRE or Contractor.** CONFIRE and Contractor may, at any time, with or without reason, terminate this Agreement and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by CONFIRE or Contractor shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or CONFIRE or no later than three (3) days after the day of mailing by the terminating party, whichever is sooner.
 - b. **With Cause by CONFIRE or Contractor.** CONFIRE or Contractor may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by either Party; or
 - (2) any act by Contractor or CONFIRE exposing the other party to liability to others for personal injury or property damage; or
 - (3) A party is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of party's insolvency.
5. **INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**
 - a. **Generally.** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:
 - (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; or
 - (2) arises out of, pertains to, or relates to the performance of this Agreement
 - b. **Indemnified Parties, Defined.** The "Indemnified Parties" are CONFIRE, its officers, consultants, employees, and trustees.
 - c. **Claim, Defined.** A "Claim" consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death, except that:
 - (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a "Claim" shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful

misconduct of the Contractor; and

- (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a “Claim” shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties or defects in design furnished by those persons.
- d. CONFIRE may accept or reject legal counsel Contractor proposes to defend CONFIRE with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend CONFIRE at Contractor’s expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.
- 6. INSURANCE.** The Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.
- 7. CONFIDENTIALITY.** The Contractor and the Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services (“Confidential Information”), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of CONFIRE, except as required by law or as necessary for Contractor’s agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor’s agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to CONFIRE notice(s) of the legal process”, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that CONFIRE may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.
- 8. CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify CONFIRE of this information.
- 9. APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon CONFIRE until CONFIRE’s legislative body has approved all the terms and conditions contained herein.
- 10. DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
- 11. COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of CONFIRE and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify CONFIRE, in writing, and, at the sole option of CONFIRE, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor’s receipt of a written termination notice from CONFIRE. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying CONFIRE of the violation, Contractor shall bear all costs arising therefrom.
- 12. PERMITS/LICENSES.** Contractor and all Contractor’s employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 13. SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from CONFIRE the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 14. ANTI-DISCRIMINATION.** It is the policy of CONFIRE that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental

disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

- 15. AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit CONFIRE, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that CONFIRE shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 16. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by CONFIRE.
- 17. 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.

- 18. ASSIGNMENT AND SUCCESSORS.** Neither CONFIRE nor Contractor 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.
- 19. 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.
- 20. 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.
- 21. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which CONFIRE's principal administrative office is located.
- 22. 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.
- 23. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- 24. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between CONFIRE and Contractor 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 CONFIRE and Contractor.
- 25. MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contractor.
- 26. 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.

27. AUTHORITY. The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.

28. 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.

29. 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.

**EXHIBIT D
to AGREEMENT FOR SERVICES**

INSURANCE

1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
 - 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, CONFIRE, and the contracting agencies and member agencies of CONFIRE from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
 - 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with CONFIRE the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
 - 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	1,000,000 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	Waived Waived
Professional Liability	1,000,000
Workers Compensation	Waived
Employer's Liability	Waived

2. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to CONFIRE and approved by CONFIRE. Certificates and insurance policies shall include the following:
 - 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CONFIRE, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 2.3. An endorsement stating that CONFIRE and contracting agencies and member agencies of CONFIRE, and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional

Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by CONFIRE.

- 2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**EXHIBIT E
to AGREEMENT FOR SERVICES**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between Cardo Consulting, Inc. ("Business Associate"), a California S Corporation and the Consolidated Fire Agencies ("Covered Entity"), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq.

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 business associate of 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), (e)(3), or (e)(5); and

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

Cardo Consulting, Inc.

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Ray Gayk

Its: Imterim Director

Its: Consultant

**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, 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 § 7920.000 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

been included herein, unless to do so would frustrate the intent and purpose of

- 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

