

**CONSOLIDATED FIRE AGENCIES
CONTRACTING AGENCY AGREEMENT
(City of Montclair Fire Department)**

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 Montclair Fire Department (“Contracting Agency”), a fire protection district duly authorized and existing under Health & Safety Code § 13800 et seq. 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: Scope of Services
 - Appendix 1 to Exhibit A: Optional Seat Based Products Available
- Exhibit B: Compensation
- Exhibit C: Effective Date and Term
- Exhibit D: General Terms and Conditions
- Exhibit E: HIPAA Business Associate Agreement
 - Appendix 1 to Exhibit E: General Terms and Conditions to HIPAA Business Associate Agreement

2. INDEPENDENT CONTRACTOR

- a. CONFIRE, in the performance of this Agreement, is and shall act as an independent contractor.
- b. 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.
- c. 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. **SCOPE OF SERVICES**

CONFIRE shall furnish to the Contracting Agency the services described in Exhibit A (“Services”).

4. **COMPENSATION**

CONFIRE shall receive payment, for Services rendered pursuant to this Agreement, as specified in Exhibit B (“Compensation”).

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,
Interim Executive Director
1743 Miro Way
Rialto, CA 92376

To Contracting Agency:

City of Montclair
Attn: Ryon Dierck, Fire Chief
5111 Benito St.
Montclair, CA 91763

8. **HIPPA BUSINESS ASSOCIATE AGREEMENT**

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

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

Consolidated Fire Agencies

City of Montclair Fire Department

Date: _____, 2026

Date: _____, 2026

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Terisa Bonito

Its: Interim Executive Director

Its: President

EXHIBIT A
to CONTRACTING AGENCY AGREEMENT

SCOPE OF SERVICES

1. CONFIRE shall provide the following services to the Contracting Agency (“Services”):
 - a. Answer emergency calls transferred to CONFIRE by the Contracting Agency’s primary public-safety answering point (PSAP) or other authorized reporting mechanisms.
 - (1) For emergency medical calls, CONFIRE shall utilize an accredited Emergency Medical Dispatch (EMD) protocol. This also includes the use of an Emergency Care Nurse System (ECNS).
 - b. Provide emergency fire, rescue, and ambulance dispatch services to Contracting Agency on a twenty-four (24) hours per day basis, seven (7) days a week.
 - c. Upon receiving an emergency call, alert Contracting Agency’s appropriate station, personnel, and equipment, identifying the appropriate equipment.
 - (1) The primary modes of alerting are: the County of San Bernardino’s Public Safety Radio System , voice delivered over the Public Safety Radio System, and an IP-based data stream delivered over a circuit that must be received and broadcast in stations by Contracting Agency-owned equipment.
 - d. Record and retain audio recordings of requests for emergency service and the primary radio traffic associated with the emergency incident.
 - (1) Records retained in compliance with CONFIRE Board approved records retention policy
 - e. Record and retain incident records stored in CONFIRE’s computer aided dispatch (CAD) system, which includes information related to the incident that includes reported times, location, nature of emergency, call-back number, units responding to the incident, and any other data recorded electronically during the incident.
 - (1) Records retained in compliance with CONFIRE Board approved records retention policy
 - f. Respond to Public Records Requests initiated by the Contracting Agency or the public for the above-mentioned records in compliance with the California Public Records Act and other applicable statutes.
 - g. As deemed appropriate by CONFIRE, provide trained and certified staff, supervision, and management personnel to support the services CONFIRE provides.

- h. Provide 40-hour per week Duty Chief coverage for the Valley Dispatch Center.
- i. Provide, on an ongoing basis, Geofile maintenance services for the purpose of maintaining the accuracy of the geographic information in the computer-aided dispatch system.
 - (1) This may include updating the Street Network, modifying response areas and various overlays (ambulance, mutual threat areas etc), and providing other Geofile services necessary to the dispatch services described above.
- j. Make available to the Contracting Agency the Agency Fire Response Map.
 - (1) This is an electronic map of the Contracting Agency's immediate area of responsibility and adjacent jurisdictions. The map references (pages) will be the only map referenced in the dispatching process.
 - (2) CONFIRE will make these electronic maps available to agencies through electronic means.
 - (3) Agencies may print maps and created hard copy map books at their own expense.
- k. Provide Contracting Agency use and access to the following software programs:

Product/System	Comment
*Central Square - Visinet	CAD Records
*Image Trend - EPCR w/ Firstwatch Integration	EMS/Fire reporting software
*Pulsepoint	Public incident notification application
*SolarWinds	CONFIRE MIS Help Desk
*Civic Plus Next Request	Online Public Records Request (PRA) system
*Active 911 (agency pays their own subscription)	Responder notification application
**Incident Qualification System (IQS)	Personnel Certs & Quals database
** Firstwatch (basic package)	Agency response reporting data platform
** Tablet Command (end user license and required modules)	Mobile Data Device for unit location, status and response information

*Universal cost basis (per Exhibit B:A-1)
 ** Seat-based cost basis (per Exhibit B:A-1)

- l. Provide all equipment and support reasonably necessary for CONFIRE to deliver the services described in 1.a. through 1.j. above.

2. CONFIRE offers additional services/products on a seat-based cost model. These are listed in Appendix 1 to Exhibit A of this agreement.
 - a. The Contracting Agency shall indicate which of the services/products listed in Appendix 1 of this Exhibit it will utilize and the quantity of each.
 - b. Pricing for these services/products varies and is available upon request.
3. In receiving the Services, Contracting Agency shall do the following:
 - a. To the extent that such policies and procedures are not inconsistent with the policies and procedures of Contracting Agency, Contracting Agency shall comply with the policies and procedures of CONFIRE.
 - (1) The policies and procedures of CONFIRE include, by way of illustration and not by limitation, all information technology security policies applicable to the Services.
 - (2) CONFIRE shall provide Contracting Agency access to CONFIRE's existing policies and procedures upon execution of this Agreement and any updates as they are updated.
 - b. Comply with the latest technology directives issued by CONFIRE.
 - (1) The directives include, by way of illustration and not by limitation, the directive mandating the provision of Automated Vehicle Location (AVL) services for all response vehicles through approved mobile incident command and response platform.
 - (2) The Contracting Agency shall be solely responsible for all costs associated with the procurement, licensing, cellular connectivity, deployment, and ongoing support of the required mobile incident command and response platform and agency mobile devices necessary to facilitate AVL functionality.
 - c. Acquire and maintain station alerting equipment which meets adopted CONFIRE standards and specifications.
 - d. The Contracting Agency shall be responsible for all costs associated with the purchase, licensing, installation, and ongoing replacement of customer-premise equipment required to support service delivery, in accordance with CONFIRE's Equipment Replacement Schedule Policy and applicable cost recovery model.
 - e. The Contracting Agency shall utilize the CONFIRE online Public Records Request system for agency requests for such information. The Contracting Agency shall also provide a link on its Agency website for the public to access the system to submit Public Records Requests.

4. The Contracting Agency is authorized to use CONFIRE's radio talkgroups and frequencies by virtue of this Agreement. Authorization for use of these frequencies and talkgroups shall terminate upon termination of this Agreement. The intent of the Parties is to keep primary dispatching and communications on existing CONFIRE JPA frequencies and talkgroups.
 - a. Maintain all radio and pager frequencies as required by CONFIRE.

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

OPTIONAL SEAT-BASED PRODUCTS AVAILABLE

Product Name	Comments
ESRI Enterprise	Agency-wide geospatial data platform (maps, analytics)
ESRI Contributor	Interactive map application
ESRI Creator	Map, spatial analysis creator application
ESRI Mobile	Map-based field applications
ESRI Viewer	Browser-based mapping tool
First Due	Pre-planning platform
Firstwatch-Perform Plus	Granular Analysis Capability
Firstwatch-First Pass	EPCR QI Module
Firstwatch-FOAM	Accreditation Analysis
Kronos Cloud	Staffing software (Telestaff)
Twilio	Text module for Kronos
Smart Sheet	Project Management Software
TC End-User Managed	Tablet Command Incident management Module
TC Staff Integration	Tablet Command Telestaff Integration
West Net Agency	Station Alerting Platform Support
West Net RIC/MCU	Station Alerting Licenses

Seat-based cost basis (per Exhibit B:A-1)

EXHIBIT B
to CONTRACTING AGENCY AGREEMENT

COMPENSATION

Compensation to be paid as follows:

A. FEES FOR SERVICES:

1. In exchange for the Services set forth in **Exhibit A**, paragraph 1, commencing with the 2026-27 Fiscal Year, Contracting Agency shall pay CONFIRE a sum identified by CONFIRE through its annual budget process, which shall be limited to Contracting Agency's proportionate share of CONFIRE's projected operating costs. CONFIRE shall provide written notice of this sum to Contracting Agency, delivered no later than May 30 of the preceding Fiscal Year. (**Attachment A**)
 - a. Contracting Agency's proportionate share of CONFIRE's projected operating costs shall be computed as follows:
 - (1) All incidents dispatched by CONFIRE for Contracting Agency within its jurisdictional area during the preceding calendar year; divided by
 - (2) All incidents dispatched by CONFIRE during the preceding calendar year; results in
 - (3) Contracting Agency's percentage of the total number of incidents dispatched.
 - b. This formula does not include direct costs incurred for 'seat' or inventory-based items such as software licenses, voice and data circuit charges, cellular device charges etc. These costs, including support costs, are passed-through to each agency and are not subject to the cost per call formula.
2. Invoices are issued on a quarterly basis.
3. Payment is due within thirty (30) days upon receipt of the invoice.

B. ADDITIONAL FEES:

1. Contracting Agency shall also pay an annual premium.
 - a. This premium shall be paid annually and shall be five percent (5%) of Contracting Agency's annual fee for services (see Paragraph A.1. above).
 - b. Dollars paid pursuant to this provision shall:

- (1) Be collected for and held in CONFIRE's Term Benefit Reserve Fund (5011).
 - (2) Be available to the Contracting Agency for use to offset membership costs should the Contracting Agency seek such status.
 - (3) If not used to offset membership costs, remain in this fund for use by CONFIRE as deemed appropriate.
- c. For 2026-27, and each succeeding Fiscal Year: This annual premium will be assessed and paid, in the first quarter of each fiscal year. The amount will be included in the annual written notice referenced in Section A.1 of Exhibit B.
2. In the event that CONFIRE agrees to provide Contracting Agency with Additional Services, Contracting Agency shall pay CONFIRE for those Additional Services at the rate agreed by the Parties.
3. Contracting Agency shall pay directly to the appropriate telephone company(ies) all costs of telephone service to the Contracting Agency, and any foreign exchange telephone service, utilized for emergency numbers to CONFIRE. The Contracting Agency has the option to use the countywide emergency number (909-822-8071 or 800-340-9110) at no additional charge as a backup to the Emergency 9-1-1 System.
4. Contracting Agency shall pay CONFIRE the equipment replacement costs assessed by CONFIRE for damage to CONFIRE issued equipment caused by Contracting Agency's use or misuse of said CONFIRE issued equipment, which shall be added to Contracting Agency's payment set forth in Section A of this Exhibit B.
5. In the event that CONFIRE incurs additional costs or expenses as a result of Contracting Agency's delay or failure in complying with the terms and conditions of this Agreement, Contracting Agency shall pay CONFIRE the amount of CONFIRE's additional costs or expenses so resulting.
6. In the event of temporary complete disruption of service by CONFIRE, Contracting Agency has the right to assume dispatch functions at its discretion. As used herein, "temporary" means a period of time not to exceed twenty-four (24) hours from the time such service disruption occurs. If disruption occurs beyond twenty-four (24) hours, Contracting Agency shall not be charged for those days during the complete disruption period of time. A complete disruption shall mean all communication services by CONFIRE, including all backup methods, systems and protocols have become unavailable.

EXHIBIT C
to CONTRACTING AGENCY AGREEMENT

EFFECTIVE DATE AND TERM

1. This Agreement is effective on July 1, 2026 (“Effective Date”).
2. Unless terminated or otherwise cancelled in accordance with this Agreement, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2027 (the “Term”).
3. At anytime during the term of this agreement the Contracting Agency may submit to CONFIRE (in accordance with CONFIRE policies and regulations) an application to become a party to the CONFIRE Joint Powers Agreement.
4. Upon admission as a member of CONFIRE, the provisions of the CONFIRE Joint Powers Agreement and any bylaws, policies, or other instruments promulgated thereunder will govern the relationship between the parties of that CONFIRE Joint Powers Agreement and this Agreement will terminate.

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 to Contracting Agency, 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 Compensation 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 Montclair Fire Department (“Covered Entity”), a fire protection district duly authorized and existing under Health & Safety Code § 13800 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 D;

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 Montclair

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: _____

Its: Interim Executive Director

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.