



County of San Bernardino
F A S
STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	FAS Vendor Code		SC	Dept. MCR	A	Contract Number	
<input type="checkbox"/> Change							
<input type="checkbox"/> Cancel							
ePro Vendor Number 00000349					ePro Contract Number 135111		
County Department Arrowhead Regional Medical Center				Dept. MCR	Orgn. MCR	Contractor's License No.	
County Department Contract Representative Patrick Petre, Director				Telephone (909)580-6150		Total Contract Amount \$870,000 aggregate	
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other:							
If not encumbered or revenue contract type, provide reason:							
Commodity Code 948-12		Contract Start Date 4/23/2013	Contract End Date 4/22/2016	Original Amount \$870,000	Amendment Amount		
Fund EAD	Dept. MCR	Organization MCR	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$	
Project Name Non-emergent Transportation			Estimated Payment Total by Fiscal Year				
			FY	Amount	I/D	FY	Amount
			12/13	\$72,500		15/16	\$217,500
			13/14	\$290,000			
			14/15	\$290,000			

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name
 GW Transport, Inc.
 Address
 11957 Bighorn Peak Court
 Rancho Cucamonga, CA 91739
 Telephone (909) 945-2130 Federal ID No. or Social Security No. 26-3059057

hereinafter called Contractor

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino desires to provide non-emergency medical transportation by wheelchair and gurney van; and

WHEREAS, the County conducted a competitive process to find Contractor(s) to provide these services, and

WHEREAS, the County finds Contractor qualified to provide non-emergency medical transportation by wheelchair and gurney van; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

Auditor-Controller/Treasurer Tax Collector Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

I. DEFINITIONS

- A. Acute Rehabilitation (Acute Rehab) – A facility which provides intense rehabilitation services and nursing care. To qualify for acute rehab, a patient must be able to participate in at least three hours of various forms of therapy including physical therapy, occupational and/or speech therapy.
- B. Assisted Living Homes - Residents have as much independence as they want with the knowledge that personal care and support services are available if they need them. Assisted living communities are designed to provide residents with assistance with basic ADLs (activities of daily living) such as bathing, grooming, dressing, and more.
- C. Centers for Medicare and Medicaid Services-1500 (CMS-1500) Form – The form CMS-1500 is the standard paper claim form used by health care professionals and suppliers to bill for services and/or equipment provided.
- D. Contract Transaction Charge (CTC) – The Charge Contractor agrees to remit in the amount of one percent (1%) of all sales (products and/or services) occurring under this contract, not including taxes capped at 1% of \$100,000 or \$1,000 per contract.
- E. Lanterman-Petris Short (LPS) Act – California Welfare & Institution Code Section 5000 signed in 1972 ends the involuntary inappropriate, indefinite, and involuntary commitment of mentally disordered persons, people with developmental disabilities, and persons impaired by chronic alcoholism, and to eliminate legal disabilities.
- F. RX and Medical Justification Requirement for Non-Emergency Transportation Form – The form Medical Center staff will provide to the Contractor in order to confirm the transport request and information regarding the financial responsibility, insurance or other medical payment coverage.
- G. Rx & Medical Justification Requirement for Non-Emergent Behavioral Health Transportation – The form Medical Center and/or Behavioral Health Staff will provide to the Contract in order to confirm the transport request and information regarding the financial responsibility, insurance or other medical payment coverage.
- H. Skilled Nursing Facility (SNF) – A facility (Sub-acute facilities, nursing homes, or convalescent homes), which provides a low intensity skilled care in the form of nursing services or rehabilitation to chronically ill patients. Patients who may be transferred from an Acute Hospital to a SNF include patients who require ongoing antibiotic therapy or low levels (0.5-1 hour) of rehabilitation therapy such as physical and/or occupational therapy.

II. CONTRACTOR RESPONSIBILITIES

The Contractor shall:

- A. Respond to all calls and/or requests for non-emergency transportation within 30 minutes, by an adequate number of staff, available 24 hours a day, 7 days a week, and advise Medical Center as to availability of transportation van and anticipated time of service.
- B. Guarantee a maximum of a two-hour response from time of receiving a call for both the Medical Center and Behavior Health Unit (BHU) transport to time of transport.
- C. Assume overall responsibility for billing third-party payors, including but not limited to, share of cost for Medicare, Medi-Cal and other Health Maintenance Organizations (HMO) or Prospective Payment Organizations (PPO). The Medical Center is an excluded entity for the Benefits Identification Card

(BIC) purposes relative to claims submission. Therefore, Contractor is responsible for obtaining the appropriate BIC number for billing and claims purposes.

- D. Where Medical Center is designated as payor, bill Medical Center for patient transportation services according to the fee schedule in Attachment A, on a Centers for Medicare and Medicaid 1500 form.
- E. Provide a billing system that will allow adequate tracking of Medical Center Departments utilizing transportation services, including rate, date of service, address of transport, name and location of Department Individual authorizing transport services.
- F. Provide a notification system that will provide sufficient tracking of patient transport.
- G. Be responsible for all service and labor related expenses for all vehicles and personnel.
- H. Provide non-emergent transportation for the Medical Center Behavioral Health Units (BHU) patients as referred by Medical Center and/or BHU to a Lanterman-Petris Short (LPS) designated facility for inpatient hospitalization for acute psychiatric care, or to patient's home as directed by Medical Center and/or BHU.
- I. Provide non-emergent transportation for the Medical Center patients, as referred by Medical Center, to a lower level of care (Skilled Nursing Facility, acute rehabilitation, assisted living, board and care) for continuum of care, or to patients' homes as directed by Medical Center.
- J. Transport no more than one patient at a time.
- K. Provide that two personnel are present for all the Medical Center gurney and BHU patient transports.
- L. Require that all drivers have a valid driver's license, receive training and certification in Basic Life Support (BLS) issued by the American Heart Association and training in Management of Aggressive Behavior (MAB), including restraints training and Patient Rights training. Provide proof of said requirements to the Medical Center and BHU as requested.
- M. Contractors will provide to drivers ready access to appropriate communication tools at Contractor's expense.
- N. Provide to the Medical Center and BHU copies of Contractor's policies and procedures pertaining to transportation of patients to including, but not limited to:
 - 1. Mechanical problems while en route with a patient.
 - 2. Patient with a medical or psychiatric emergency.
 - 3. Automobile accident

III. GENERAL CONTRACT REQUIREMENTS

A. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

B. Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C. Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

D. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

E. Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is no available.

F. Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

G. Subcontracting

Contractor agrees not to enter into any subcontracting agreements for work contemplated under the Contract without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's Contract.

H. Agreement Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

I. Agreement Modification

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

J. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

K. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

L. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

M. Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

N. Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

O. Notification Regarding Performance

In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under the Contract, the Contractor shall notify the County within one (1) working day, in writing and by telephone.

P. Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

Q. Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

R. Choice of Law

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

S. Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

T. Notification Regarding Performance

In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the Contractor shall notify the County within one (1) working day, in writing and by telephone.

U. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This

provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

V. Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

W. Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

X. Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

Y. Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

Z. Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV–Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

AA. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

BB. Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

CC. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

1. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
2. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
3. Shall not sell, offer, or provide alcohol or a drug to another person.

This shall not be applicable to a Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

DD. Employment Discrimination

During the term of the Contract, Contractor shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, age, political affiliation, disability or sexual orientation. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

EE. Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

FF. Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in

investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

GG. Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

HH. Health Insurance Portability and Accountability Act (HIPAA)

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) otherwise defined as Protected Health Information (PHI) or electronic Protected Health Information (ePHI). The HIPAA Privacy and Security Regulations specify requirements with respect to contracts between an entity covered under the HIPAA Privacy and Security Regulations and its Business Associates. A Business Associate is defined as a party that performs certain services on behalf of, or provides certain services for, a Covered Entity and, in conjunction therewith, gains access to IIHI, or PHI or ePHI. Therefore, in accordance with the HIPAA Privacy and Security Regulations, Contractor shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as Appendix I.

IV. COUNTY RESPONSIBILITIES

The County shall:

- A. Contact Contractor with requests for non-emergency patient transportation.
- B. Prior to the time of the transport of the patient, or as soon thereafter as reasonably possible, supply Contractor with a completed order form for medical transportation, a blank copy of which is attached as Attachment B-1 for medical Center transports and Attachment B-2 for BHU transports. The order form shall confirm the transport request and provide information regarding financial responsibility, insurance or other medical payment coverage, to the extent permitted by law, for Contractor to bill patients and/or third party payors.
- C. Compensate the Contractor for non-emergent transportation of patients in accordance with provisions of Section V of this Contract.
- D. Monitor and evaluate the performance of the Contractor in meeting the terms of the Contract and the quality and effectiveness of services provided based on criteria determined by the County.. County personnel shall monitor the performance of the Contractor annually, or as deemed necessary by the County.

V. FISCAL PROVISIONS

- A. Reimbursement for invoices shall be based on the mutually agreed upon Fee Schedule (Attachment A).
- B. Contractor will provide invoices to the Medical Center. Payment to the Contractor will be due and payable within 60 days of the date on the invoice.
- C. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- D. Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- E. Contractor agrees to remit a Contract Transaction Charge (CTC) in the amount of one percent (1%) of all sales (products and/or services) occurring under this contract, not including taxes, capped at 1% of \$100,000 or \$1,000 per contract. Contractor agrees not to assess the transaction charge in the form of a line item in their invoices; rather it will include the CTC in its unit prices for all products and/or services available under the contract. The CTC shall be remitted to the County Purchasing Department at 777 E. Rialto Avenue, San Bernardino, CA 92415 no later than thirty (30) calendar days following the end of the calendar quarter in which products and/or service under the contract were paid. At the end of each calendar quarter or on the termination date of the contract, Contractor will calculate the CTC owed to County by multiplying the dollar amount of sales (products and/or services) paid by County in that calendar quarter by 1%. In no event shall Contractor remit to County more than \$1,000 in total CTC payments due under the contract. Calendar quarters shall include the months of January through March, April through June, July through September, and October through December. Contractor's obligation to remit the CTC survives termination of the contract. Upon termination of the contract, Contractor shall remit any outstanding CTC payments due to County within thirty (30) calendar days following the latter of: 1) termination of contract or, 2) final payment by County (if applicable). Contractor's failure to remit the CTC in a timely manner may result in the County exercising any recourse available under the contract or as provided for by law.
- F. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- G. County is not liable for the payment of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless County would otherwise be liable for the payment of such taxes in the course of its normal business operations.

VI. INDEMNIFICATION AND INSURANCE REQUIREMENTS

- A. Indemnification
The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever,

including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

B. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

C. Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

D. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

E. Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

F. Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

H. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

I. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

J. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

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

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

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

1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

3. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

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

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

4. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
5. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

VII. RIGHT TO MONITOR AND AUDIT

- A. The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

- B. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

VIII. AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING (ARRA)

A. Use of ARRA funds and requirements

This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

B. Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

C. Whistleblower Protection

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

IX. CORRECTION OF PERFORMANCE DEFICIENCIES

- A. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- B. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
1. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 2. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 3. Withhold funds pending duration of the breach; and/or
 4. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "2" of this paragraph; and/or
 5. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

X. TERM OF CONTRACT

This Contract is effective as of April 22, 2016 but may be terminated earlier in accordance with provisions of this Contract. The Contract term may be extended for two additional one-year periods by mutual agreement of the parties. The Director of the Medical Center is authorized to initiate the termination on behalf of the County.

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

XI. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino
Arrowhead Regional Medical Center
400 North Pepper Avenue
Colton, CA 92324
Attn: Director*

*GW Transport Inc.
11957 Bighorn Peak Court
Rancho Cucamonga, CA 91739
Attn: Executive Director*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

XII. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

► _____
Janice Rutherford, Chair, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

GW Transport Inc.
(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 11957 Bighorn Peak Court
Rancho Cucamonga, CA 91739

Approved as to Legal Form

► _____
Frank Salazar, County Counsel

Date _____

Reviewed by Contract Compliance

► _____

Date _____

Presented to BOS for Signature

► _____
Patrick Petre, Director

Date _____

**ARROWHEAD REGIONAL MEDICAL CENTER
NON-EMERGENT MEDICAL TRANSPORTATION FEE SCHEDULE**

DESCRIPTION	RATE
Wheelchair/Ambulatory (one way)	
Transport (within 15 mile radius)	\$57.00
After Hours (5:00 pm- 8:00 am, within 15 mile radius)	\$57.00
Weekend/Holiday (within 15 mile radius)	\$57.00
After Hours (5:00 pm – 8:00 am, outside 15 mile radius)	*\$57.00
Weekend/Holiday (outside 15 mile radius)	*\$57.00
Waiting Time (over 15 min, per 15 min)**	\$15.00
Mileage (outside 15 mile radius)~	\$2.00
Oxygen (per use up to 8 LPM)	No charge
Gurney (one way, requires 2 attendants)	
Transport (within 15 mile radius)	\$145.00
After Hours (5:00 pm- 8:00 am, within 15 mile radius)	\$145.00
Weekend/Holiday (within 15 mile radius)	\$145.00
After Hours (5:00 pm – 8:00 am, outside 15 mile radius)	*\$145.00
Weekend/Holiday (outside 15 mile radius)	*\$145.00
Waiting Time (over 15 min, per 15 min)**	\$20.00
Mileage (outside 15 mile radius)~	\$3.50
Oxygen (per use up to 8 LPM)	No charge
Shuttle Car (one way)	
Transport (within 15 mile radius)	\$40.00
After Hours (5:00 pm- 8:00 am, within 15 mile radius)	\$40.00
Weekend/Holiday (within 15 mile radius)	\$40.00
After Hours (5:00 pm – 8:00 am, outside 15 mile radius)	*40.00
Weekend/Holiday (outside 15 mile radius)	*40.00
Waiting Time (over 15 min, per 15 min)**	\$15.00
Mileage (outside 15 mile radius)~	\$2.00

*Rate plus mileage

** Starts when staff arrives at the patient's room

~ Determined by Mileage Chart



SW use only

RX AND MEDICAL JUSTIFICATION REQUIREMENT FOR NON-EMERGENCY TRANSPORTATION

Circle one:
WHEELCHAIR/GURNEY VAN

Date/Time of Transport _____
(Transportation Provider)

Patient's Name _____ Medi-Cal ID # _____

Transported From _____ Transported To _____

Diagnosis specifically related to this visit and medical purpose of visit:

The code for the mode of transportation: (a) wheelchair van; (b) gurney or litter van; (c) ambulance.

What assistive device does the patient use, if any?

The specific physical or mental limitation(s) that preclude the patient's ability to ambulate without assistance or to be transported by private or public conveyance or physical or mental limitation(s) that require prone or supine position and presence of an attendant:

The medical justification for both the frequency and duration of trips requested;

The treatments plan goals or expected outcomes of the prescribed visits: (Note: If this is a reauthorization TAR, please indicate why original goals were not reached and new goals if any).

Physician's Signature: _____ Date: _____

California License #: _____

Physician's Name and Address: (PLEASE PRINT CLEARLY) _____

This document contains information that is privileged, confidential, and prohibited from redisclosure under applicable state and federal laws. Obtaining, copying, or distributing protected health information to anyone other than the intended recipient is strictly prohibited by law. If you receive this transmission in error, please notify the sender immediately by phone at 909-580-1080, dispose of the confidential information in a secure manner, or destroy the information

SW use only # _____



RX & MEDICAL JUSTIFICATION FOR NON-EMERGENT BEHAVIORAL HEALTH TRANSPORTATION

Date/Time of Transport: _____ Insurance ID: _____

Patient Name: _____ Height ____/____ Weight _____ lbs

Transport From (Check one) BH Triage BH Inpatient Unit _____

Transport To: _____ Accepting MD _____

Diagnosis specifically related to this visit: _____

Check one as to patient status: 5150 5250 Other: _____ Voluntary (specify reason for hospitalization): _____ Flight RiskPatient uses assistive device/s: No Yes, specify _____

Specify if physical or mental limitation/s preclude patient's to ability to ambulate without assistance or to be transported by private or public conveyance or presence of physical or mental limitations/s that require prone or supine position and presence of attendance.

Physician to Complete:

Physician Name: _____ Signature: _____

California License #: _____ Address: 400 N. Pepper Ave. Colton, CA 92324

ARMC Behavioral Health
Tel: (909) 580 2814
Fax: (909) 580 2809

Place patient label here

This document contains information that is privileged, confidential, and prohibited from re-disclosure under applicable state and federal laws. Obtaining, copying, or distributing protected health information to anyone other than the intended recipient is strictly prohibited by law. If you receive this transmission in error, please notify the sender immediately by phone at 909-580-2814, dispose of the confidential information in a secure manner, or destroy the information.

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, CONTRACTOR, hereinafter referred to as BUSINESS ASSOCIATE, may use, access or disclose Protected Health Information to perform functions, activities or services for or on behalf of the COUNTY OF SAN BERNARDINO, hereinafter referred to as the COVERED ENTITY, as specified in this Agreement and the attached Contract, which this agreement supplements and is made part of, provided such use, access or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), 42 United States Code (USC) 1320d et seq., and its implementing regulations, including but not limited to, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164, hereinafter referred to as the Privacy and Security Rules and patient confidentiality regulations, including but not limited to, California Civil Code 56 – 56.16, 56.20, 56.36, and Health and Safety Codes 1280.1, 1280.3, 1280.15, 130200 and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the "HITECH Act") and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

I. Definitions.

- a. "Breach" means the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), CA and/or Civil Code 56.36 which compromises the security or privacy of the Protected Health Information. For the purposes of HITECH, a breach shall not include:
 1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
 2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
 3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. "Business Associate" means with respect to a Covered Entity, a person who:
 1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity performs or assists in the performance of :
 - (a) a function or activity involving the use or disclosure of Personally Identifiable Health Information, including claims processing or administration, data analysis, , utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
 - (b) any other function or activity regulated by the HIPAA Privacy or HIPAA Security Regulations; or
 2. Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data Aggregation, management, administrative, accreditation or financial services to or for such Covered Entity where the provision of the service involves the disclosure of Personally Identifiable Health Information from such Covered Entity to the person.
- c. "Patient/Client" means Covered Entity funded person who is the patient or client of the Business Associate.
- d. "Covered Entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA Privacy and Security Regulations.

- e. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- f. "Discovered" means a breach shall be treated as discovered by Covered Entity or Business Associate as the first day on which such breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- g. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- i. "HIPAA Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
- j. "HIPAA Security Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
- k. "HITECH Act" means the privacy, security and security Breach notification provisions applicable to Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.
- l. "Personally Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and;
 - 1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 - 2. relates to the past, present or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - (a) that identifies the individual; or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- m. "Protected Health Information" or "PHI" means Personally Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Personally Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Personally Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(g), records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
- n. "Secured PHI" means PHI that was rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of technologies or methodologies specified under Section 13402 (h)(2) of the HITECH Act under ARRA.
- o. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
- p. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Rule, the HIPAA Security Rule and the HITECH Act.

- I. **Obligations and Activities of Business Associate.**
- a. **Permitted Uses.** Business Associate shall not use, access or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law. Further, Business Associate shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
 - b. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Health Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A). Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.
 - c. **Appropriate Safeguards.** Business Associate shall implement the following administrative, physical, and technical safeguards in accordance with the Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312 and 164.316:
 1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the entity; implement a security awareness and training program for all members of its workforce; implement P&Ps to prevent those workforce members who do not have access from obtaining access to electronic PHI; implement policy and procedures to address security incidents; establish policies and procedures for responding to an emergency or other occurrence that damages systems that contain electronic PHI; and perform a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of electronic PHI that establishes the extent to which an entity's security policies and procedures meet the requirements of this subpart.
 2. Implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed; implement policies and procedures that specify the proper functions to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access electronic PHI; implement physical safeguards for all workstations that access electronic PHI; restrict access to authorized users; implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain electronic PHI into and out of a facility and the movement of these items within the facility.
 3. Implement technical policies and procedures for electronic information systems that maintain electronic PHI to allow access only to those persons or software programs that have been granted access rights as specified in 45 C.F.R., Section 164.208; implement hardware, software and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic PHI; implement policies and procedures to protect electronic PHI from improper alteration, destruction, unauthorized access or loss of integrity or availability.
 - d. **Mitigation.** Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
 - e. **Reporting of Improper Access, Use or Disclosure or Breach.** Business Associate shall report to Covered Entity's Office of Compliance any unauthorized use, access or disclosure of unsecured Protected Health Information or any other security incident with respect to Protected Health Information no later than two (2) business days upon the discovery of potential breach. Additionally, effective February 17, 2010,

the Business Associate shall report to the Covered Entity's Office of Compliance any breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D, within two (2) business days of discovery of the potential breach. Upon discovery of the potential breach, the Business Associate shall complete the following actions:

- (1) Provide Covered Entity's Office of Compliance with the following information to include but not limited to:
 - (a) Date the potential breach occurred;
 - (b) Date the potential breach was discovered;
 - (c) Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
 - (d) Number of potentially affected patients/clients; and
 - (e) Description of how the potential breach allegedly occurred.
 - (2) Conduct and document a risk assessment by investigating without reasonable delay and in no case later than twenty (20) calendar days of discovery of the potential breach to determine the following:
 - (a) Whether there has been an impermissible use, acquisition, access or disclosure of PHI under the Privacy Rule;
 - (b) Whether an impermissible use or disclosure compromises the security or privacy of the PHI by posing a significant risk of financial, reputational or other harm to the patient/client; and
 - (c) Whether the incident falls under one of the breach exceptions.
 - (3) Provide completed risk assessment and investigation documentation to Covered Entity's Office of Compliance within twenty-five (25) calendar days of discovery of the potential breach with decision whether a breach has occurred.:
 - (a) If a breach has not occurred, notification to patient/client(s) is not required.
 - (b) If a breach has occurred, notification to the patient/client(s) is required, and Business Associate must provide Covered Entity with affected patient/client names and contact information so the Covered Entity can provide notification.
 - (4) Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a potential breach for the purposes of audit or should the Covered Entity reserve the right to conduct its own investigation and analysis.
- f. **Permitted Disclosures.** If Business Associate discloses Protected Health Information to a third party, including any agent or subcontractor, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Health Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breach of confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)].
- g. **Access to Protected Health Information.** Business Associate shall provide access to Protected Health Information in a Designated Record Set to Covered Entity or to an Individual, at the request or direction of Covered Entity and in the time and manner designated by the Covered Entity, as required by of 45 CFR 164.524.
- h. **Amendment of Protected Health Information.** If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR 164.526, in the time and manner designated by the Covered Entity.
- i. **Access to Records.** Business Associate shall make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use, access and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of,

Covered Entity available to the Covered Entity, and/or to the Secretary for the U.S. Department of Health and Human Services, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules and patient confidentiality regulations.

- j. **Accounting for Disclosures.** Business Associate shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information. Further, Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with provision (i), above, to permit Covered Entity to respond to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the HITECH Act.
- k. **Destruction of Protected Health Information.** Upon termination of this Agreement, Business Associate shall return all Protected Health Information required to be retained and return or destroy all other Protected Health Information received from the Covered Entity, or created or received by the Business Associate or its subcontractors, employees or agents on behalf of the Covered Entity. In the event the Business Associate determines that returning the Protected Health Information is not feasible, the Business Associate shall provide the Covered Entity with written notification of the conditions that make return not feasible. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any Protected Health Information retained by Business Associate or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.
- l. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.
- m. **Costs Associated to Breach.** Business Associate shall be responsible for reasonable costs associated with a breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the contract at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:
 - i. Postage;
 - ii. Alternative means of notice;
 - iii. Media notification; and
 - iv. Credit monitoring services.

II. **Specific Use and Disclosure Provisions.**

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation service to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR 164.502(j)(1).

III. **Obligations of Covered Entity.**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use, access or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use, access or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use, access or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use, access or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use, access or disclosure of Protected Health Information.
- d. Covered Entity shall complete the following in the event that the Covered Entity has determined that Business Associate has a breach:
 - 1. Determine appropriate method of notification to the patient/client(s) regarding a breach as outlined under Section 13402(e) of the HITECH Act;
 - 2. Send notification to the patient/client(s) without unreasonable delay but in no case later than sixty (60) days of discovery of the breach with at least the minimal required elements as follows:
 - a. Brief description of what happened, including the date of the breach and the date of discovery;
 - b. Description of the types of unsecured PHI involved in the breach (such as name, date of birth, home address, Social Security number, medical insurance, etc.);
 - c. Steps patient/client(s) should take to protect themselves from potential harm resulting from the breach;
 - d. Brief description of what is being done to investigate the breach, to mitigate harm to patient/client(s) and to protect against any further breaches; and
 - e. Contact procedures for patient/client(s) to ask questions or learn additional information, which must include a toll-free telephone number, an e-mail address, Web site or postal address.
 - 3. Determine if notice is required to Secretary of the U.S. Department of Health and Human Services.
 - 4. Submit breach information to the Secretary of the U.S. Department of Health and Human Services within the required timeframe, in accordance with 164.408(b).

IV. **General Provisions.**

- a. **Remedies.** Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which Covered Entity may have at law or in equity in the event of an unauthorized use, access or disclosure of Protected Health Information by Business Associate or any agent or subcontractor of Business Associate that received Protected Health Information from Business Associate.
- b. **Ownership.** The Protected Health Information shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the Protected Health Information.
- c. **Regulatory References.** A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or as amended.
- d. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act and patient confidentiality regulations.

- e. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules and patient confidentiality regulations.
- f. **Right to Monitor and Audit.** Covered Entity reserves the right to review and audit all records, policies, documents and other pertinent items of the Business Associate related to the use, access and disclosure of Protected Health Information as requested to ensure Business Associate is in compliance with this agreement and shall have the right to monitor the performance of Business Associate in the delivery of services provided under this agreement. Business Associate shall give full cooperation in any auditing or monitoring conducted.
- g. **Indemnification.** Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access or disclosure of Covered Entity's PHI.