

## ADMINISTRATIVE AND PROFESSIONAL SERVICES AGREEMENT

This Administrative and Professional Services Agreement (“**Agreement**”) is entered into as of April 1, 2022 (the “**Effective Date**”) by and between the County of Santa Clara, a political subdivision of the State of California (“**County**”) and **Bay Imaging Consultants Medical Group, Inc.** a California professional corporation (“**Contractor**”). County and Contractor may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

### RECITALS

WHEREAS, County provides medical services to patients through general acute care hospitals commonly known as the Santa Clara Valley Medical Center (“**SCVMC**”), O’Connor Hospital (“**O’Connor**”) and St. Louise Regional Hospital (“**St. Louise**”) and clinics and other health care facilities owned or operated by County. SCVMC, O’Connor and St. Louise are operated on a consolidated license and, unless otherwise specified, are collectively referred to herein as **Hospital**;

WHEREAS, County desires the assistance of physicians who can provide specialized professional and administrative services to patients at **O’Connor**;

WHEREAS, The Parties agree to comply with the General Terms and Conditions contained in Sections 1 – 23 of this Agreement and provisions contained in Exhibits A through A-3; Exhibit B: Insurance Requirements; Exhibit C: County Standard Terms and Conditions; Exhibit D: Business Associate Agreement; Exhibit E: Santa Clara Valley Health and Hospital System Security and Confidentiality Agreement; Exhibit F: Reassignment of Benefits; and Exhibit G: Contractor Certification of Compliance with COVID-19 Vaccine Requirements, which are attached hereto and incorporated herein by this reference and made a part of this Agreement.

WHEREAS, Contractor is a professional medical corporation that employs or contracts with physicians who are (1) duly qualified and licensed to practice medicine in the State of California (2) experienced and qualified to practice the medical specialties set forth on **Exhibit A** as may be amended from time to time (“**Specialty**”); and (3) who are, or will become prior to performing any services under this Agreement, members with clinical privileges of the Hospital’s medical staff (“**Medical Staff**”);

WHEREAS, County desires to engage Contractor to provide administrative and professional services, and Contractor is willing to provide such administrative and professional services upon the terms and conditions set forth in this Agreement;

WHEREAS, County desires to retain Contractor to provide certain administrative and

professional services in the operation of the Radiology Department of O’Connor Hospital (“**Department**”) and has determined that this proposed arrangement with Contractor will enhance the Department’s organization, procedures, standardization, economic efficiency, and professional proficiency, and provide other benefits to enhance coordination and cooperation among the Department’s providers and patients.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**1. Contractor and Physician Obligations**

1.1 Administrative Services.

1.1.1 Medical Director for Radiology Services at O’Connor Hospital:

Contractor shall act as the Medical Director (“**Medical Director**”) in accordance with the terms of this Agreement, the Medical Staff Bylaws and Rules (collectively, “**Medical Staff Bylaws**”), and the Hospital’s and County’s policies, procedures, and requirements. Contractor shall provide the Administrative Services at the location(s) set forth on **Exhibit A**. The parties may mutually agree that Contractor will provide Administrative Services at other locations as needed.

1.1.2 Administrative Duties. Contractor shall cause Medical Director to perform the administrative duties and responsibilities (“**Administrative Services**”) as set forth in the Administrative Services section of **Exhibit A**.

1.1.3 Administrative Hours. Contractor shall cause Medical Director to devote as much time as is necessary in performing the Administrative Services to provide for the effective management of the Department as set forth in **Exhibit A**. Contractor shall coordinate his work schedule with Hospital to ensure the effective operation of the Department.

1.1.4 Medical Director Efforts. To ensure the effective operation of the Department, the Parties recognize the need for Contractor, and in particular Medical Director, to devote significant energies and effort to Department activities. Therefore, during the term of this Agreement, Contractor shall cause Medical Director to refrain from providing medical direction to any other hospital or hospital department except any hospital or facility owned and operated by the County, or establishing, performing any management or administrative services for, consulting with, investing in, or otherwise assisting in the management, administrative, or operational functions of any other hospital or department, without the prior written consent of the County, which may be withheld in County’s sole discretion.

1.1.5 Intentionally omitted.

1.2. Professional Services. Contractor and its employed and contracted physicians (“**Physicians**”) shall provide professional medical services related to their Specialty and Department (the “**Professional Services**”) throughout the term of this Agreement, and as set forth on **Exhibit A and A-1**, attached hereto and incorporated herein by reference.

1.2.1 Location. Contractor shall provide the Professional Services at O’Connor and remotely from other sites as the parties agree.

1.2.2 Hours. Contractor shall provide or arrange for the provision of all Professional Services required for patient care and the operation of the Department, as determined by Hospital and its Medical Staff as set forth on **Exhibit A and A-1**.

1.2.3 Services. Each Physician providing the Professional Services shall at all times be a member of the Medical Staff with clinical privileges and shall meet the qualifications set forth in this Agreement.

1.2.4 Intentionally omitted.

1.2.5 Withdrawal of Approval. County may withdraw its approval for Contractor to provide Administrative and Professional Services, due to the County’s reasonable dissatisfaction for any reason, arrived in good faith and continuing after (a) giving written notice to the Contractor of the reasons for dissatisfaction, and (b) having a meeting between County representatives and the Contractor.

1.3 Medical Staff and Health Plan Requirements.

1.3.1 Staff Membership and Clinical Privileges. Each Physician providing Professional Services under this Agreement is required to become and remain a member in good standing of the Medical Staff of Hospital and shall, if applicable, be subject to all of the attendant clinical privileges, responsibilities and conditions associated with Medical Staff membership. Hospital shall promptly and in good faith process requests for temporary and permanent staff membership and clinical privileges required for Contractor to perform Contractor’s obligations under this Agreement.

1.3.2 Termination or Suspension of Staff Membership and Privileges. In the event a particular Physician does not meet or fails to continue to meet the established written criteria for Medical Staff membership with or without clinical privileges, Hospital shall promptly advise Contractor in writing and Contractor shall immediately terminate the particular Physician’s provision of Professional Services and shall immediately supply a replacement Physician acceptable to O’Connor.

1.3.3 Health Plan Requirements. Contractor shall cause each physician providing Services under this Agreement to comply with all applicable credentialing, re-credentialing, proctoring, patient grievance systems, quality of care and utilization

review, disease management programs, information disclosure requirements, survey and investigation cooperation, continuity of care obligations, pharmaceutical formulary requirements as well as all other contracting requirements of each health plan, health maintenance organization, or other governmental or private managed healthcare program, insurance company, and/or third-party payor with which County contracts or in the future may contract for the provision of the Services.

**1.3.4 Policies, Rules and Operations.** Contractor shall cause each Physician to perform the Services in accordance with: (a) all applicable statutes, laws, rules, and regulations; (b) all applicable Joint Commission requirements; and (c) the applicable standard of care for the Administrative and Professional Services. Additionally, Contractor shall ensure that Physicians performing the Services comply with the provisions of the governing instruments of County and Hospital, including, without limitation, County and Hospital's policies, rules and regulations, the Practitioner Code of Conduct, Peer Review Processes including Ongoing Professional Practice Evaluation ("OPPE") / Focused Professional Practice Evaluation ("FPPE"), Conflict Management, and Medical Staff Bylaws and Rules as each may be amended from time to time, and such policies, procedures and protocols related to provision of the Services, as may from time to time be established, including any quality assurance and utilization review policies. Such instruments, policies, procedures, and protocols referenced in this Section (collectively, the "Policies") may be amended from time to time by County or Hospital without prior approval of Contractor, subject to the receipt of such Policies by the Physicians from County or Hospital. Contractor shall ensure that Physicians, at the request of County or Hospital, attend compliance meetings or trainings provided by County or O'Connor.

**1.3.5 Peer Review.** Contractor shall ensure that Physicians participate in appropriate peer review processes including OPPE, indicated FPPE and in addition to any peer review that may be done by Hospital. Unless otherwise prohibited by applicable law, Contractor shall share with the Hospital's Medical Staff all information, documentation and files relating to the peer review process within thirty (30) days of occurrence.

**1.3.6 Programs; Performance Standards.** Contractor shall and shall cause each Physician to (a) participate in Hospital's quality improvement, utilization review and risk management programs and serve on such quality improvement, utilization review and risk management committees as may be requested by O'Connor from time to time; (b) participate in on-going quality improvement monitoring activities, such as audits; (c) participate in risk management activities designed to identify, evaluate and reduce risk of patient injury associated with care; (d) assist utilization review in setting, monitoring and achieving length of stay and ancillary utilization goals; and (e) participate in O'Connor's E-learning and other mandatory trainings. As part of its quality improvement, utilization review and risk management programs, O'Connor has developed certain criteria and procedures ("Performance Standards") to monitor the provision of services under this Agreement and ensure the quality and efficiency of medical care in the Department.

Contractor shall cause Physicians to abide by the Performance Standards set forth in the Performance Standards section set forth on **Exhibit A**.

1.4 Infection Prevention. Contractor shall ensure that while providing the Services, Physicians fulfill and comply with all Infection and Prevention Requirements of the Hospital while providing the Services.

1.5 Complaints. Contractor and Hospital shall cooperate in good faith to investigate any complaints made by O'Connor patients concerning any Physician and resolve the complaint in a reasonable time with appropriate action. Contractor shall notify Hospital immediately of any complaints that arise concerning him.

1.6 Exclusion. Contractor shall participate in screenings required of him who furnish, order or prescribe items or services reimbursable under any federal health program to or for patients of O'Connor under this Agreement against the List of Excluded Individuals/Entities maintained by the Office of Inspector General ("OIG") of the Department of Health and Human Services, the System for Awards Management ("SAM"; formerly the Excluded Parties List System) and any successor list maintained by the U.S. General Services Administration, and the Medi-Cal Suspended and Ineligible Provider List maintained by the California Department of Health Care Services prior to hire and once a year thereafter. Contractor will immediately notify O'Connor in the event Contractor or one of Contractor Personnel is excluded from participation in a federal health care program. Contractor will indemnify, defend and hold harmless County for any claims, judgments, overpayments or expenses arising from such exclusion pursuant to the Indemnification provisions contained in this Agreement.

1.7 Use of Premises. Contractor shall and shall cause Physicians to use O'Connor and Department premises solely for the provision of services specified in this Agreement and the provision of teleradiology services to and on behalf of other Contractor clients. No part of the premises of O'Connor shall be used at any time by Contractor, Physician, for any other purpose, including but not limited to use as an office for the general practice of medicine. Contractor agrees that if the provision of teleradiology services to and on behalf of other Contractor clients utilizes or in any way involves County property including but not limited to technology hardware and software Contractor personnel shall only use County property in a manner that has been reviewed and approved by the County including but not limited to its Information Security Office.

1.8 Limitation on Authority of Contractor. Contractor shall not and shall cause Physicians not to (a) incur any financial obligation on behalf of the County, (b) obligate or commit any assets of the County for the purchase, acquisition, or pilot trial of equipment, supplies, or personnel, (c) enter into any contract on behalf of the County for the purchase, rental, or other acquisition of equipment, facilities, supplies, or personnel, (d) make, nor allow any other individual to make, any additions, alterations, improvements, or repairs to any space, facilities, or equipment furnished by County, and /or (e) remove any equipment or supplies furnished by County, each without the express prior written authorization of County.

1.9 Conditions for Payment. Payment of the compensation provided herein is conditioned upon Contractor and Physicians (a) performing all of the duties and obligations set forth in this Section 1 (Contractor and Physician Obligations) above and (b) maintaining such records and supporting documents as may, from time to time, be required to comply with the requirements of governmental agencies and third party payors, including preparing complete and accurate time records which document separately all time spent providing professional, administrative and teaching services hereunder, in a form acceptable to O'Connor; pursuant to 42 C.F.R. §415.60 and in order to comply with Medicare requirements, executing and updating at such times and on such forms as requested by O'Connor, a written allocation statement specifying the respective amounts of time to be spent in furnishing professional or administrative services to provider, and services which do not fall into either category; and completing or assuring the prompt completion of all patient charts and other written records necessary to be maintained with respect to the Department, including all Services provided under this Agreement.

## 2. Compensation; Prompt Payment; Billing and Collections; Coding

2.1 Compensation. In consideration of the contracted services provided to County by Contractor, the County shall pay Contractor for all undisputed charges in accordance with the compensation schedule described in **Exhibit A and A-1**. The maximum compensation paid to Contractor pursuant to this Agreement shall not exceed \$5,166,576.00 inclusive of expenses as described below. The County will not pay any cost or charge that is not delineated in this Agreement.

2.2 Timing of Payment. The County's standard payment term shall be Net Thirty (30), unless otherwise agreed to by the parties. Payment shall be due Net Thirty (30) days from the date of receipt of correct and proper invoices. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic funds transfer.

2.3 Billing and Collection for Professional Services. All revenues, income, expense reimbursement, and other payments related to or received by County with respect to the Professional Services performed by Contractor (as specifically described in Exhibit A) during the term of this Agreement (regardless of the setting or locality of such Professional Services) shall be revenues of, and belong to, County. If Contractor or any Physician receives any such payment, such payments shall be promptly reported and remitted to County. The Physicians providing Services under this Agreement shall execute any reassignment of rights to fees, insurance benefits and electronic health records and other incentive payments for services provided at O'Connor as may be requested by County and will execute appropriate **Exhibit F** forms for such reassignment of benefits.

2.3.1 County shall be responsible for all billing and collection activities, including, but not limited to, billing for fee-for-service patients, discounted fee-for-service patients, capitated patients, or any other payment method established by County and the responsible payor, with regard to the Professional Services provided by Contractor and Physicians hereunder during the term of this Agreement. Neither

Contractor nor any Physician shall independently bill any patient or payor for any Services provided under this Agreement.

2.3.2 Contractor shall ensure that Physicians provide County with timely and complete information as necessary to enable billing and collection of charges for all Professional Services rendered in connection with this Agreement, including, but not limited to, all assignments, treatment certifications, and other approvals, consents, or documents necessary or appropriate to assist County in promptly obtaining appropriate payment for patient services.

2.3.3 Contractor shall ensure that Physicians promptly prepare and submit complete and accurate medical records, medical chart notes, and related back-up documentation, and respond and provide such assistance and information as County may reasonably request to facilitate billing and collection of charges for patient services, including, but not limited to, assigning appropriate procedure and diagnosis codes for billing purposes and dictating or completing appropriate descriptions and notations to be made on the patient chart to support the appropriate billing code, in accordance with the requirements of the Centers for Medicare and Medicaid Services (“CMS”) and other state and federal laws and regulations. Contractor will and will cause Physicians to access and use O’Connor’s EHR only for those patients and services covered under this Agreement and to access such information only in compliance with O’Connor Policies and Procedures and in accordance with applicable Federal and State requirements

2.3.4 Contractor shall ensure that Physicians comply with all applicable commercial and governmental billing, coding and reimbursement laws, rules, and procedures and respond, cooperate, and provide such assistance and information as County may reasonably request to ensure complete compliance with all applicable laws and payor requirements. The County has the right to audit any and all records for all services billed on behalf of the Contractor by the County. The Contractor will cooperate fully with such audits including providing appropriate documentation and justification for such billed services. County reserves the right to recover any overpayments based on the audit findings.

2.4 Hospital Charges. County shall, from time to time, establish a schedule of charges for the technical, facility, and non-professional elements of each unit of service rendered to patients. Billing thereof shall be the responsibility of the County.

2.5 Third-Party Payor Arrangements. Contractor shall and shall cause each Physician to cooperate in all reasonable respects necessary to facilitate County’s entry into or maintenance of any third-party payor arrangements. Third party payor arrangements are defined as arrangements for the provision of services under Medicare, Medi-Cal, or other public or private health, hospital care and/or managed care programs. Contractor shall, upon County’s request, (a) make commercially reasonable efforts to enroll as a provider and to enroll each Physician as necessary under O’Connor’s contracts with payers, with respect to Contractor’s Professional Services provided pursuant to this Agreement in any third-party payor arrangement.

2.6 Changes in Rules and Regulations. The Parties understand that they may be required to alter their billing arrangements in order to comply with changing legal requirements or to avoid economically impracticable reimbursement disallowances. The Parties therefore agree, upon written request of either Party, to negotiate in good faith in order to modify this Agreement to comply with legal requirements or to avoid such disallowances. If the Parties cannot reach agreement on such modifications within sixty (60) days after the initial written request, either party may terminate this Agreement upon thirty (30) days additional written notice.

2.7 Medical Records and Claims. Contractor shall and shall cause Physicians to prepare and maintain a complete medical record on a timely basis for each patient to whom Physicians provide Professional Services. This medical record shall be the O'Connor's Electronic Health Record (EHR). Contractor shall and shall cause Physician to maintain financial books and records, and all medical records and charts, in accordance with industry standards, and in compliance with all state and federal laws and regulations, the requirements of The Joint Commission and the Medical Staff Bylaws and Rules and Hospital policies and procedures. Contractor shall and shall cause Physicians maintain and provide all such books, records and charts to patients and Hospital, and to state and federal agencies, including without limitation the California Department of Public Health, California Department of Managed Health Care, and CMS. Contractor shall and shall cause Physicians cooperate with Hospital to complete all documentation that may be required by insurance carriers, health care service plans, governmental agencies, or other third-party payors. Contractor shall and shall cause Physicians retain its/their records and information for at least six (6) years after the termination of this Agreement.

2.8 Billing for Administrative Services. Contractor shall, on a monthly basis, during the term of this Agreement, submit a written invoice to County in a format acceptable to County, detailing to County's satisfaction the Administrative Services provided by Contractor during the immediately preceding calendar month. In completing the monthly invoice, Contractor shall describe the specific Administrative Services activities performed, the dates on which those activities occurred and, for each date, the number of hours spent.

### **3. Qualifications of Contractor Physicians.**

3.1 Qualifications of Contractor Physicians. At all times during the term of this Agreement, each Physician providing the Administrative and/or Professional Services shall comply with each of the following qualifications, and Contractor shall provide documentation of compliance to the County upon request, and shall immediately notify County if it becomes aware that he ceases to meet any of the following qualifications:

3.1.1 Maintain an unrestricted license to practice medicine in the State of California;

3.1.2 Maintain a valid DEA Registration (as defined below) with a California

address; provided, however, County may agree to exceptions if a Physician's field of practice does not customarily involve prescription of medications. "**DEA Registration**" means a federal Drug Enforcement Agency registration which authorizes, at a minimum, prescriptions of drugs listed on DEA Schedules 2 through 5, or such other Schedules as may replace such existing Schedules;

3.1.3 Hold a minimum of core privileges in the physician's specialty, in addition to all clinical privileges required by the Hospital's Medical Staff Bylaws, Rules and Policies, as necessary and appropriate to the provision of Administrative and Professional Services hereunder;

3.1.4 Be a member in good standing on Hospital's Medical Staff;

3.1.5 Maintain certification or eligibility for certification with the appropriate specialty board;

3.1.6 Maintain eligibility to provide professional medical services as a participating physician to beneficiaries of Medicare, Medicaid and other federal healthcare programs (each a "**Federal Healthcare Program**") which County identifies from time to time;

3.1.7 Maintain or agree to apply for participating physician status in any insurance coverage arrangement or managed care plan in which Hospital participates and that is reasonably available to Contractor;

3.1.8 Be employed by or under contractual arrangement with Contractor;

3.1.9 Be of high repute and good standing in the community as determined by County;

3.1.10 Act in a professional manner as determined by County; and

3.1.11 Not have any of the following adverse events occur:

3.1.11.1 Suspension or revocation in the past ten (10) years of his or her license to practice medicine in any state;

3.1.11.2 Be the subject of any material reprimand, sanction, probation or disciplinary action by any professional medical licensing authority;

3.1.11.3 Be, at any time, excluded, barred or suspended from participation in, or sanctioned by, any Federal Healthcare Program;

3.1.11.4 Have been denied membership and/or reappointment to the medical staff of any hospital or healthcare facility in the past ten (10) years;

3.1.11.5 Have his or her medical staff membership or clinical privileges at any hospital or healthcare facility suspended, restricted or revoked for any disciplinary cause or reason; or

3.1.11.6 Have ever been convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of professional medical services or the practice of medicine.

3.2 Coverage Events. At all times during the term of this Agreement, each Physician will provide the Professional Services or on an as needed basis, to all patients of O'Connor who present to the Emergency Room and to O'Connor's inpatients who are in need of medical care, regardless of patient's insurance status or ability to pay. Each time Physician is performing Professional Services under this agreement at the hospital will be referred to as a "Coverage Event."

3.3 Contractor Obligations Regarding EHR. Contractor shall ensure that all Physicians materially comply with policies regarding adoption and utilization of EHR systems utilized by County in connection with the Services provided hereunder and set forth in section 4.5 below.

#### 4. County Obligations

4.1 Space and FF&E. County shall provide such space, furniture, fixtures, and equipment ("FF&E") as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.2 Access to Services and Non-Clinical Personnel. County shall arrange for access to such services and non-professional/non-clinical personnel, including without limitation, support staff and materials management, as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.3 Ancillary Clinical Services. County shall arrange for the availability of such ancillary clinical services, including without limitation nursing support and radiology, pathology, respiratory, and anesthesia services, as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.4 Supplies. County shall provide such supplies as are necessary for the performance of the Administrative and Professional Services, as determined by County in its reasonable discretion.

4.5 Electronic Health Records ("EHR") System. County shall provide an EHR system capable of supporting O'Connor where Contractor may provide the Administrative and Professional Services. Such EHR shall be considered part of the FF&E provided by County pursuant to this Agreement. County shall arrange for and provide training of all applicable staff

with respect to the use and capabilities of the EHR system provided by County to support the provision of the Services pursuant to this Agreement. In addition, County shall arrange for or provide technical support of the EHR system by trained technicians, who shall be experienced in the use, function and operation of the EHR system. County and Contractor shall and shall cause Physicians to cooperate in good faith with one another with respect to putting in place and operationalizing any new EHR system at O'Connor or any other facility at which Contractor provides the Services hereunder.

4.5.1 Contractor Obligations Regarding EHR: Contractor shall and shall cause Physicians to materially comply with policies regarding adoption and utilization of EHR systems utilized by County in connection with the Services provided hereunder.

4.6 Medical Records: County, with the assistance of Contractor, shall maintain and store medical records for all patients who receive Administrative and Professional Services for the period required by the laws pertaining to retention of medical records and shall at all times cause all such medical records to be maintained in a manner that is consistent with HIPAA (as defined in Section 9 below), HITECH (as defined in Section 9 below) and other applicable state and federal privacy laws. All such medical records shall be County's property, but such medical records shall be made readily available to Contractor in connection with Contractor's continued Administrative and Professional Services to County patients, or for the purpose of defending any claim or other lawsuit or administrative action against Contractor.

4.7 Quality Improvement. County shall cooperate with Contractor to ensure that Physicians have appropriate access to such data regarding the Administrative and Professional Services and resources as are necessary to enable Physicians to participate in quality improvement activities, case conferences and other educational activities (including by way of teleconferencing) at appropriate County facilities, subject to County's budgets in effect from time to time.

4.8 Joint Meetings. County and Contractor agree to meet, as requested, and establish processes for the Parties to share information and address matters relating to this Agreement.

4.9 Administrative Responsibility. In compliance with Section 70713 of Title 22 of the California Code of Regulations, O'Connor shall retain professional and administrative responsibility for services rendered pursuant to this Agreement. O'Connor shall provide an Administrative Director who shall be responsible and accountable to Hospital for administrative and technical functions, including supervision, selection, and assignment and evaluation of O'Connor personnel; maintenance of equipment; development of an annual budget; and acquisition of materials, supplies, and equipment. In the event of any dispute between the Medical Director and the Administrative Director regarding their respective administrative responsibilities, such dispute shall be submitted to the O'Connor's Chief Executive Officer, or his or her designee, whose decision shall be final and binding upon the Parties.

**5. Relationship between the Parties**. This Agreement is not intended to create and shall

not be construed as creating any relationship between the Parties other than that of independent entities contracting for the purposes of effecting the provisions of this Agreement. Neither Party nor any of its representatives shall be construed to be the partner, associate, affiliate, joint venturer, agent, employer, employee or representative of the other. Physicians shall not be construed to be employees of County or Hospital, and Contractor shall be responsible for all applicable employer obligations, including without limitation, wages, federal and state withholding, FICA, unemployment benefits, workers' compensation, and for any employee benefits in effect for which he may be eligible, including without limitation, vacation pay, sick leave, retirement benefits, disability insurance, and employee records. Neither Party shall be liable for the acts of the other solely by virtue of this Agreement.

**6. Name/Marketing.** Neither Party shall use the names, trademarks, service marks or logos of the other Party or any of its Affiliates (as defined below) except with that Party's prior written consent of the specific intended use. For the purposes of this Agreement, an "**Affiliate**" of a Party is an individual, corporation, partnership, limited liability company, trust or other entity or organization that directly or indirectly controls, is controlled by, or is under common control with the Party.

**7. Insurance and Indemnification Requirements.**

7.1. Throughout the term of this Agreement, Contractor shall indemnify County as set forth in **Exhibit B** (Insurance Requirements).

7.2. Throughout the term of this Agreement, Contractor shall comply with all insurance requirements as stated in **Exhibit B** (Insurance Requirements).

**8. Notification and Cooperation in Litigation.** Each Party agrees, to the extent permitted by law, to notify the other Party of any complaint, grievance or claim it receives that relates to the Services. The Parties agree to cooperate in any investigation of any such complaint, grievance or claim and in the resolution thereof. Without limiting the generality of the foregoing, at County's request with reasonable advance notice, Contractor shall make Physicians available to County and its Affiliates, at no cost to County or its Affiliates, to testify as fact witnesses, expert witnesses or otherwise in the event of litigation being brought against County or its Affiliates with respect to the provision of the Services. Furthermore, Contractor shall reasonably cooperate, and ensure that Physicians reasonably cooperates, with County and its Affiliates in furnishing information, testimony, and other assistance in connection with any litigation, investigations, audits, proceedings, or disputes relating to the Services provided under this Agreement, other than proceedings or disputes between the Parties to this Agreement.

**9. Access to Information; Privacy and Confidentiality.**

9.1. The Parties shall comply with all state and federal laws and regulations governing the confidentiality and disclosure of patient records and personal information, including, but not limited to, the Health Insurance and Portability and Accountability Act of 1996 and its implementing regulations as amended by the Health Information Technology for Economic and

Clinical Health Act (“**HITECH**”) and its implementing regulations (collectively “**HIPAA**”), as may be amended from time to time. Contractor and its Physicians providing Services under this Agreement shall comply with all County, Hospital and Medical Staff policies, rules and procedures governing the confidentiality of patient records and personal information.

9.2. For such time period as may be required under applicable laws or regulations after the furnishing of Services pursuant to this Agreement, each Party shall make available upon written request to the United States Department of Health and Human Services (“**HHS**”), the United States Comptroller General and their duly authorized representatives, this Agreement and all other books, documents and records as are necessary to verify the nature and extent of the costs incurred by either Party in connection with the Services provided under this Agreement, and if either Party carries out the duties of this Agreement through a subcontract, the subcontract also shall contain a clause permitting access by HHS, the United States Comptroller General and their duly authorized representatives to books, documents and records of such organization as necessary to verify the nature and extent of such costs.

9.3. Each Party acknowledges that in the course of performing their obligations under this Agreement, each Party may become privy to Confidential Business Information (as defined below) of the other Party. For the purposes of this Agreement, “**Confidential Business Information**” shall mean any information or matter that one should reasonably believe is of a secret, confidential, privileged, private or proprietary nature and which is connected to the business of the other Party. Included within the definition are matters of a business nature (such as certain information about rates, charges, costs, claims, professional service agreements and employees), peer review information, quality improvement information, and any other information of a similar nature not available to the public. Each Party agrees not to disclose any such Confidential Business Information to any third party unless authorized in writing by the other Party or unless such disclosure is required by law. Notwithstanding the foregoing, each Party shall be entitled to disclose Confidential Business Information to such of its Affiliates and its and their respective officers, employees, agents, and advisors (collectively, the “**Representatives**”) as are necessary to accomplish the purposes of this Agreement, and all such Representatives shall be bound by the confidentiality provisions hereof. Each Party shall instruct its Representatives as to their obligations under this Section. Each Party’s obligation of confidentiality shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Confidential Business Information shall not include information: (a) rightfully in the public domain or which hereafter becomes part of the public domain (other than through a breach of this Agreement); (b) required to be disclosed by law; (c) that is independently developed by the receiving Party without use any of Confidential Business Information of the disclosing Party; or (d) that was learned by the receiving Party from a third party who did not impose a confidentiality obligation on the receiving Party. Upon the termination of this Agreement, County may request, and Contractor will return any and all Confidential Business Information provided to Contractor or Physicians during the term of this Agreement, within five business days of the request.

9.4. At all times throughout the term of this Agreement, Contractor shall ensure that Physicians comply with the County’s Security and Confidentiality Agreement set forth on

**Exhibit E**, which may be amended from time to time.

9.5. In providing Administrative and Professional Services under this Agreement, Contractor and Medical Director may have access to Protected Health Information (as defined by HIPAA) of a Hospital patient who is not also a mutual patient of Contractor or Medical Director, resulting in Contractor serving as a Business Associate (as defined by HIPAA) of Hospital. The Parties agree to enter into a Business Associate Agreement, set forth on **Exhibit D** which sets forth the requirements for the potential use or disclosure of, and access to, Protected Health Information with respect to such arrangements.

9.6. “**County Data**” means data and information that the County provides to Contractor and its Physicians. All County Data is the property of the County and Contractor or its Physicians will not have any ownership interest in County Data. Other than performing obligations under this Agreement, Contractor and its Physicians will not use or disclose County Data without prior written permission from the County. Contractor is responsible for ensuring the security and confidentiality of County Data; protecting against any anticipated threats or hazards to the security or integrity of County Data; protecting against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to the County; and ensuring the proper disposal of County Data upon termination of this Agreement. Contractor will take appropriate action to address any unauthorized access to County Data, including notifying County immediately, and no more than 24 hours of any unauthorized access and resolving the cause of the unauthorized access. If Contractor discloses confidential and/or legally protected County Data to unauthorized persons or entities, Contractor will comply with all applicable federal and state laws and regulations, including California Civil Code sections 1798.29 and 1798.82, at Contractor’s sole expense (if applicable). Contractor will not charge the County for any expenses associated with Contractor’s compliance with the obligations set forth in this section.

9.7. All records, files, proceedings and related information of Contractor, Hospital and the Medical Staff and its committees pertaining to the evaluation and improvements of the quality of patient care at Hospital shall be kept strictly confidential by Contractor and Hospital. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by Hospital.

## **10. Term and Termination:**

10.1. Term. This Agreement shall commence on April 1, 2022, the Effective Date, and shall continue until (and including) March 31, 2024, unless otherwise terminated as provided herein.

10.2. Termination of the Agreement.

10.2.1 Without Cause. Either party may terminate this Agreement, without cause or penalty, by giving no less than ninety (90) days’ written notice to the other Party. In the event of such termination, the Parties shall not enter into another agreement

for the same services as provided hereunder for a period of one (1) year after the later of the initial Effective Date or the most recent renewal date of this Agreement.

10.2.2 Per Terms of the Agreement. Either Party may terminate this Agreement in accordance with the provisions set forth in this Agreement.

10.2.3 For Breach. Either Party may terminate this Agreement in the event of the other Party's material breach hereof by giving thirty (30) days' prior written notice of the general nature of such breach. Notwithstanding the foregoing, this Agreement shall not terminate in the event that the breaching Party cures the breach, to the satisfaction of the non-breaching Party, within fifteen (15) days of the receipt of such notice (the "Cure Period").

10.2.4 Immediately. Either Party may terminate this Agreement immediately if the other Party fails (1) to maintain the required insurance coverage; or (2) makes an assignment for the benefit of creditors, becomes insolvent or bankrupt, or is subject of a bankruptcy petition or petition for dissolution, liquidation or for the winding up of business affairs, or for the appointment of a trustee or receiver to take possession of the assets; or (3) any aspect of this Agreement endangers patient safety or will subject to the County to ill repute; or (4) Contractor is convicted of a crime punishable as a felony or involving moral turpitude; or (4) Contractor violates Privacy and Confidentiality provisions; or (5) in the event legal counsel for either Party advises that this Agreement or any practices which could be, or are, employed in exercising rights or providing Administrative and Professional Services under this Agreement pose a material risk of violating any legal requirements.

10.2.5 Budget Contingency. Except to the extent that Services have been completed, this Agreement is contingent on the appropriation of sufficient funding by the County for the Services covered by this Agreement. If funding is reduced or deleted by the County for purposes of this Agreement, the County has the option either to terminate this Agreement with no liability occurring to the County or to offer an amendment to the Agreement indicating the reduced amount upon ninety (90) days written notice.

### 10.3. Effect of Termination.

10.3.1 Upon expiration or termination of this Agreement, neither Party shall have any further obligation hereunder except for (a) obligations due and owing which arose prior to the date of termination and (b) obligations, promises, nor covenants contained herein which expressly extend beyond the term of this Agreement.

10.3.2 If County provides Contractor (including any Physician) with office space for purpose of providing services under this Agreement, upon expiration or termination of this Agreement, and upon County's request, Contractor (including any Physician), shall immediately vacate the Hospital and the Department premises, removing at such time any and all of Contractor's personal property. Hospital may

remove and store, at Contractor's expense, any personal property that has not been so removed.

10.3.3 Following the expiration or termination of this Agreement, Contractor shall not and shall cause each Physician not to do anything that might interfere with any County efforts to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between County and any entity or person who may replace Contractor. Contractor shall and each Physician shall cooperate with the County and any other contractor to ensure prompt and smooth transition of Services without interruption or adverse impact to the County.

10.3.4 Termination of this Agreement by County shall not provide Contractor or any Physician the right to a fair hearing or the other rights more particularly set forth in the Medical Staff Bylaws.

**Notices.** Except as otherwise stated, all notices, requests, demands, or other communications required or permitted to be in writing under this Agreement (each a "Notice") shall be deemed to have been duly given on: (a) the date of service if served personally on the Party to whom notice is to be given, (b) the business day following the date of deposit with a next business day courier service (e.g., Federal Express, UPS, or similar service), (c) the date of acknowledgement of receipt of electronic transition by telecopy, email or facsimile; or (d) the third day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid. The parties may deliver notice as follow:

If to County: Paul E. Lorenz, Chief Executive Officer  
Santa Clara Valley Medical Center  
751 S. Bascom Avenue, Room # 7C116  
San Jose, California 95128

With copy to: Pat Wolfram, RN, MS, MBA  
Business Development Executive  
O'Connor Hospital  
2105 Forest Avenue  
San Jose, California 95128

If to Provider: Bay Imaging Consultants Medical Group, Inc.  
Attn: President and CEO  
2125 Oak Grove Road, Suite 200  
Walnut Creek, California 94598

Either Party may change the above address or addresses by submitting a notice in writing notifying the other Party of such new address.

**11. Dispute Resolution.** Except as otherwise provided in this Agreement, in the event any disagreement, dispute, or claim arises between the Parties with respect to the enforcement or interpretation of this Agreement or any specific terms and provisions set forth in this Agreement (collectively, a “**Dispute**”), such Dispute shall be settled in accordance with the following procedures. Notwithstanding anything that may be construed to the contrary herein, each of the Parties expressly acknowledges that it has an affirmative duty to expedite the process and procedures described below to the extent reasonably practical in order to facilitate a prompt resolution of any Dispute.

11.1 Meet and Confer. The Parties shall, as soon as reasonably practicable after one Party gives written notice of a Dispute to the other party (the “**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the “**Meet and Confer**”). The obligation to conduct a Meet and Confer pursuant to this Section 12.1 does not obligate any Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable laws protecting statements, disclosures, or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such laws, including California Evidence Code Section 1152. If any Dispute is not resolved to the mutual satisfaction of the other Party within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the Parties may pursue any available remedy at law or equity. Nothing in this provision is intended to delay either party’s right to terminate the Agreement in accordance with the applicable provisions herein.

**12. Exclusion; Fair Market Value**

12.1 Each Party represents and warrants that it has not been excluded from participating in Medicare, Medicaid, or other Federal Healthcare Program. Each Party agrees that it shall notify the other Party immediately in the event that such Party or any of its Physicians is excluded from Medicare, Medicaid, or any other Federal Healthcare Program during the Term of this Agreement. If either Party or any of its Physicians is excluded from participating in Medicare, Medicaid, or any other Federal Healthcare Program, this Agreement shall terminate automatically effective as of the date of such exclusion.

12.2 In determining the compensation to be paid under this Agreement, the Parties have agreed to the fair market value of the Services to be provided in light of the time, energies, training, experience and skills required, compensation for comparable duties at other facilities in the area of Hospital, the availability of persons with such skills, training and experience and general economic conditions, and have also taken into account The Parties agree that such compensation reflects the fair market value of the full range of Services to be provided by Contractor to County hereunder, without regard to particular payor coverage or reimbursement and that such compensation has not been determined by taking into account in any way the volume or value of any referrals or business generated between the Parties.

13. **Intellectual Property.** County shall own all right, title and interest in and to the Deliverables. For purposes of this provision, the term “Deliverables” shall mean any documentation, written or audio materials, work product, invention, original works of authorship, and the derivative works, patents, trademarks, or other proprietary rights associated therewith created by Contractor solely during the performance of services for County pursuant to this Agreement. Contractor hereby assigns to the County, solely with regard to the Deliverables, all rights, title and interest in and to any and all intellectual property patentable or registerable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice, either alone or jointly with others employed by or contracted with County, during the period of Contractor’s agreement with the County or resulting from the use of premises leased, owned or contracted for by the County. Contractor acknowledges that all Deliverables made by Contractor (either solely or jointly with others employed by or contracted with County) within the scope of this Agreement and which are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. Section 101) and shall belong solely to County. Contractor agrees that, solely with regard to the Deliverables, the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others employed by or contracted with County. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all Deliverables prepared under this Agreement. Upon written approval from the County, Contractor shall retain a perpetual, non-exclusive, non-transferable, paid up right to use Deliverables for any purpose including but not limited to internal research, promotional, educational, patient care, archival or commercial purposes. If requested to and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of patent or copyright ownership of Deliverables as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such patents or copyrights. This section shall apply to the extent not otherwise provided under this Agreement. Contractor shall use County premises solely for the provision of Services specified in this Agreement. No part of the County premises shall be used at any time by Contractor for the performance of academic, research or personal activities outside the scope of this Agreement.

14. **Contractor’s Compliance with this Agreement.** All obligations and prohibitions imposed on Contractor pursuant to this Agreement are equally applicable to each and every Physician, and to any other physician, partner, shareholder, associate, employee or contractor (collectively, the “**Contractor Personnel**”) engaged, retained, employed or contracted by Contractor to assist in the performance of this Agreement. Contractor shall require all Contractor Personnel to comply with all terms and conditions of this Agreement as if they were individual signatories to it insofar as it relates to any obligations of such Contractor Personnel. Upon County’s request, Contractor shall obtain from each of the Contractor Personnel a written acknowledgment and agreement to be bound by the terms and conditions of this Agreement in such form as may be required by County.

15. **Conflict of Interest.**

In accepting this Agreement, Contractor covenants that Contractor and all Physicians providing Services presently has no interest, and shall not acquire any interest, direct or indirect,

financial or otherwise, which would conflict in any manner or degree with this Agreement and the Services undertaken pursuant to this Agreement. Contractor further covenants that, in the performance of this Agreement, Contractor shall not employ any contractor or person having such an interest.

Contractor shall comply and require Physicians providing Services with all applicable federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure of Contractor and Physicians to comply with these laws constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it and Physicians presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ or contract with any contractor or person having such an interest. Contractor, including but not limited to Physicians and Contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing services under this Agreement, Contractor shall provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Physicians and Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in this section including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

16. **Disclosure of Interests.** In order to permit compliance with federal anti-referral statutes and regulations, as amended from time to time, Contractor shall cause Physicians to provide Hospital upon execution of this Agreement with information sufficient to disclose any

ownership, investment or compensation interest or arrangement of Contractor, Physician or any of Contractor's or Physicians immediate family members, in any entity providing "designated health services," as that term is defined in the statutes and regulations. This provision is not intended to reallocate any disclosure or reporting requirements imposed upon Contractor or a Physician under any governmental program to Hospital, or to create an assumption of such disclosure obligations on the part of Hospital, and Contractor acknowledges that it and/or each Physician shall have the sole responsibility to fulfill any such federal and/or state reporting requirements. Contractor shall immediately inform Hospital of any other arrangements that may present a conflict of interest or materially interfere with Contractor's or a Physician's performance of its/his/her duties under this Agreement. Hospital may exercise its right to terminate this Agreement under if Contractor or a Physician pursues or engages in conduct that does constitute a conflict of interest or that materially interferes with (or is reasonably anticipated to interfere with) Contractor's or Physician's performance under this Agreement

17. **California Public Records Act.** The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

18. **Disentanglement.** Prior to any termination or expiration of this Agreement, Contractor shall take all necessary and appropriate actions to assist County to accomplish a complete, timely and seamless transition of services provided under this Agreement from Contractor and Physicians to the County, or to any replacement contractors designated by County ("Replacement Providers") without causing any interruption or adverse impact on the services under this Agreement and/or services provided by any third parties (the "Disentanglement"). Without limiting the generality of the foregoing, Contractor shall: (a) cooperate with County and/or the Replacement Providers, including promptly taking all steps required to assist County in effecting a complete Disentanglement; (b) provide to County all information needed for Disentanglement including, without limitation all data, documents and information pertaining to the services provided under the Agreement; (c) provide for the prompt and orderly conclusion of all work, as County may direct, including documentation of work in progress and other measures to provide an orderly transition; (d) assist County as needed to provide training or orientation needed to transition services to County ; and (e) accomplish any other measures reasonably requested by County to ensure an orderly transition to the County. Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of services to the County.

19. **Anti-Referral Laws.** Nothing in this Agreement or in any other written or oral agreement between County and Contractor, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patient to Hospital. Any consideration specified in this Agreement is consistent with what the Parties reasonably believe to be fair market value for the Services provided. Contractor acknowledges and shall cause Physicians to acknowledge that it/they are subject to and must comply with certain federal and state laws governing referral of patients, as may be in effect or amended from time to time, including but not limited to: payments for referrals or to induce the referral of patients (Cal. Business and Professions Code Section 650; Cal. Labor Code Section 3215; and the Medicare/Medicaid Fraud and Abuse Law, Section 1128B of the Social Security Act; and all implementing regulations); and the referrals of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship (Cal. Business and Professions Code Sections 650.01 and 650.02; Cal. Labor Code Sections 139.3 and 139.31; and Section 1877 of the Social Security Act; and all implementing regulations).

20. **Changes in Law.** In the event there are any changes in Medi-Cal or Medicare requirements, The Joint Commission accreditation guidelines or requirements, and/or substantial changes under other public or private health and/or hospital care insurance programs or policies which may have a material effect on the Hospital's operations, County may elect to renegotiate this Agreement. County shall indicate the basis upon which it has determined that such a material impact on its operations may result. In any case where such notice is provided, both Parties shall negotiate in good faith during the thirty (30) day period thereafter in an effort to develop a revised Agreement, which, to the extent reasonably practicable, will adequately protect the interests of both Parties in light of the changes which constituted the basis for the exercise of this provision.

21. **County Standard Terms and Conditions.** Contractor shall cause Physicians to comply with the County Standard Terms and Conditions that are applicable to Contractor set forth in Exhibit C.

22. **Suspension.** County may suspend this Agreement in order to permit Hospital, its employees and agents to conduct any review of any ethical, clinical, compliance-related, quality- or patient care-related matter. In lieu of termination of this Agreement under Section 10, Hospital may suspend this Agreement for any reason provided under Sections 10.2.2 or 10.2.3. Suspension of the Agreement shall take effect upon receipt of notice by Contractor or Physician in writing or orally; if given orally, County shall confirm oral notice promptly in writing. Suspension shall remain in effect until the rights and duties of Physician under this Agreement are reinstated by County by written notice to Physician. During the suspension, County shall be relieved of all of its duties and obligations under this Agreement, including, without limitation, any obligation to make payment for services rendered by Physician. If the Agreement remains suspended for sixty (60) consecutive days, the suspension shall be treated as the termination of the Agreement without cause for all purposes of this Agreement.

23. **Miscellaneous.**

23.1 Entire Agreement; Amendment. This Agreement and all schedules, exhibits, addenda and recitals referred to and incorporated herein constitute the entire agreement between the Parties pertaining to the subject matter contained herein. This Agreement supersedes all prior agreements, negotiations, and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter of this Agreement. There are no representations, warranties, agreements, or understandings, express or implied, written or oral, between the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No supplement, amendment, or modification of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

23.2 No Third-Party Beneficiaries. This Agreement shall not be construed as conferring upon any third party any right or benefit, and any and all claims which may arise hereunder may be enforced solely by County and Contractor. Notwithstanding anything contained herein, or any conduct or course of conduct by any Party hereto, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either Party by any person or entity not a Party to this Agreement.

23.3 Subject Headings. The subject headings of the Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

23.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

23.5 Contract Execution. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same legal force and effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

23.6 Severability. If any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

23.7 No Assignment: Except as specifically provided in this Agreement, no Party may assign, subcontract or delegate any duties under this Agreement without the other Party’s written consent. Any assignment, delegation or subcontract by either Party in violation of this provision is not enforceable and confers no rights on any third party.

23.8 Governing Law. This Agreement shall be governed by, construed, and enforced

in accordance with the laws of the State of California. Venue for all purposes pertaining to this Agreement shall be Santa Clara County.

23.9 Waiver. Failure to require performance of any provision of this Agreement is not a waiver of that provision. Any waiver granted by a Party must be in writing and shall apply to the specific instance expressly stated.

23.10 Survival. Termination, expiration or cancellation of this Agreement does not affect any provision that survives as a matter of law or expressly survives termination, expiration, or cancellation.

23.11 Cross Reference of Agreements. County and Contractor acknowledge and agree that this Agreement and any other agreement or arrangement between (a) County and (b) Contractor, Physician, or any immediate family member of between (a) Hospital and (b) Contractor, Physician or any immediate family member of Physician shall be cross-referenced to a master list of contracts that is centrally maintained and updated by Hospital. For the purposes of this Section, "immediate family member" means a husband or wife; birth or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

23.12 Signatures. Each signatory warrants and represents that he or she executed this Agreement in his or her authorized capacity, and that he or she has the authority to bind the entity listed below to contractual obligations.

23.13 Contractor shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. **If applicable, Contractor shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements ("Certification"), attached hereto as Exhibit G.** Contractor shall comply with the requirements of this Section for the entire term of this Agreement.

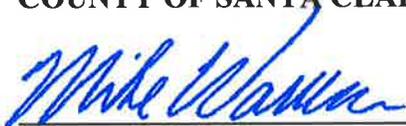
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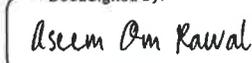
Contractor shall comply with all reasonable requests by County for documentation demonstrating Contractor’s compliance with this Section. Failure by Contractor to comply with any of the requirements of this Section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Agreement, and the County may, in its sole discretion terminate this Agreement immediately or take other action as the County may determine to be appropriate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**COUNTY OF SANTA CLARA**

**CONTRACTOR**

  
**MIKE WASSERMAN**      **MAR 22 2022**  
Date  
President  
Board of Supervisors

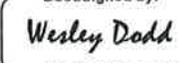
DocuSigned by:  
      3/3/2022  
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**ASEEM OM RAWAL, M.D.**      Date  
President  
Bay Imaging Consultants Medical Group, Inc.

Signed and certified that a copy of this Document has been delivered by electronic or other means to the President, Board of Supervisors

Attest:

  
**TIFFANY LENNEAR**      **MAR 22 2022**  
Date  
Clerk of the Board of Supervisors

Approved as to form and legality

DocuSigned by:  
      3/3/2022  
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**WESLEY DODD**      Date  
Deputy County Counsel

## EXHIBIT A

### DESCRIPTION OF CONTRACTED SERVICES MEDICAL DIRECTOR RADIOLOGY SERVICES

#### ADMINISTRATIVE SERVICES

Contractor shall cause Medical Director to:

1. Assist O'Connor in its compliance with applicable legal requirements and accreditation standards in the Department, including but not limited to compliance with Joint Commission and State Radiologic Health Branch requirements and standards.
2. Advise and consult with Director of Diagnostic Imaging on a quarterly basis regarding supplies, equipment, maintenance and environmental needs regarding the Department.
3. Advise and consult with Director of Diagnostic Imaging on a monthly basis regarding monthly goals to include budget, productivity targets, and patient satisfaction.
4. Actively participate on appropriate O'Connor and Medical Staff Committees as appropriate. These may include:
  - 4.1. Quarterly Department of Radiology Meetings with the following persons in attendance:
    - 4.1.1. At least 1 one Radiologists on O'Connor Active Staff Roster; active staff must include a minimum of three (3) Radiologists.
    - 4.1.2. One Administrative Member
    - 4.1.3. Director of the Diagnostic Imaging Department
  - 4.2. Actively participate Committees as required by the Medical Staff. These may include:
    - 4.2.1. Medical Leadership Committee (MLC) •- monthly
    - 4.2.2. Performance Improvement Committee - monthly
    - 4.2.3. Credentials Committee - monthly
    - 4.2.4. Pharmacy & Surveillance Committee - quarterly
    - 4.2.5. General Medical Staff – quarterly
    - 4.2.6. Cancer Care Committee - quarterly
  - 4.3. Perform peer review functions defined by Medical Staff.

- 4.4. Report results of item 4.3 to Radiology Department (quarterly), Medical Executive Committee (quarterly) and Performance Improvement Committee (quarterly).
5. Participate in educational programs conducted by O'Connor and Medical Staff and coordinate semi-annual education lectures for hospital clinical and non-clinical staff regarding Professional Services offered in the Department to the extent allowable by applicable laws and regulations.
6. Develop the professional policies, protocols, procedures, practice guidelines, and standards focused on improving quality of care, utilization of resources, and containing costs of the Department.
7. Review and approve all Department patient care policies and procedures prior to administrative and MLC approval.
8. Supervise the quality, availability, safety and appropriateness of the medical services rendered in the Department, including advising O'Connor in connection with the exercise of its management authority over non-radiologist O'Connor staff.
9. Evaluate and participate in answering all complaints and inquiries of patients, associates and physicians concerning clinical services rendered in the Department as requested.
10. Support the mission and goals of O'Connor as appropriate within the scope of services provided in the Department.
11. Coordinate the activities of the Department with those of O'Connor as a whole.
12. Investigate and keep current with new and emerging trends and developments in services, practice techniques and quality control mechanisms regarding radiology services.
13. In conjunction with O'Connor administration, develop and participate in quality assurance programs conducted by O'Connor and Medical Staff necessary to ensure O'Connor's compliance with regulatory and accreditation requirements, Joint Commission standards with respect to the Department and requirements of third-party payers, and provide continuous education of Department associates and physicians.
14. Assist O'Connor in financial objectives to reduce the overall operating costs and increase diagnostic imaging outpatient volume.
15. Protocolling patients by the radiologists prior to performing radiological testing on patients.

#### PROFESSIONAL SERVICES

Contractor shall cause Physician(s) to:

1. Professional Services. Provide Professional Services for radiology, CT, MRI, Nuclear Medicine, Ultrasound, mammography/biopsies and any other related service and consultation

generally provided in a hospital radiology practice. Services to be provided twenty-four (24) hours per day, seven (7) days per week, 365 days a year. During each On-Site Coverage, Contractor shall ensure that Physicians remain physically present in O'Connor for the duration of the Coverage Shift and be available to provide Professional Services to patients in O'Connor as determined by medical necessity. During each Off-Site Coverage, Contractor shall ensure that Physicians (a) respond by telephone within thirty (30) minutes of receiving a telephone call or page from the Department and (b) arrive in the Department within a timeframe appropriate to the acuity of the patient and based on Medical Staff protocols or as otherwise required by medical necessity.

2. Coverage Shifts Generally. During each Coverage Shift, Contractor shall cause Physicians to provide Professional Services to patients who present to O'Connor's emergency department and to O'Connor's inpatients who are in need of medical care in Physician's clinical specialty ("Physician's Specialty"), regardless of patients' insurance status or ability to pay. Physicians shall be unencumbered by conflicting duties or responsibilities and shall respond in accordance with O'Connor's Medical Staff Bylaws and Rules and Regulations and the Department's Policies and Procedures during each Coverage Shift for which Physician is scheduled.

3. Render medical services to patients presenting in the Department within the standards of radiology medical practice.

## PERFORMANCE STANDARDS AND COMPENSATION OF CONTRACTED SERVICES

### A. Coverage Parameters

- Contractor shall ensure that Quality Assurance/Performance Improvement Measures are met. Quality Assurance/Performance Improvement Measures include:
  - Radiologists perform double reads on at least three percent (3%) per modality of all studies performed in the Hospital and related outpatient facilities.
  - Turnaround time for Emergency Department tests/studies for non-x-ray imaging not greater than one hour from the time the study is sent to the Radiologist to the time the reading is completed, and the report signed by the Radiologists (95%).
  - Turnaround time for inpatient cross-sectional imaging studies not greater than one (1) hour from the time the study is sent to the Radiologist to the time the reading is completed, and the report signed by the radiologists (95%).
  - Contractor may assign additional radiologist not located at O'Connor to read tests/studies in order to meet the turnaround time set above. However, when the total or wRVU reaches the 75<sup>th</sup> percentile, additional radiologist resources will be allocated to O'Connor

- Contractor shall pay County all costs related to the secure set-up of the internet technology (IT) required for the functioning of the radiology department remote communications. The total costs are estimated not to exceed twenty thousand dollars (\$20,000). Contractor shall pay County all invoiced amounts for such costs within net thirty (30) days from the Contractor's receipt of the invoice.

**B. Coverage Hours and Compensation**

- Hours: Medical Director services will be provided up to 20 hours per month.
- Compensation for Medical Director services: \$150 per hour, not to exceed \$3,000 per month.
- Use the attached invoice to submit your hours each month. County reserves the right to make changes to the invoice documents/process.
- Hours: Professional Services are provided Seven (7) days a week, 365 days a year, including holidays.

A. Weekday Coverage (Monday – Friday) Understanding that hours of On-Site coverage may decrease if need for services decreases, in which case hours of Off-site Coverage may increase upon mutual agreement.

- Weekday Day Shift. On-Site Coverage to be provided from 8:00 am to 5:00 pm with Off-site Coverage from 5:00 pm to 8:00 am Monday through Friday.
- Weekday Night Shift Off-Site Coverage to be provided from 5:00 pm to 8:30 am

B. Weekend Coverage (Saturday and Sunday) Understanding that hours of On-Site coverage may decrease if need for services decreases, in which case hours of Off-site Coverage may increase upon mutual agreement.

- Weekend Day Shift. Off-site Coverage to be provided from 8:30 am to 5:00 pm
  - Weekend Night Shift. Off-site Coverage to be provided from 5:00pm to 8:30 am
- Compensation for Professional Services: Stipend \$7,500 per a month inclusive of protocolling by radiologists and off hours coverage services, plus \$61.00 per wRVU.

Use the attached invoice to submit your hours each month. Invoice is due monthly and must be submitted within fourteen (14) days of the end of the prior month. County reserves the right to make changes to the invoice documents/process.

Contractor will provide medically necessary Services to all patients who present at O'Connor. Contractor will provide any and all information required for the County to obtain payment from government entity for such services.

Contractor agrees to register and follow all processes for Medi-Cal provider enrollment and timely and actively cooperate with the County for related onboarding activities.

The Contractor will not make any attempt to collect professional charges from the patient or from the payor for services provided pursuant to this Agreement. Contractor agrees to accept payment from County as full and complete payment for such services.

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(Attachment to Exhibit A)

MEDICAL DIRECTOR RADIOLOGY SERVICES  
INVOICE/TIME SHEET FORM

Administrative Services

The following services were provided by \_\_\_\_\_, M.D. ("Physician") on behalf of **Bay Imaging Consultants Medical Group, Inc.** at **O'Connor Hospital** during the month of \_\_\_\_\_ 20\_\_\_\_. Use as many sheets as necessary.

	Services Provided (please list specific activity performed)	Date	Hours
1.	Medical Staff CME Activities		
	_____	_____	_____
	_____	_____	_____
2.	Hospital Staff Education & Training		
	_____	_____	_____
	_____	_____	_____
3.	Clinical Supervision		
	_____	_____	_____
	_____	_____	_____
4.	Quality Improvement Activities (committees, case review, etc.)		
	_____	_____	_____
	_____	_____	_____
5.	Administration Activities		
	_____	_____	_____
	_____	_____	_____
6.	Community Education		
	_____	_____	_____
	_____	_____	_____

7. Medical Management Activities

\_\_\_\_\_  
\_\_\_\_\_

8. Compliance Activities

\_\_\_\_\_  
\_\_\_\_\_

9. Other

\_\_\_\_\_  
\_\_\_\_\_

I certify to the best of my knowledge that the activities described above are directly related to the administrative services agreement that I have with the hospital and that I have not billed the Medicare program separately for any of the duties and responsibilities described above. Email the completed form to: [OCHPhysicianInv@hhs.sccgov.org](mailto:OCHPhysicianInv@hhs.sccgov.org). Invoice is due monthly and must be submitted with fourteen (14) days of the end of the prior month.

Please be sure to enter **Medical Director Invoice** in the email subject line.

**Bay Imaging Medical Group, Inc.**

2125 Oak Grove Road, Suite 200  
Walnut Creek, California 94598

Compensation: \$150/hr. not to exceed \$3,000/mo.  
Effective April 1, 2022 through March 31, 2024

By: \_\_\_\_\_ Total Hours \_\_\_\_\_  
*(Physician Signature)*

Approved by:

Hospital Representative \_\_\_\_\_ Date: \_\_\_\_\_

Approved Amount to Pay: \$ \_\_\_\_\_

Approved Hospital Executive: \_\_\_\_\_



**Exhibit A-1**

**Employee Health Services**

**Professional Services**

Contractor shall cause Physicians to:

1. Provide, as needed, Pre-Employment Chest Single View Frontal X-ray (71010) for all prospective new hires of O'Connor Hospital sent by the Employee Health department.
2. Provide, as needed, Tuberculosis screening services for employees who have tested positive for TB.
3. Review, interpret and report in writing the results of the Chest X-ray specified below to Employee Health.

**PERFORMANCE STANDARDS AND COMPENSATION OF CONTRACTED SERVICES**

**A. Coverage Parameters**

- Contractor shall ensure physicians provide X-ray services to Employee Health as needed for prospective new hires and set forth below.
- Review, interpret and report in writing the results of the Chest X-ray specified below to Employee Health.

**B. Coverage Hours and Compensation**

- Hours: Flexible as requested by Employee Health for prospective new hires.
- Compensation: \$37.00 per Chest Single View Frontal X-ray for prospective new hires of O'Connor Hospital sent by Employee Health department. There is no additional payment by the County for this service.

Use the attached invoice to submit the number of Employee Health chest X-rays each month. County reserves the right to make changes to the invoice documents process. Invoice is due monthly and must be submitted within fourteen (14) days of the end of the prior month.

Contractor will not make any attempt to collect professional charges from the patient or from the payor for such services submitted to the County for reimbursement. Contractor agrees to accept any payment from County as full and complete payment for such services.

**(Attachment to Exhibit A-1)**  
**INVOICE FORM FOR EMPLOYEE HEALTH**  
**PROSPECTIVE NEW HIRE CHEST X-RAYS**

The following services were provided by **Bay Imaging Consultants Medical Group, Inc.** (“Contractor”) for Employee Health at O’Connor Hospital during the month of \_\_\_\_\_ 20\_\_\_\_

Number Chest Single View Frontal X-ray Services\_\_\_\_(Attach report, with Patient Name, date of service and service provided, to invoice form).

**Send invoice via secure encrypted email to Carolyn.Clark@hhs.scc.org or Fax to (408) 947-3449.**

I certify to the best of my knowledge that the activities described above are directly related to the Professional Services Agreement that Radiological Associates Medical Group of Santa Clara Valley, Inc. has with O’Connor Hospital for Employee Health and Contractor has not billed the patient or Medicare program separately for any of the services described above.

**Bay Imaging Consultants Medical Group, Inc.**

2125Oak Grove, Suite 200  
Walnut Creek, California 94598

Compensation: \$37 per Chest Single View Frontal X-ray services.  
Effective TBD through TBD

\_\_\_\_\_  
(Authorized Signatory)

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Employee Health Supervisor

**EXHIBIT B**

**INSURANCE REQUIREMENTS FOR  
PROFESSIONAL SERVICES CONTRACTS  
(e.g. Medical, Legal, Financial services, etc.)**

**Indemnity**

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

**Insurance**

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

**A. Evidence of Coverage**

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

**B. Qualifying Insurers**

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
  - a. Each occurrence - \$1,000,000
  - b. General aggregate - \$2,000,000
  - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
  - a. Premises and Operations
  - b. Personal Injury liability
  - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement, which shall read:**

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claim made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:



**EXHIBIT C**  
**COUNTY STANDARD TERMS AND CONDITIONS**

**1. Contracting Principles**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

**2. Audit Rights**

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor. All payments made under this Agreement shall be subject to an audit at the County's option and shall be adjusted in accordance with said audit. Necessary adjustments may be made from current billings. Any such audit shall be requested within 12 months of the end of any concluded term year, and any such audit shall be concluded within six months of such audit being initiated.

Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in County audits. Contractor shall pay to County the full amount of any audit determined to be due because of County audit exceptions. This provision is in addition to other inspection and access rights in this Agreement.

**3. Use of County's Name for Commercial Purposes**

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.

**4. Assignment of Clayton Act, Cartwright Act Claims**

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

**5. County No-Smoking Policy**

Contractor and its employees, agents and subcontractors, shall comply with the County’s No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

**6. Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention**

(a) Compliance with All Laws: Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(b) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(c) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(d) Definitions: For purposes of this Subsection 6, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include

the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

(e) Prior Judgments, Decisions or Orders against Contractor: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS THAT (A) WERE ISSUED IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT BY A COURT, AN INVESTIGATORY GOVERNMENT AGENCY, ARBITER, OR ARBITRATION PANEL AND (B) FOUND THAT CONTRACTOR VIOLATED AN APPLICABLE WAGE AND HOUR LAW OR PAY EQUITY LAW. CONTRACTOR FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH FINAL JUDGMENTS.

(f) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San Jose, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(g) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor’s records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Subsection, except where prohibited by federal or state laws, regulations or rules. County’s access to such records and facilities shall be permitted at any time during Contractor’s normal business hours upon no less than 10 business days’ advance notice.

(h) Pay Equity Notification: Contractor shall (1) provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, “Employees



**EXHIBIT D**  
**BUSINESS ASSOCIATE AGREEMENT**

**WHEREAS**, County of Santa Clara (“County” or “Covered Entity”) is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information (“PHI”) to **Bay Imaging Consultants Medical Group, Inc.** “Business Associate” pursuant to the terms of the Agreement and this Business Associate Agreement (“BAA”); and

**WHEREAS**, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) performing both covered and non-covered functions; and

**WHEREAS**, the Santa Clara Valley Health and Hospital System, which is part of the County is comprised of multiple County Departments, including Valley Medical Center and Clinics (“VMC”), O’Connor Hospital and Clinics (“O’Connor”), Saint Louise Regional Hospital (“Saint Louise”), including the DePaul Health Center (“DePaul”), the County Mental Health Department (“MHD”), the County Department of Alcohol and Drug Services (“DADS”), the County Public Health Department (“PHD”) and the County Custody Health Services (“Custody Health”) and County Valley Health Plan (“VHP”), all of which are “Covered Entities” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

**WHEREAS**, the Covered Entity and Business Associate are “qualified service organizations” or “QSO” within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations (“C.F.R.”) Part 2; and

**WHEREAS**, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI used and disclosed pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290dd-2, 42 C.F.R part 2, California Confidentiality of Medical Information Act Civil Code Section 56, California Health & Safety Code 1280.15, and other applicable laws; and to the extent the Business Associate is to carry out the covered entity’s obligation under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

**WHEREAS**, part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title

Agreement with County of Santa Clara and Bay Imaging Consultants Medical Group – O’Connor –Diagnostic Radiology Services – April 1, 2022

45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to the BAA, the parties agree as follows:

**I. Definitions**

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

**Privacy Breach** Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

**Business Associate** is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

**Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

**Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

**Protected Information** shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity's behalf.

**Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h)(1) and 45 C.F.R. 164.402.

## II. Duties & Responsibilities of Business Associates

**a. Permitted Uses.** Business Associate shall use Protected Information only for the purpose of performing Business Associate's obligations under the Contract and as permitted or required under the Contract or Addendum, or as required by law.

Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code Section 5328, 42 C.F.R. Part 2, or the HITECH Act, if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. [45 C.F.R. Sections 164.502(a) (3), 164.504(e) (2) (ii) (A) and 164.504(e) (4) (i)].

**b. Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule, 42 C.F.R., Welfare & Institutions Code Section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information obtained pursuant to the Agreement and this BAA to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and

Agreement with County of Santa Clara and Bay Imaging Consultants Medical Group – O'Connor – Diagnostic Radiology Services – April 1, 2022

(ii) a written agreement from such third party to immediately notify Business Associate of any Breaches of confidentiality of the Protected Information within twenty-four (24) hours of discovery, to the extent it has obtained knowledge of such Breach. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e) (2) (i)-(ii) (A) and 164.504(e) (4) (ii)].

**c. Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. [42 U.S.C. Section 17936(a) and 45 C.F.R. 164.501]. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. [42 U.S.C. Section 17935(a); 45 C.F.R. Section 164.502(a) (5) (ii)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected 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)]. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

**d. Appropriate Safeguards.** Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, and comply, where applicable, with the HIPAA Security Rule with respect to Electronic PHI.

**e. Reporting of Improper Access, Use or Disclosure.** Consistent with Section (h)(4) of this agreement, Business Associate shall notify Covered Entity within twenty – four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e. any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in any information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors.

Business Associate shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA. As set forth below, [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b); California Health & Safety Code 1280.15, California Confidentiality of Medical Information Act 56.10, California Welfare & Institutions 5328].

Compliance & Privacy Officer  
Santa Clara Valley Health & Hospital System  
2325 Enborg Lane, Suite 240  
San Jose, California 95128  
Facsimile: (408) 885-6886  
Telephone: (408) 885-3794

The Breach notice must contain: (1) a brief description of what happened, including the

date of the Breach and the date of the discovery of the Breach, if known; (2) the location of the breached information; (3) the unauthorized person who used the PHI or to whom the disclosure was made; (4) whether the PHI was actually acquired or viewed; (5) a description of the types of PHI that were involved in the Breach; (6) safeguards in place prior to the Breach; (7) actions taken in response to the Breach; (8) any steps Individuals should take to protect themselves from potential harm resulting from the Breach; (9) a brief description of what the business associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and (10) contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R. Sections 164.410(c) and 164.404(c)]. Business Associate shall take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Business Associate shall otherwise comply with 45 C.F.R. Section 164.410 with respect to reporting Breaches of Unsecured PHI. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 165.308(b)]

**f. Business Associate's Agents and Subcontractors.** Business Associate shall ensure that any agents or subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (II) d above with respect to Electronic PHI. [45 C.F.R. Sections 164.502(e) (1) (ii), 164.504(e) (2) (ii) (D) and 164.308(b)]. If Business Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes a material breach of violation of an agent or subcontractor's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Business Associate shall terminate the contract or arrangement with agent or subcontractor, if feasible. [45 C.F.R. Section 164.504(e) (1) (iii)]. Business Associate shall provide written notification to Covered Entity of any pattern of activity or practice of a subcontractor or agent that Business Associate believes constitutes a material breach or violation of the agent or subcontractor's obligations under the Contract or Addendum or other arrangement with twenty four (24) hours of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

The Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

**g. Access to Protected Information.** Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524. [45 C.F.R. Section 164.504(e) (2) (ii) (E); 42 C.F.R. part 2 and Welfare & Institutions Code Section 5328]. If Business Associate maintains an Electronic Health Record, Business Associates shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e)(1). If any Individual requests access to PHI directly from Business

Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request.

**h. Electronic PHI.** If Business Associate receives, creates, transmits or maintains Electronic PHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
- (2) Document and keep these security measures current and available for inspection by Covered Entity.
- (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect it.
- (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R. Section 164.304, “the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.” Security incident shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate, or (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

**i. Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any Individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.

**j. Accounting Rights.** Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with Privacy Rule and the HITECH Act. [42 U.S.C. Section 17935(c) and 45 C.F.R. Section 164.528]. Business Associate agrees to implement a process that allows for an accounting of disclosures to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years

prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. [45 C.F.R. Section 164.528(b)]. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity in writing within five (5) days of the request. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in the Agreement and this BAA.

**k. Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 165.504(e)(2)(ii)(I)]. Business Associate shall concurrently provide to Covered Entity a copy of any internal practices, books, and records relating the use and disclosure of PHI that Business Associate provides to the Secretary.

**l. Minimum Necessary.** Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information reasonably necessary to accomplish the purpose of the request, use, or disclosure in accordance with 42 U.S.C. Section 17935(b). Business Associate understands and agrees that the definition of "minimum necessary" is defined in HIPAA and may be modified by the Secretary. Each party has an obligation to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

**m. Adherence to the Requirements of 42 C.F.R.** Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by SCVHHS under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Section 2.1, *et seq.*, and HIPAA, and may not use or disclose the information except as permitted or required by this BAA or applicable law.

**n. Resist Efforts in Judicial Procedures.** Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.

Agreement with County of Santa Clara and Bay Imaging Consultants Medical Group – O'Connor – Diagnostic Radiology Services – April 1, 2022

**o. Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information governed by this BAA, and all rights, interests, and title remain vested in the County at all times.

**p. Warranties and Disclosures.** Business Associate assumes risk for any and all use of PHI. SCVHHS assumes no liability or responsibility for any errors or omissions in, or reliance upon, the PHI, including, but not limited to information electronic systems. SCVHHS makes no representations or warranties of any kind, express or implied, including but not limited to: accuracy, completeness, or availability of content, non-infringement, merchantability or fitness for a particular use or purpose, the fullest extent of the law. SCVHHS does not warrant that PHI is free of viruses or other harmful components or that service will be uninterrupted or error-free, or that defects will be corrected.

**q. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with the BAA, nor does Covered Entity’s (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity’s enforcement rights under the Agreement or BAA, Business Associate shall notify Covered Entity within five (5) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### **III. Termination**

**a. Material Breach.** A Breach by Business Associate of any provision of this BAA shall constitute a material Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding; provided however that if such Breach is capable of cure, notice of such breach by the non-breaching party

shall be given and an opportunity to cure such breach shall be provided. [45 C.F.R. Section 164.504(e) (2) (iii)].

**b. Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**c. Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section 2 of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii) (2) (I)]. If County elects destruction of the PHI, Business Associate shall certify in writing to County that such PHI has been destroyed.

#### **IV. General Provisions**

**a. Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the Covered Entity for any Breach of Business Associate's privacy or security obligations under the Agreement, caused solely by Business Associate, including any fines, penalties and assessments that may be made against Covered Entity or the Business Associate for any privacy breaches or late reporting and agrees to pay the reasonable costs of and notice for any credit monitoring services.

**b. Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the use and safeguarding of PHI.

**c. Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

**d.** Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

Covered Entity may terminate Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

**e. Assistance in Litigation of Administrative Proceedings.** Business associate shall notify Covered Entity within forty-eight (48) hours of any litigation or administrative proceedings commenced against Business Associate or its agents or subcontractors. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named as an adverse party.

**f.No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**g. Effect on Agreement.** Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

**h. Interpretation.** The BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, 42 Code of Federal Regulations (“C.F.R.”) Part 2, the Privacy Rule and the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

**i. Governing Law, Venue.** This agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.





**EXHIBIT E**  
**Santa Clara Valley Health & Hospital System**  
**Security and Confidentiality Agreement**

As an employee of, or volunteer, student, Physician, or other person doing business with Santa Clara Valley Health and Hospital System (hereinafter “the Provider”), and as a condition of my employment or other relationship, I agree to the following:

1. I am responsible for complying with the Provider’s HIPAA Policies and Procedures and with applicable patient privacy laws. I acknowledge that I have received a copy of the Provider’s HIPAA Policies and Procedures or have been provided with access to these policies on the Provider’s intra-net site at <http://www.valleypages/centralsvcshipaa.htm>.
2. I will treat all information received in the course of my employment with the Provider, which relates to the patients of the Provider, as confidential and privileged information.
3. I will not access protected health information unless I have a need to know this information in order to perform my job.
4. I will not disclose information regarding the Provider’s patients to any person or entity, other than as necessary to perform my job, and as permitted under the Provider’s HIPAA Policies and Procedures.
5. I will not disclose other types of confidential information (e.g., employee information, financial information, proprietary information, etc.) to any person or entity, other than as necessary to perform my job, and as permitted under Provider’s Policies and Procedures.
6. I will not log on to any of the Provider’s computer systems that currently exist or may exist in the future using a password other than my own.
7. I will safeguard my computer password and will not post it in a public place, such as the computer monitor or a place where it will be easily lost, such as on my nametag.
8. I will not allow anyone, including other employees, to use my password to log on the computer.
9. I will log off the computer as soon as I have finished using it.
10. I will not use Internet e-mail to transmit protected health information unless I am instructed to do so by my Privacy Officer.



**EXHIBIT F**

Medical group will assure that each physician will complete and sign a copy of this form regarding the reassignment of payment benefits, within five (5) days of the effective date of the agreement.

**REASSIGNMENT OF BENEFITS**

I, \_\_\_\_\_, M.D. hereby assign to the County of Santa Clara, all of my rights, if any, to bill and receive payment for my services furnished to patients at O'Connor Hospital pursuant to the Professional Services Agreement effective April 1, 2022 between the County of Santa Clara and **Bay Imaging Consultants Medical Group, Inc.** wherein County makes payment to Contractor for my Professional Services to patients.

This assignment shall be effective for all applicable services provided pursuant to Exhibit A of this Agreement.

\_\_\_\_\_  
**Signature** (Print Name clearly then Sign) **Date**

**EXHIBIT G**

**CONTRACTOR CERTIFICATION OF COMPLIANCE WITH  
COVID-19 VACCINE REQUIREMENTS**

*[Attached form on next page.]*

**CONTRACTOR CERTIFICATION OF COMPLIANCE WITH  
COVID-19 VACCINE REQUIREMENTS  
(Revised January 4, 2022)**

**Contractor Information:**

Contractor name:	Name of Contractor representative:
Bay Imaging Consultants Medical Group, Inc.	Aseem Om Rawal, M.D.
Contractor phone number:	Contractor email address:
925-296-7126	arawal@bicrad.com

**Contractor Certification.** On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor’s employees working at County facilities, including but not limited to the requirements in the County’s memorandum regarding COVID-19 Vaccine Requirement for County Personnel (“County Vaccine Policy”), the County’s memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <<https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>>. Contractor has also reviewed and is in compliance with the State of California’s July 26, 2021 Public Health Order and December 22, 2021 Public Health Orders. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.
2. As of the date signed below:
  - a. Contractor understands that it must confirm, and has confirmed, that all of contractor’s workers (including any subcontractor workers) who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County<sup>1</sup> are:
    - i. Fully vaccinated against COVID-19 and, as of January 24, 2022, up-to-date on any boosters for which they are eligible as defined and required in the County Vaccine Policy; **or**

<sup>1</sup> As established in the County’s Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County’s vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to vaccination, testing, and masking requirements.

- ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.
- b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health’s Vaccine Records Guidelines and Standards.
- 3. If contractor seeks to send any workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, to any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such workers to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such worker arriving onsite so that the department has sufficient time to determine whether it will approve the contractor’s requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where applicable, regular testing and the use of a fit-tested N95 mask.<sup>2</sup> Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite. Regardless of exemption status, personnel who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible may not work in higher-risk settings at County facilities.<sup>3</sup>
- 4. If any of contractor’s workers are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those workers to go onsite at a County facility without express written permission from the County.

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<sup>2</sup> If contractor sends workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, it is contractor’s obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

<sup>3</sup> “Higher-Risk Settings” are those identified in the Order of the Health Officer of the County of Santa Clara Requiring Up-to-Date COVID-19 Vaccination of Personnel in Higher-Risk Settings, *available at: <https://covid19.sccgov.org/december-28-2021-booster-health-order>*. There are certain high-risk roles and high-risk areas that are not within higher-risk settings. Regardless of exemption status, effective no later than February 1, 2022, County personnel are not permitted to work in these high-risk roles and high-risk areas if they are not fully vaccinated and, as of January 24, 2022, up-to-date.

- 5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

Aseem Om Rawal, M.D.

President

Name of authorized representative of Contractor

Title

DocuSigned by:

*Aseem Om Rawal*

3/3/2022

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Signature

Date