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20-10665 Contract Number 4400005710-A-1

SAP Number 4400005710

Arrowhead Regional Medical Center

Department Contract Representative	<u>William L. Gilbert</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>Roche Diagnostics Corporation</u>
Contractor Representative	<u>Ben Zemetra</u>
Telephone Number	<u>(626) 419-3711</u>
Contract Term	<u>January 23, 2018, through January 22, 2023.</u>
Original Contract Amount	<u>\$7,179,234</u>
Amendment Amount	<u>\$61,260</u>
Total Contract Amount	<u>\$7,240,494</u>
Cost Center	<u>7500</u>

Briefly describe the general nature of the contract: An Amendment No. 1 to Contract No.4400005710 with Roche Diagnostics Corporation, for laboratory equipment, supplies, reagents, tests, software and related services, increasing the total contract amount by \$61,260 from \$7,179,234 to \$7,240,494, with no changes to the contract period of January 23, 2018, through January 22, 2023.

FOR COUNTY USE ONLY

Approved as to Legal Form

Bonnie Uphold

Bonnie Uphold, Deputy County Counsel

Date 9-20-20

Reviewed for Contract Compliance

Date _____

Reviewed/Approved by Department

William L. Gilbert

William L. Gilbert, Director

Date 9/21/2020



ROCHE DIAGNOSTICS CORPORATION AMENDMENT NO.1

This amendment No. 1 (“Amendment”) is effective when executed and amends Product Schedule #144764 having an Effective Date as indicated below (“Schedule”) between Roche Diagnostics Corporation (“RDC, RD, or Roche”) and County of San Bernardino (“Customer, You, or Your”) subject to the terms of the Roche Diagnostics Master Agreement (signed by Customer on 12/01/2008 and Roche on 12/10/2008) identified below (“Master Agreement”), and is intended by the parties to modify the existing terms and conditions and the Schedule as specifically set forth in this Amendment. Except as noted below, all other terms and conditions contained in the Master Agreement and the Schedule will remain in full force and effect.

Product Schedule, Effective Date: 02/26/2018

1. Customer Information:

Customer Number	55063299
Customer Name	County of San Bernardino on behalf of Arrowhead Regional Medical Center
Equipment Address	400 N Pepper Ave
City, State, Zip	Colton, CA 92324-1801



The Schedule shall be amended as follows:

1.1 Software, Software Services, Software Discount Information: See Appendix D. This information details Customer’s Software, Software Services and Software Discounts acquired hereunder. The values for the items listed as “Included in Reagents” are provided for use in preparing Customer’s Medicare cost reports. Any Software provided to Customer will also be pursuant to the terms and conditions identified in Exhibit A – IT Solutions Terms and Conditions , as attached hereto and incorporated herein The IT Solutions Terms and Conditions included in Exhibit A will replace the Middleware Terms and Conditions included in the Middleware Exhibit of the Schedule and referenced in Section 2.17 in the Schedule, in its entirety.

1.2 Changes to Middleware Information. The following will apply only to the information for Middleware in Appendix A of the Schedule: (a) the Middleware Equipment, Services, and Discount Information will be moved to an Appendix D, (b) references to Middleware will be changed to Roche Middleware Solutions, (c) references to Equipment will be changed to Software, (d) references to Services to will be changed to Software Service, and (e) the Acquisition Method will be changed to License for Use.

2. AUTHORIZED ACCEPTANCE:

This Amendment shall become effective and binding upon the date of last signature ("Effective Date"). By signing this Amendment, each party is warranting that the person signing has the authority to do so.

County of San Bernardino on behalf of Arrowhead Regional Medical Center	Roche Diagnostics Corporation
Signature:  Curt Hagman	Signature:  <small>Shaton Edwards cn=Shaton Edwards, c=US, ou=Roche Diagnostics, email=shaton.edwards@roche.com 2020.09.02 18:23:21 -0400</small>
Print Name: Chairman, Board of Supervisors	Print Name: Shaton Edwards
Title:	Title: Manager, Strategic Contracting
Date: OCT 27 2020	Effective Date:

Roche Diagnostics has signed this Agreement first and this Agreement shall be effective upon Roche Diagnostics's receipt of executed documents and acknowledgment by an Authorized Roche Diagnostics Representative in Indianapolis, Indiana.
Customer changes to this Agreement after Roche Diagnostics Corporation signature are void.

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD LYNN MONELL, Clerk of the Board of Supervisors of the County of San Bernardino

By 
Lynn Monell





ROCHE DIAGNOSTICS CORPORATION AMENDMENT

Appendix D – Software, Software Services, Discount Information

Description	Quantity	Acquisition Method	Value *	Pricing *	Payment Frequency/ Method	Services Payment Commencement	Value of Discount
Software 1. Roche Middleware Solutions (Additions)							
Software Upgrade	See Exhibit Roche Middleware Solution Exhibit	License to Use	\$61,260.00	\$61,260.00	One-Time Payment \$61,260.00	N/A	N/A
TOTAL VALUE OF DISCOUNTS							N/A

Roche Middleware Solution Exhibit

Customer Name: County of San Bernardino on behalf of Arrowhead Regional Medical
 Center IT Consult Number: 20206342

	Current System	Additions
System Software	v8.15	v8.15
<u>Roche</u> Middleware Solutions	v8.15	
Hardware (New or Upgrade)		
<u>Roche</u> Middleware Solutions		
Licensed Features		
Specimen Management	Yes	
Maintenance Manager	Yes	
Specimen Storage and Retrieval	Yes	
Data Collection	Yes	
QC Integration	Yes	
Moving Averages	Yes	
Connections & Licensing		
License for Instrument		
License for 3 rd party Instrument		
Interface Connection	12	
3rd Party Interface Connection		11
License for Thin Client	6	
ODBC Database Access Connection	1	
License for Hot Backup (Instrument)		
License for Hot Backup (Thin Client)		
Interface Connection - Mirroring		11
Training & Consulting Services		
Training slot: Rules Writing		
Training Slot: Moving Averages		
CC/IA Rules Package		
Upgrades		
Middleware Software Upgrade		
DI Accessories		
DI Interface Cable - Custom		6
Device Server 1 Port		6
Server Class UPS		

Exhibit A - IT Solutions terms and conditions

The following are Terms and Conditions ("Terms and Conditions") associated with Roche IT Solutions, including Roche Middleware Solutions, cobas Infinity, VANTAGE, Virtuoso, uPath, and VENTANA Connect.

1. DEFINITIONS: Any capitalized term defined herein shall have the meaning ascribed to it in these Terms and Conditions. In addition to terms defined as used in these Terms and Conditions, the following definitions shall be used herein:

- a. **"Software"** means, the Software Product and Documentation provided to Customer
 - i. **"Software Product"** means a specific software product identified in Appendix D, including drivers for instruments or accessories provided by Roche, as applicable.
 - ii. **"Documentation"** means Roche's then-current documentation for the Software made available to Customer by Roche in writing, including user manuals, training guides, instructions and other updates or alerts provided by Roche from time to time.
 - iii. **"Approved Third Party Software"** means any third party software (including drivers for instruments or accessories provided by Roche) in a particular release version which Roche has expressly approved in writing or in any product information or other publication to be used in connection with or parallel to the Software.
- b. **"Software Services"** means the maintenance and support services for the Software being provided by Roche. Software Services may include Updates or Upgrades.
 - i. An **"Update"** is a change to Software which is necessary to enable the Software to continue to operate at existing functionality levels or to correct software defects.
 - ii. An **"Upgrade"** is an improvement to Software that adds new functionality to the Software or any Product. "Upgrade" does not include any new licensable features which Roche has determined, in Roche's sole discretion; require payment of an additional license fee.
- c. **"Installation"** means each licensed copy of Software installed at a Customer's site.
- d. **"Acceptance"** means acknowledgement by Customer of completion of installation of the Software
- e. **"Roche Product Supply Agreement"** means one or more separate agreement(s) entered into between Customer and Roche pursuant to which Customer has agreed to acquire reagents, supplies, consumables (collectively, the "Reagents/Supplies"), or purchase, lease or acquire equipment (the "Equipment," and collectively with IT solutions other than Software, and Reagents/Supplies, the "Products") and service from Roche for Customer's use in performing in-vitro diagnostics testing. The Roche Product Supply Agreement may include an allowance, surcharge or discount for the Software or Software Services described in Appendix D or to pursuant to which the Products and Services are "bundled" into the transactions contemplated by the Roche Product Supply Agreement.

2. CERTIFICATION OF USE: By accepting these Terms and Conditions, Customer is certifying that that the Software will not be used in a blood bank or transfusion setting as long as Customer continues to use the Software. For purposes of this certification, a blood bank or transfusion setting is any setting involving the collection, processing, compatibility testing, storage and/or distribution of blood and blood components, including the manufacturing and maintaining of these products and associated databases. If Customer's use of the Software changes in a way that causes this certification to become inaccurate, Customer will notify Roche as soon as possible.

3. LICENSING CONDITIONS:

- a. License Grant. Subject to these Terms and Conditions and for the term of use specified in Appendix D, Roche grants Customer a perpetual, limited, personal, non-transferable, non-exclusive, non-assignable license to use the Software in object code only, and the Documentation for such Software, for Customer's internal use in the United States of America.

b. Installations. The number and type of Software Installations are set forth in Appendix D.

c. Restrictions. Customer shall not, and shall not permit any third party to, translate, reverse engineer, decompile, recompile, update, reproduce or modify all or any part of the Software or merge the Software into any other software. Customer shall not allow any third party to have access to the Software without Roche's prior written consent. Customer shall not sell, assign, transfer, publish, disclose, display or otherwise make available the Software or copies thereof to any third parties.

d. Ownership of Materials. All patents, copyrights, trade secrets, trademarks and other proprietary rights in or related to the Software are and will remain the exclusive property of Roche, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Software is used or licensed. Customer will not take any action that jeopardizes Roche's proprietary rights or acquire any right in the Software. Roche will own all rights in any copy, translation, modification, adaptation, derivation, compilation, updated works and partial copies of the Software including any improvement or development thereof. Customer shall assign and hereby assigns these rights to Roche and will obtain, at Roche's request, the execution of any instrument that may be appropriate to perfect these rights in Roche's name. Customer shall secure and protect the Software, Documentation and copies thereof in a manner consistent with the maintenance of Roche's or applicable third party rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to the Software to satisfy its obligations hereunder.

4. TERM AND TERMINATION :

a. Term. Customer's contractual agreement with Roche relating to the Software (the "Term") shall commence on the Effective Date of Appendix D and shall remain in effect until otherwise terminated in accordance with the provisions of these Terms and Conditions.

b. Termination for Default. These Terms and Conditions shall remain in effect until the licenses for all Software Products licensed hereunder have terminated. Notwithstanding any other term or condition set forth herein, Roche may terminate: (i) if Customer is in default of, violates or fails to perform any term or condition of the applicable Roche Products Supply Agreement, Appendix D, or these Terms and Conditions and such failure continues for thirty (30) days after notice thereof by Roche; or (ii) as otherwise expressly permitted pursuant to these Terms and Conditions. Except as otherwise specifically expired pursuant to its terms, the rights and obligations under Section 11 (Limited Warranty; Limitation of Liability; Indemnity) of this Agreement shall survive the cancellation, termination, or expiration of Appendix D and/or these Terms and Conditions.

c. Remedies on Default. In the event of default by Customer as set forth in these Terms and Conditions, in addition to any remedies set forth in these Terms and Conditions, Customer shall immediately (a) cease all use of the Software, and (b) immediately delivery to Roche all copies of all Software in Customer's possession and certify in writing to Roche within ten (10) business days after termination that the foregoing actions haven been taken. Further, Roche shall have the right to pursue any other remedy provided by law. Customer agrees to pay all costs of collection, including without limitation, court costs, and reasonable attorneys' fees.

5. BILLING AND PAYMENT TERMS: Roche will begin billing Customer for the Software Products and Services on the date of installation completion for the first Software Product installed. Service will be billed as per the payment method defined in Appendix D. Roche will provide Customer with payment terms of net thirty (30) days from the date of invoice. Payment by credit card is acceptable at point of sale only. Failure to pay invoices when due may result in non-shipment of all future orders of products that Customer purchases from Roche and/or Customer being notified by Roche that Customer is in default of these Terms and Conditions.

6. SOFTWARE EARLY TERMINATION FEE: Both parties agree and acknowledge that in the event of a default of these Terms and Conditions by Customer which results in the early termination of Customer's obligations as set forth in these Terms and Conditions and/or Appendix D, the "Software Early Termination Fee" that Customer agrees to pay will be: (a) the sum of Customer's remaining monthly payments for all rented and leased Software, less unearned interest; plus (b) the sum of Customer's remaining payments for Software Service, whether or not included in the Software price; plus (c) the pro-rata remaining value of all Software and Software Services identified as "included" or "Included in Reagents", provided at "No Additional Charge", or identified as Discounts. Customer agrees that the provisions related to the Software Early Termination Fee are reasonable in light of the circumstances and are not disproportionate to the presumed injury or loss resulting from Customer's default.

7. DELIVERABLES:

- a. Software. Roche shall provide Customer with the Software in object code only, pursuant to the Installation/Acceptance Section below, as well as Documentation for the Software in electronic form.
- b. Third Party Software. Any other third party software provided to Customer in connection with the Software is licensed subject to applicable third party terms and conditions. See Section 8.
 - i. Roche Middleware Solutions and cobas Infinity Test Systems. If Customer acquires a separate Software system(s) for the purpose of testing changes to Customer's laboratory environment, Customer agrees that this Software will not be utilized for reportable patient results.
- c. Network Connections and Infrastructure. Customer shall be responsible for the acquisition, installation, testing, monitoring and maintenance of adequate hardware, network connections and services, including but not limited to all network infrastructure related hardware and software such as switching and routing equipment, name resolution systems, centralized data backup and recovery systems, virus protection systems, firewall and intrusion detection systems, physical security, etc. This shall be known as the "IT Infrastructure".
- d. Installation/Acceptance.
 - i. The installation of each Software shall occur following the completion and approval by Customer and Roche of a detailed site survey in accordance with an installation timeline to be provided by Roche. Customer and Roche agree to use their best efforts to maintain the estimated schedule in the installation timeline, however, neither Customer nor Roche will be liable to the other for delays as a result of events beyond their control.
 - ii. Customer's acceptance of Software occurs upon the earlier of Customer's (1) written confirmation of acceptance or (2) use of Software in a manner that exceeds the scope or duration of the tasks in the installation timeline (for example, use in the assistance of actually processing patient billable results).
 - iii. Roche Middleware Solutions and cobas Infinity Installation Processes. For each Installation, Roche will install the Software and necessary license files. Roche will provide setup of the connectivity to analytical Equipment and Customer's LIS for the processing of orders and results. Roche will not provide any additional services as part of installation, including but not limited to consulting services or assistance to Customer in implementing any other Software functionality. This assistance may be acquired from Roche at an additional charge.

8. SOFTWARE SUBLICENSES: The Third Party Software Terms and Conditions have been provided to the Customer and ONLY apply and Roche Middleware Solutions and are attached herewith.

9. IT INFRASTRUCTURE:

- a. Requirements. Customer shall ensure that the IT Infrastructure is suitable to run the Software and meets the minimum hardware and Software specifications provided to Customer by Roche. Unless otherwise specified in Appendix D, Customer is responsible for acquiring all hardware required for use of the Software. Customer is also responsible for providing all network segmentation, virtual networks (VLANs) with access control lists (ACLs), for the system. Customer agrees further that it is Customer's responsibility to limit the network communication to only essential traffic. Specific to Roche Middleware Solutions, if Customer is currently using hardware and/or accessories previously acquired through Roche, Roche will continue to provide service for the hardware and/or accessories until Customer is required to complete a Software upgrade to a newer version in accordance with Section 14. If Customer is acquiring new hardware and/or accessories or if Customer is acquiring new hardware and/or accessories as part of any upgrade, Roche will not provide a warranty or service for the new hardware and/or accessories. Any warranty or service associated with the new hardware and/or accessories will be provided through the manufacturer. Roche's Service Department will assist in providing contact information.
- b. Use of Approved Third Party Software. Customer shall ensure that no third party software other than Approved Third Party Software installed interferes with or negatively influences the Software. Roche does not guarantee that any third party software other than Approved Third Party Software does not negatively influence the Software or its performance, and vice versa. Roche denies any liability whatsoever if third party software is

c. Remote Access Connectivity. Customer shall provide an internet enabled connection and shall host Roche remote diagnostics software provided by Roche for Roche to remotely access the necessary systems for the purpose of installation, troubleshooting, user training, Software updates and other appropriate uses related to Customer's operation and Roche's service of the Software. Roche shall not be obligated to provide Software Services contracted for hereunder if Customer fails to comply with this section. In the event Roche provides Software Service to Customer hereunder for which Roche would be considered a "Business Associate" (as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and associated rules (together, "HIPAA")), then the parties shall enter into and comply with the terms of a mutually acceptable Business Associate Agreement, as defined and in accordance with applicable laws.

d. Security and Maintenance. Customer is responsible for the maintenance, security, disaster recovery and integrity of the IT Infrastructure and in particular the hardware, system software, malware protection, antivirus software and its ongoing management and network environment. Customer is responsible to ensure that the operating system is current with any security patches released by Microsoft and that any Approved Third Party Software is also patched. Customer is responsible to ensure all Software is backed up following Customer's standard operating procedures for software and applications backup.

e. Snapshot Expressly Prohibited. If Customer is operating Software in a virtual environment, CUSTOMER IS EXPRESSLY PROHIBITED from using Snapshot or any other similar backup method similar thereto for purposes of restoring previous test order, sample assignment or results processing. Roche expressly disclaims any and all liability for any claims, damages, judgments or losses arising from Customer's use of Snapshot or any other similar backup method in violation of this express prohibition.

10. U.S. GOVERNMENT RESTRICTED RIGHTS: The Software licensed under these "Terms and Conditions" is "Commercial Computer Software" and "Commercial Computer Software Documentation" as those terms are defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense FAR Supplement (DFARS). The Software and related Documentation licensed hereunder is provided to end users for use, by and for the U.S. Government, with only those rights as are granted to all other end users pursuant to these Terms and Conditions. Use of the Software is permitted only by parties who are authorized by an appropriate U.S. Government official. This provision is in lieu of, and supersedes, any FAR, DFARS, or any other provision that relates to use of the commercial computer software licensed under these Terms and Conditions.

11. LIMITED WARRANTY; LIMITATIONS ON LIABILITY; INDEMNITY:

a. Warranty. Roche warrants that the Software will function in conformance with its specifications and be free of material defects for a period of one (1) year from the date of Acceptance of the Software, provided the Software is used in accordance with these Terms and Conditions and operated on the IT Infrastructure directed by Roche.

THE ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY ROCHE FOR THE SOFTWARE AND SOFTWARE SERVICES. ROCHE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO WARRANTY IS MADE THAT THE OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS IN THE SOFTWARE WILL BE CORRECTED. NOTWITHSTANDING ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS, BUT EXCLUDING ANY CLAIMS FOR INFRINGEMENT INDEMNIFICATION SPECIFICALLY PROVIDED FOR UNDER THESE TERMS AND CONDITIONS, OR ARISING FROM ROCHE'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATIONS OF LAW, IN NO EVENT WILL ROCHE OR ANY OF ROCHE'S AFFILIATES (OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, CONSULTANTS, ATTORNEYS OR AGENTS) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA OR INFORMATION, LOSS OF USE OF THE SOFTWARE, BUSINESS INTERRUPTION, LOSS OF BUSINESS REPUTATION OR GOODWILL, DOWNTIME COSTS, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES WHICH CUSTOMER MAY INCUR OR EXPERIENCE, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR RELATING TO THE SOFTWARE OR THE SERVICES FURNISHED BY ROCHE, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ROCHE OR ANY OF ITS AFFILIATES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ROCHE'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATING TO THE USE OR NON-USE OF THE SOFTWARE BY CUSTOMER SHALL BE LIMITED TO 3X VALUE OF THE FEES PAID FOR THE SOFTWARE CONTAINED IN THIS AGREEMENT.

b. **IP Indemnification.** Roche will indemnify, defend, and hold harmless Customer and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Software. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will use reasonable efforts to notify Roche promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Roche of its obligations only if and to the extent that such delay or failure materially prejudices Roche's ability to defend such lawsuit or claim. Customer will give Roche sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Roche may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend Customer against any claim for which Customer is entitled to indemnity by Roche, then Roche shall reimburse Customer for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Customer. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Customer to Roche. This shall not apply to any judgment or settlement amount, which amounts Customer shall be entitled to notify, invoice or debit Roche's account at any time; and Customer, at its sole discretion, may settle the claim or suit. If, in Roche's opinion, the Software becomes, or is likely to become, the subject of a claim of infringement of Intellectual Property Rights, Roche may, at its option: (i) procure for Customer the right to continue using the Software; (ii) replace or modify the Software to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Roche, Customer shall cease use of the Software upon written notice from Roche, and Roche shall provide Customer with a pro-rata refund of the unearned fees paid by Customer to Roche for the Software.

c. **Third Party Hardware.** Third Party hardware includes a standard manufacturer's warranty from date of shipment.

d. **Third Party Patches.** Customer is solely responsible for all effects and consequences of loading any third party patches onto the operating system or the system software within the IT Infrastructure. This excludes patches provided by Roche to fulfill its contractual obligations and patches approved by Roche for Approved Third Party Software.

e. **The following Warranty Terms and Conditions ONLY apply to cobas Infinity and Roche Middleware Solutions**

i. **No Warranty on Functionality.** The Software offers sample optimization functionality in two specific ways: software-driven configuration management in which Customer provide operational guidelines (in the form of data) to be executed by the Software, including workflow instructions and autoverification parameters ("Data-Driven Functionality"), and customer-driven rules-based decision making in which Customer create and implement algorithms to direct the Software in the processing of test results ("Rules -Driven Functionality"). Customer agrees that any parameters used for workflow instructions, autoverification parameters or "rules" implemented by Customer using Data-Driven Functionality or Rules-Driven Functionality shall be the sole responsibility of Customer. Customer will not, at any time, rely upon Roche to make any determinations regarding the data inputted by Customer relating to Data-Driven Functionality or the content and direction of any of Customer's "rule-writing" or result processing decisions relating to Rules-Driven Functionality. ACCORDINGLY, ROCHE MAKES NO REPRESENTATIONS AND WARRANTIES WITH RESPECT TO ANY WORKFLOW INSTRUCTIONS, AUTOVERIFICATION, ALGORITHMS OR RULES IMPLEMENTED VIA DATA-DRIVEN FUNCTIONALITY AND/OR RULES-DRIVEN FUNCTIONALITY AND FURTHER SPECIFICALLY DISCLAIMS ANY WARRANTIES NOT EXPRESSLY MADE HEREIN.

IN ADDITION TO ANY OTHER LIMITATIONS ON LIABILITY AND WARRANTY DISCLAIMERS CONTAINED IN THESE TERMS AND CONDITIONS, UNDER NO CIRCUMSTANCES SHALL ROCHE BE LIABLE FOR ANY LOST PROFITS, LOSS OF INCOME, LOSS OF DATA OR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ASSOCIATED WITH THE USE OF THE DATA-DRIVEN FUNCTIONALITY OR RULES-DRIVEN FUNCTIONALITY. CUSTOMER IS SOLELY RESPONSIBLE FOR THE CONTENT, STRUCTURE, CONSISTENCY AND CORRECTNESS OF ALL RULES APPLIED, E.G., MULTIPLE-STAGE DIAGNOSTIC DECISION TREES OR VALIDATION RULES

12. The following Interfacing provision applies only to cobas Infinity and Roche Middleware Solutions:

- a. **Pre-Analytical and/or Automation Equipment:** If Customer is acquiring Roche pre-analytical and/or automation equipment on the Agreement, Customer understands and agrees that the Roche pre-analytical and/or automation equipment may only be operated when interfaced with Roche Software purchased directly from Roche. Customer may not interface the Roche pre-analytical and/or automation equipment with Middleware software (or any other similar middleware product) acquired from any third party.

13. The following Allowance provision applies only to Roche Middleware Solutions:

- a. **Middleware Software Changes:** Up to one change or addition, not to exceed \$7,500 may be made to the contracted software licenses up to 45 days after the shipment of Customer's Middleware Software listed in the Agreement to accommodate Customer's unanticipated laboratory workflow needs. The Middleware Software, as well as the delivery timelines and expectations, may be revised by Roche in accordance with any change Customer requests. Deletions of any software licenses will not be credited back to Customer after it ships if Customer's system configuration changes. Unless Customer specifically requests otherwise, Roche reserves the right to ship Customer a newer version of the Middleware Software than is stated in the Agreement, but Roche will notify Customer if this occurs.

12. MAINTENANCE AND SUPPORT SERVICES: Customer is required to maintain Service plan coverage for the Software ("Software Services") for the duration of the Term. The scope of Software Service provided by Roche pursuant to any service plan shall be as follows:

- a. **Scope of Software Services.** Roche will provide the following Services to Customer during the Term of Software Service coverage for the Software:
 - i. Corrections of material defects in the Software so that the Software will operate in accordance with the Documentation. All Software Services will be performed via telephone, modem connection and/or web tunneling or in the case of updates, via the best delivery method as determined by Roche.
 - ii. Periodic updates of Software that may incorporate corrections of any material defects or fixes of any minor bugs. Customer is responsible for installation of all updates and upgrades to the Software provided by Roche within thirty (30) days of receipt.
 - a. **Generally.** Subject to any limitations provided in this Section 6, all Software Updates and Upgrades will be provided to Customer at no additional charge. However, it shall be Customer's responsibility during the Term to ensure that all Updates and Upgrades made available by Roche are installed in a timely fashion such that all Software remains within two (2) versions of the then-current version being sold by Roche to new customers (the "Current Release"). To the extent that Customer fails to maintain within two versions of the Current Release, Roche is no longer required to provide a warranty or any support to Customer's Software (regardless of the existence of any Service component of these Terms and Conditions) unless Customer upgrades all Software to a version within two versions of the Current Release and further, Roche may charge Customer for such upgrades.
 - b. **Planned Obsolescence. Next Generation Replacement Software.** During the Term, Roche may, in its sole discretion, cease supporting any version of the Software because it is opting to make that version of Software obsolete. If, during the Term, the version of Software used by Customer is subject to such a planned obsolescence, Roche will provide Customer with a more current Software version or alternative Software product, at Roche's option, at no additional charge to Customer. The replacement software provided by Roche will have functionality at least equivalent to the version subject to the planned obsolescence.
 - iii. Telephone support 24 hours per day, seven days per week, to assist Customer in using and troubleshooting the Software.
 - iv. Remote system support for diagnostics, training, troubleshooting and the provision of Software updates.
 - v. Assistance with configuration changes required as part of new Roche instrument or assay purchases.

- vi. Roche will work with Customer to plan and deliver its standard training for the Software licensed under Appendix D and these Terms and Conditions. Additional telephone support is available 24 hours per day, 365 days per year, by calling Roche Diagnostics at 1-800-440-3638.
- b. Additional Services. Additional training, maintenance and services may be provided to Customer by Roche at Roche's standard rates pursuant to mutually agreeable terms.
 - c. Services Not Included. Software Services do **not** include:
 - i. Following completion of the Software installation and acceptance by Customer, work performed by Roche to accommodate changes or modifications to Customer's hardware, software or network that affect their operation or interaction with Software or affect the Software's. This includes but is not limited to adjustments to the Software configuration required because of (A) Customer's LIS migration or upgrades, (B) maintenance and support of Customer's IT Infrastructure, including uninterruptible power supplies, power conditioners and other items external to the Software, and/or (C) configuration changes to any third party systems connected to the Software.
 - ii. The repair, correction, or replacement of the Software when such repair, correction or replacement is due, directly or indirectly, to: (A) Customer's failure to adhere to the standards of, or to follow operation or maintenance instructions as set forth in, the Documentation; (B) the use of media, supplies, or consumable supplies which are not compatible with the Software; (C) the unauthorized repair, maintenance, modification or alteration of the Software unless specifically approved in writing by Roche in advance; (D) hardware or software not supplied or authorized by Roche; (E) negligent acts or omissions of Customer; (F) power failure, surges or electrical damage, lightning, fire or water damage, accident or disruptive events reasonably within Customer's control; (G) changes in Customer's operation standards that would require Roche to modify its standard configurations or procedures, or (H) other causes external to the Software and not attributable to Roche, including but not limited to any acts of nature or any Third Party Device.
 - iii. Major new releases of a Software containing substantial new enhancements, features or functionality, that are not distributed generally by Roche as a periodic update pursuant to (a)(ii) of this Section.
 - iv. Maintenance and support of Customer hardware or software other than Software licensed hereunder and other services not set forth in this Section.