

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-237

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative
Telephone Number

William L. Gilbert
(909) 580-6150

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Cayuse LLC
Bryan Schafer
(909) 662-4662
January 1, 2023 - December 31, 2027
\$33,825
\$33,825

Briefly describe the general nature of the contract: Master Agreement with Cayuse, LLC. for a cloud-based Institutional Review Board system, to digitally manage research protocols compliance with federal research requirements, in the amount of \$33,825, for the retroactive period of January 1, 2023 through December 31, 2027.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Supervising Deputy County Counsel

Date 3-17-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *William L. Gilbert*
William L. Gilbert, Director

Date

3/21/23

CAYUSE MASTER AGREEMENT

This MASTER AGREEMENT ("Agreement") is made and entered into as of January 1, 2023 ("Effective Date") by and between Cayuse, LLC, a Delaware limited liability company located at 121 SW Salmon Street, Portland OR ("Cayuse"), and San Bernardino County, a political subdivision organized and existing under the laws and constitution of the State of California, ("Customer") on behalf of Arrowhead Regional Medical Center located at 400 N Pepper Avenue, Colton CA. Cayuse and Customer are each referred to herein as a "Party" and are collectively referred to herein as the "Parties." In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. ORDERING

Pursuant to this Agreement, Customer may order from Cayuse (a) licenses to access and use one or more of Cayuse's proprietary research administration and grant management software solution modules to be hosted and made available by Cayuse on a software-as-a-service basis, including related APIs (the "Subscription Service"), and/or (b) related training, implementation and/or other professional services (collectively, "Professional Services"). The specifics of each Customer order will be set forth on one or more written or electronic quotations, order form(s) and/or other documents provided by Cayuse (each, an "Order Form") that reference this Agreement and are agreed upon by both Parties. Any Customer Affiliate (as defined below) may enter into an Order Form with Cayuse under this Agreement and, solely with respect to such Order Form, such Customer Affiliate shall become a party to this Agreement and all references to Customer in this Agreement shall be deemed to refer to such Customer Affiliate. Each Order Form is a separate obligation of Customer or the Customer Affiliate, as applicable, and no other Customer Affiliate has any obligation related to, or right to access, the Subscription Service under such Order Form. For purposes of this Agreement, a "Customer Affiliate" shall mean any party that: (i) directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Customer; or (ii) is part of an affiliated education system or group of educational institutions with Customer. All Order Forms are incorporated herein by reference.

2. SUBSCRIPTION SERVICE ACCESS, SUPPORT AND RESTRICTIONS

2.1 License to Subscription Service. Subject to the terms and conditions of this Agreement and the payment of all applicable Fees (as defined below), Cayuse hereby grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license, during the Subscription Term (as defined below), to permit any of Customer's user(s) who are authorized by the Customer and Cayuse to use the Subscription Service ("End Users") to access and use the Subscription Service solely for Customer's internal business purposes.

2.2 Limitations on License. Customer shall not: (a) modify or make derivative works based on the Subscription Service; (b) use the Subscription Service in a manner not authorized under the documents, agreements, user manuals and any technical publications and specifications, as applicable, made generally available by Cayuse to customers relating to the operation and use of the Subscription Service ("Documentation") or in violation of any applicable law, rule or regulation, including any export/import laws; (c) distribute, transfer, grant sublicenses, or otherwise make available the Subscription Service (or any portion thereof) to other than End Users, including, but not limited to, making the Subscription Service available as an application service provider, service bureau, or rental source; (d) remove any product identification or other notices contained in the Subscription Service; or (e) reverse engineer the Subscription Service for any reason or access the Subscription Service to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of the Subscription Service, or (iii) copy any ideas or features. The Subscription Service is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Subscription Service is provided to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

2.3 Support and Maintenance. Cayuse will provide support and

maintenance services for the Subscription Service in accordance with the Cayuse Maintenance and Support Policy attached hereto as Appendix 1 ("Support Services").

2.4 Unauthorized Access. Customer shall promptly notify Cayuse of any unauthorized use, copying or disclosure of the Subscription Service of which it becomes aware and further agrees to take such commercially reasonable measures necessary to end and prevent any such further use, copying and disclosure.

2.5 Breach of License. Cayuse, in its sole and exclusive discretion, may immediately terminate this Agreement in the event Customer or any End User violates the license grants made herein or any provision of this Section 2. Each Party acknowledges and agrees that any breach of this Section 2 by Customer or an End User shall cause immediate and irreparable injury to Cayuse, and in the event of such breach, Cayuse shall be entitled to seek and obtain injunctive relief, without bond or other security, and all other remedies available at law and in equity.

3. PROFESSIONAL SERVICES

3.1 Generally. In the event that Customer also requires related Professional Services, the parties will execute one or more statements of work (each, an "SOW"). All SOWs are incorporated herein by reference. Cayuse will provide all Professional Services and related deliverables ("Deliverables") in accordance with the specifications and schedule, if any, set forth in each SOW. If Customer notifies Cayuse in writing within thirty (30) days after the Deliverables are made available to Customer that Cayuse is not in compliance with the foregoing covenant with respect to such Deliverables, then Cayuse will, as Customer's sole and exclusive remedy and Cayuse's sole liability, use commercially reasonable efforts to cause the Deliverables to conform to such covenant at no additional cost to Customer.

3.2 Customer Personnel, Facilities and Resources. If applicable to any Professional Services, Customer will provide Cayuse with timely access to appropriate Customer personnel. An SOW may specify those tasks, activities or resources for which Customer is responsible and, if applicable, those tasks, activities and resources that will be performed jointly by Customer and Cayuse.

3.3 Approvals and Information. Customer will respond promptly to any request by Cayuse for information, approvals, decisions or authorizations that are needed by Cayuse to perform the Professional Services. Cayuse may also describe the course of action Cayuse intends to follow if it does not receive a timely response from Customer, which may include suspension of the affected Professional Services. Cayuse may follow the described course of action in the absence of a timely response from Customer. Any subsequent change requested by Customer will be subject to mutual agreement and may result in a change order to the SOW ("Change Order").

3.4 Changes to SOWs. Either party may propose changes to the Professional Services under an applicable SOW. Requests for changes will be submitted to the other party in writing for consideration of feasibility and the likely effect on the fees and the Professional Services. The parties will document any agreed upon changes in mutually executed Change Orders.

3.5 Intentionally blank.

3.6 Customer Delays. If action or inaction by Customer, or its suppliers' failure to perform their responsibilities in a timely manner, delays or prevents Cayuse from performing the Professional Services or Custom Development, Cayuse will be entitled to a Change Order documenting an equitable adjustment in the schedule for performance and the Fees under the applicable SOW.

4. INTELLECTUAL PROPERTY

4.1 Protection of Proprietary Rights. Customer acknowledges that the Subscription Service is a commercially valuable asset of Cayuse, the development of which required the investment of substantial time, effort, and cost by Cayuse. Customer further acknowledges that the Subscription Service contains trade secrets of Cayuse and that it is Cayuse's Confidential Information (as defined below) and is proprietary to Cayuse. Accordingly, Customer hereby agrees that it and its End Users will use the highest degree of care permitted by applicable law to maintain the confidentiality of the Subscription Service.

4.2 Subscription Service Ownership. As between Customer and Cayuse, Cayuse shall retain all right, title and interest in and to the Subscription Service, including all output and executables of the Subscription Service, all updates and/or upgrades thereto, and the Documentation. Except for the license granted in Section 2.1, this

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Agreement does not grant Customer any right, title, or interest in any intellectual property owned by or licensed to Cayuse, including Subscription Service. Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices and restrictions contained in this Agreement.

4.3 Deliverable Ownership. Unless expressly stated otherwise in an SOW and excluding any Customer trademarks, service marks and other logos, as between Customer and Cayuse, Cayuse will retain all right, title and interest in and to all Deliverables and Customer hereby irrevocably assigns to Cayuse any and all ownership rights it may have in or to such Deliverables. Customer's rights to the Deliverables shall be the same as the rights granted to Customer under the Agreement with respect to the Subscription Services to which such Deliverable pertains.

4.4 Data Responsibility. Customer is solely responsible for any and all data input by Customer or any Authorized Users or other parties on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including personally identifiable data (collectively, "Customer Data"), that may be collected or utilized by Customer through its use of the Subscription Service; provided that Customer Data may not include, and Cayuse shall have no responsibility for, any protected health information or personally identifiable data other than user name or ID, account number, user profile or preferences, mailing address, email address, IP address, landline or cellular telephone numbers. Cayuse reserves the right to take down, delete and/or block access (whether temporarily or permanently) to any Customer Data that violates any of the provisions of this Section or in respect of which Cayuse receives a complaint from any person. Customer is responsible for establishing and enforcing terms of use and privacy policies ("Customer Policies") that govern use of the Subscription Service by End Users as permitted under this Agreement and applicable law. In relation to all personal data comprised within any Customer Data, Customer warrants that such personal data shall have been obtained and supplied to Cayuse in compliance with applicable data protection and privacy legislation, including Customer having obtained all necessary consents and approvals from End Users pursuant to the Customer Policies that are necessary under such legislation to permit Cayuse to (i) provide the Subscription Service; (ii) perform its other obligations hereunder; and (iii) exercise its rights and benefits hereunder.

4.5 Customer Data License; Usage Data. Customer shall fully own and retain all rights to Customer Data. Customer grants to Cayuse a limited, nonexclusive, fully paid-up, royalty-free license to copy, store, display and use the Customer Data for purposes of: (i) providing Customer and End Users access and use of Subscription Service; and (ii) enabling Cayuse to perform its other obligations hereunder. Cayuse shall fully own and retain all rights to anonymous usage data derived from Customer Data ("Usage Data") as aggregated with usage data from Cayuse's other customers for its own business purposes such as support, operational planning, product innovation and sales and marketing of Cayuse's services. For purposes of clarification, such Usage Data may not include any data that could reasonably identify Customer or any particular End User.

4.6 Third-Party Access. Customer consents to allow Cayuse to provide access to Customer Data to Cayuse employees and to certain third party service providers which have a legitimate need to access such data in order to provide their services to Cayuse as part of Cayuse's provision of the Subscription Service to Customer. Remote access to Customer Data from outside the Continental United States (CONUS), including remote access to Customer Data by authorized support staff in identified support centers, is prohibited unless approved in advance by the Customer Chief Information Security Officer (CISO).

4.7 Customer Data Retention and Deletion Requests. Cayuse assumes responsibility for the security and confidentiality, integrity, and availability of Customer Data under its control. No Customer Data shall be copied, modified, destroyed or deleted by Cayuse other than for normal operation or maintenance of the Subscription Service during the Term without prior written notice to and written approval by CISO. When data is destroyed or disposed, it shall be in accordance with the National Institute of Standards of Technology (NIST) Special Publication 800-88 published by the U.S. Department of Commerce. The incorporation of the Defense of Department (DoD) standard 5220.2-M wipe method shall be used when using data destruction programs, file shredders, etc. In either case, a written confirmation of this process is required to the CISO within three (3) days of the destroyed/disposed data.

4.8 License to Customer Trademarks. Customer hereby grants to Cayuse a limited, non-transferable, non-sublicensable, non-exclusive license, during the Subscription Term, to use, reproduce, display, and distribute any trademarks, service marks, or trade names that Customer may designate from time-to-time ("Customer Marks") in connection the Subscription Service to Customer and its End Users, subject to the terms of this Agreement. With prior approval, the Customer further grants Cayuse the right to display the Customer Marks on its Website and marketing materials. Cayuse shall comply with Customer's then-current policies regarding the use of Customer's Marks. Cayuse acknowledges and agrees that the Customer Marks belong to and shall continue to belong to Customer (or its licensors or other third party owners), and Cayuse shall have no rights in or to the Customer Marks other than as specifically set forth in this Agreement.

5. FEES AND PAYMENT

5.1 Subscription Service Fees. The pricing and fees for the Subscription Service and Professional Services are set forth in the applicable Order Form or SOW (the "Fees") and will be invoiced in accordance with the provisions set forth therein. Cayuse escalates the annual Subscription Service Fee by four (4%) percent annually during the Subscription Term. Cayuse reserves the right to change the Fees for any Renewal Term (as defined below) upon thirty (30) calendar days ("Days") prior written notice to Customer.

5.2 Payment Terms. All amounts to be paid by Customer hereunder shall be due and payable within forty-five (45) Days after Customer's receipt of the invoice therefor.

5.3 Taxes. Customer shall pay all applicable sales, use and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Cayuse's net income, unless Customer is exempt from the payment of such taxes and provides Cayuse with sufficient evidence of such exemption.

5.4 Without limiting Cayuse's termination rights, Cayuse shall have the right to suspend the Subscription Service in the event Customer fails to pay any Fees when due.

6. CONFIDENTIALITY

6.1 Confidentiality Obligations. This Agreement is subject to compliance with the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) (collectively, "Regulations"). All information, including detailed price and cost information, is public information. If Cayuse believes that any portion of this Agreement (including any attachments, amendments, SOWs, and SLAs), materials, or work product provided to Customer is exempt from public disclosure, Cayuse must clearly mark that portion "Confidential" or "Proprietary". Cayuse also must include a brief description that identifies the recognized exemption from disclosure under the Regulations. Information marked "Confidential" or "Proprietary" in its entirety will not be honored, and Customer will not deny public disclosure of any information so marked. Cayuse represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law.

6.2 Feedback. Customer and/or its End Users may provide suggestions, comments or other feedback to Cayuse with respect to the products and services, including the Subscription Service. Feedback is voluntary and Cayuse is not required to hold it in confidence. Feedback may be used by Cayuse for any purpose without obligation of any kind. Nothing contained herein shall preclude either Party from developing any products or services or enhancing any existing products or services, including but not limited to the products that are the subject of this Agreement, provided any such developments or enhancements are not based on or derived from the other party's intellectual property or Confidential Information.

7. TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years (the "Subscription Term").

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7.2 Termination for Breach. Either Party may terminate this Agreement upon not less than thirty (30) Days prior written notice if the other Party has failed to comply with any material term, condition, or obligation of this Agreement, and such Party subsequently has failed to remedy the default within thirty (30) Days after such notice by the non-defaulting Party.

7.3 Termination for Insolvency. If Cayuse believes in good faith that Customer's ability to make payments may be impaired, or if Customer fails to pay any invoice when due and does not make such payment within ten (10) Days after receipt of notice from Cayuse of such failure, then Cayuse may, in its sole discretion, either: (a) suspend the Subscription Service until such payment is made; or (b) terminate the Subscription Service. In either event, Customer shall remain liable to pay all Fees under this Agreement.

7.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, all sums owed to Cayuse by Customer will become immediately due and payable upon the effective date of termination, and each Party shall immediately cease use of all Confidential Information belonging to the other Party and shall irretrievably delete and/or remove such items from all computer hardware and storage media, including backups. Additionally, following termination of this Agreement, Customer shall immediately cease use of the Subscription Service.

7.5 Survival. Notwithstanding any provisions contained in this Agreement to the contrary, in addition to any provisions that by their express terms survive expiration and termination of this Agreement, or by their nature may be reasonably inferred to have been intended to survive expiration and termination of this Agreement, the following provisions shall survive expiration and termination of this Agreement: 2.2 (Limitations on License), 4 (Intellectual Property), 5 (Fees and Payment), 6 (Confidentiality), 7.4 (Effect of Termination), 7.5 (Survival), 8.3 (No Other Warranties), 10 (Limitation of Liability) and 11 (General).

8. WARRANTIES

8.1 Mutual Warranties. Each Party represents and warrants that (a) it has the authority to enter into this Agreement and to grant the rights and licenses provided herein, and that by entering into this Agreement such Party is not in violation of any previous agreement between such Party and any third party, and (b) it will comply with all laws and regulations applicable to the obligations assumed under this Agreement.

8.2 Cayuse Warranties. Cayuse warrants that (a) all Professional Services and Support Services shall be provided in a professional, competent and workmanlike manner in accordance with the prevailing industry standards and (b) the Subscription Service, when used in accordance with the Documentation and this Agreement, will perform in all material respects as specified in such Documentation during the applicable Subscription Term; provided that if Customer notifies Cayuse in writing that the Subscription Service does not comply with the foregoing, then Cayuse will, as Customer's sole and exclusive remedy and Cayuse's sole liability, use commercially reasonable efforts to cause the Subscription Service to comply with the foregoing at no additional cost to Customer.

8.3 No Other Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8 (WARRANTIES), CAYUSE DOES NOT MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICE (INCLUDING ANY WARRANTY AS TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), NOR WITH RESPECT TO ANY OTHER MATTER SET FORTH IN THIS AGREEMENT.

9. INSURANCE

9.1 Cayuse shall secure and maintain throughout the Subscription Term the types of insurance with limits, and in accordance with the requirements as set forth in Attachment A, as attached hereto and incorporated herein.

10. LIMITATION OF LIABILITY

10.1 Disclaimer of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, COSTS OF RECREATING LOST DATA, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF

CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.

10.2 Cap on Direct Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR AN AMOUNT OF DAMAGES IN EXCESS OF TWO TIMES THE FEES PAID OR PAYABLE BY CUSTOMER TO CAYUSE IN THE TWELVE (12) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

10.3 Exclusions. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS UPON THE TYPES AND AMOUNTS OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS OF CERTAIN TYPES OF DAMAGES, SET FORTH IN THIS SECTION 10 (LIMITATION OF LIABILITY), SHALL NOT APPLY TO THE FOLLOWING: (A) DAMAGES RESULTING FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE GRANTS AND RESTRICTIONS); OR (B) CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW.

11. GENERAL

11.1 Nature of Relationship. In entering this Agreement, each Party does so as an independent party and not as an agent, partner, or joint venturer of the other Party. Neither Party has any right or authority, nor shall a Party hold itself out as having any right or authority, to assume, create, or enter into any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon, the other Party.

11.2 Intentionally omitted.

11.3 Press Release. No news releases, advertisements, public announcements or photographs arising out of the Agreement or Cayuse's relationship with Customer may be made or used without prior written approval of Customer.

11.4 Construction. The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

11.5 Inapplicability of UCITA. THE PARTIES AGREE THAT NO PROVISION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) IS INTENDED TO APPLY TO THE INTERPRETATIONS OF THIS AGREEMENT, WHETHER OR NOT UCITA IS ENACTED IN THE LEGAL JURISDICTION WHOSE LAW GOVERNS THIS AGREEMENT AS SET FORTH IN THIS AGREEMENT.

11.6 Governing Law; Severability. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforcement of the remaining provisions shall not be affected or impaired.

11.7 Assignment. Customer shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of Cayuse save as described in the agreement. Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part. Any assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, Cayuse reserves the right to assign this Agreement in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of Cayuse Subject to all of the terms and conditions hereof, this Agreement inures to the benefit

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of and is binding upon the Parties hereto and their successors and assigns.

11.8 Waiver. The failure to enforce or the waiver by either Party of one default or breach of the other Party shall not be considered to be a waiver of any subsequent default or breach.

11.9 Force Majeure. Except with regard to payment obligations, either Party shall be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party, including, but not limited to, default of subcontractors or suppliers, failures of third party software, default of third party vendors, acts of God or of the public enemy, U.S. or foreign governmental actions, labor shortages or strikes, communications or utility interruption or failure, fire, flood, epidemic, and freight embargoes. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

11.10 Remedy. The rights and remedies of the Parties will be cumulative (and not alternative). If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Insurance Requirements.

11.11 Entire Agreement. This Agreement, and each Order Form and

SOW, together constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement shall be binding on either Party unless it is in writing and signed by authorized representatives of both Parties. In the event of any conflict or inconsistency between this Agreement, order form, and/or any exhibit, the terms and conditions of this Agreement shall prevail. The terms on any purchase order or similar document submitted by Customer to Cayuse will have no effect and are hereby rejected. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

11.12 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth above.

11.13 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which taken together shall constitute one and the same Agreement.

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

CAYUSE, LLC

BY: John Starr (Mar 20, 2023 19:24 CDT)
NAME: John Starr
TITLE: CFO

CUSTOMER: SAN BERNARDINO COUNTY ON BEHALF OF
ARROWHEAD REGIONAL MEDICAL CENTER

BY: Dawn Rowe
NAME: Dawn Rowe
TITLE: Chair, Board of Supervisors

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



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Appendix 1 Cayuse Maintenance and Support Policy

During the Subscription Term, Cayuse shall provide standard technical support for End Users for the Subscription Service between the hours of 6:00 am and 5:00 pm, Pacific Time, Monday through Friday, excluding Cayuse companywide holidays ("Business Hours"). Cayuse shall make available applications and technical staff to assist with questions about the Subscription Service and to assist Customer in solving any problems. The Cayuse technician responding to Customer's inquiry will be experienced, technically competent, and familiar with the Subscription Service. Customer shall submit a help desk request through Cayuse' website, with verifiable and reproducible evidence of problem, questions, or requests for assistance. Upon receipt of a help desk request, Cayuse shall respond by email to acknowledge receipt of the request based on the priority status Customer notes on the request.

- i) **Urgent – Production Down.** Reserved for issues when the production environment is down. Cayuse will respond within one (1) hour from the time the request is received (during Business Hours or within one (1) hour of opening if the request is not received during Business Hours).
- ii) **High – Production Critical.** Reserved for issues when the production environment is threatened, but not actually down. Cayuse will respond the same day the request is received (if the request is received by 4:00 pm Pacific Time of any day the help desk is open or, if received later, the next business day).
- iii) **Medium – Time Sensitive.** Cayuse will respond within 24 hours of the time the request is received, excluding in the computation of such 24 hours any days outside of Business Hours. (For example, if such a request is received at 1:00 pm on a Friday, Cayuse will respond by 1:00 pm on the following Monday, if such Monday is within Business Hours.)
- iv) **Low – Non Essential Timeline.** Cayuse will respond within 48 hours of the time the request is received, excluding in the computation of such 48 hours any days during which the help desk is not open. (For example, if such a request is received at 1:00 pm on a Friday, Cayuse will respond by 1:00 pm on the following Tuesday, if neither such Tuesday nor the preceding Monday is outside of Business Hours.)

Cayuse may undertake scheduled maintenance of the Subscription Service during time periods designated by Cayuse. Cayuse will provide Customer with no less than 48 hours prior electronic mail or other notice of any scheduled maintenance that is likely to make the Subscription Service inaccessible or unusable and will only perform this type of scheduled maintenance outside of Business Hours.

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Appendix 2 Services Level Addendum

1. DEFINITIONS.

Certain capitalized terms, not otherwise defined in this Appendix 2, will have the meanings set forth in the Agreement. The following capitalized terms will have the definitions set forth below:

1.1 "Availability" will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and thereafter dividing the difference so obtained by the total time during such month.

Represented algebraically, Availability for any particular calendar month is determined as follows:

$$\text{Availability} = \frac{(\text{Total Monthly Time} - \text{Unscheduled Downtime})}{\text{Total Monthly Time}}$$

1.2 "Scheduled Downtime" will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the Service, according to the Documentation, due to planned system maintenance performed by Cayuse. Cayuse will exercise reasonable efforts to perform scheduled system maintenance between the hours of 12:00 AM and 3:00 AM Eastern Standard Time and one Saturday a month for 12 hours. Cayuse may change planned maintenance windows at its sole discretion and will notify Customer of any such changes that affect previously notified plans, provided such maintenance is done during low volume times.

1.3 "Total Monthly Time" is deemed to include all minutes in the relevant calendar month, to the extent such minutes are included within the Access Term.

1.4 "Unscheduled Downtime" will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the Production Service according to the Documentation, other than Scheduled Downtime, as defined above.

2. PERFORMANCE. Cayuse will undertake commercially reasonable measures to ensure that Availability equals or exceeds ninety-nine and nine tenths percent (99.9%, which equates to 44 minutes of Unscheduled downtime per month) during each calendar month (the "Service Standard"), provided that any Unscheduled Downtime occurring as a result of circumstances beyond Cayuse's reasonable control including (i) Customer's breach of any provision of the Agreement; (ii) non-compliance by Customer with any provision of this Appendix 2; (iii) incompatibility of Customer's equipment or software with the Service; (iv) poor or inadequate performance of Customer's systems; (v) Customer's equipment failures; (vi) acts or omissions of Cayuse's suppliers; or (vii) force majeure (as contemplated in the Agreement), shall not be considered toward any reduction in Availability measurements. Customer may report Unscheduled Downtime by calling (877)-689-3661 ext. 1 or (503)-297-1311 ext. 1 or by email at support@cayuse.com during Cayuse's normal business hours (9 am to 8 pm EST). Cayuse will exercise commercially reasonable efforts to respond to reports of Unscheduled Downtime by telephone or email acknowledgement within one (1) business day of each such report.

3. MEASUREMENT AND REPORTS. Cayuse will provide for monitoring of Availability on an ongoing basis. All measurements of Availability will be calculated on a monthly basis for each calendar month during the Access Term. In the event Unscheduled Downtime occurs, Cayuse will provide a report setting forth measurements thereof and a calculation of Availability within a reasonable time thereafter. If Customer disagrees with any measurement or other information set forth in any such report, it must so inform Cayuse in writing within five (5) calendar days after receipt. Accuracy of any such report shall be deemed conclusive unless such notice is provided by Customer. Any such notice must indicate specific measurements in dispute and must include a detailed description of the nature of the dispute. Cayuse and Customer agree to attempt to settle any such disputes regarding Availability and/or related measurements in a timely manner by mutual good faith discussions.

4. CUSTOMER REQUIREMENTS. Customer is responsible for maintenance and management of its computer network(s), servers, software, and any equipment or services needed to access the Service; and (ii) correctly configuring Customer's systems in accordance with the Documentation. Customer must promptly notify Cayuse in the event Unscheduled Downtime occurs. Unscheduled Downtime will be deemed to begin when Cayuse receives accurate notification thereof from Customer, or when Cayuse first becomes aware of such Unscheduled Downtime, whichever first occurs. The obligations of Cayuse set forth in this Appendix 2 will be excused to the extent any failures to meet such obligations result in whole or in part from Customer's failure(s) to meet the foregoing requirements.

5. REMEDIES. In the event Unscheduled Downtime occurs, Cayuse will undertake commercially reasonable efforts to remedy such Unscheduled Downtime within a commercially reasonable timeframe. Customer's sole and exclusive remedy, and Cayuse's sole and exclusive liability, for Cayuse's breach of this Appendix 2 will be the following credits:

Uptime Calculation	Service Credit
<99.9% of unscheduled downtime	1 day of fees credited
<99.7% of unscheduled downtime	2 days of fees credited
<99.5% of unscheduled downtime	5 days of fees credited

6. Other

Customer's instance will be hosted on AWS and controlled VPN access is for OS-level administrative access managed by Cayuse. Currently there are no restrictions on the access to the endpoint URL. Administrative tasks (host (OS) level) are for Cayuse managed hosting. Cayuse works with AWS to implement tools for tracking irregular activity. Upon request, we will provide reporting to Customer. Data is backed up incrementally daily, with a full backup completed on a weekly basis. All data is retained for one week.

CAYUSE MASTER AGREEMENT

ATTACHMENT A INSURANCE REQUIREMENTS

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

1. Cayuse shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Cayuse and all risks to such persons under this Agreement. If Cayuse has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Cayuse shall carry General Liability Insurance covering all operations performed by or on behalf of Cayuse providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Cayuse is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Cayuse owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
 - f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.

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

2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
4. **Severability of Interests.** Cayuse agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Cayuse and Customer or between Customer and any other insured or additional insured under the policy.
5. **Proof of Coverage.** Cayuse shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire

CAYUSE MASTER AGREEMENT

without thirty (30) days written notice to the Department, and Cayuse shall maintain such insurance from the time Cayuse commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Cayuse shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

6. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
7. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Cayuse or Customer payments to Cayuse will be reduced to pay for Customer purchased insurance.
9. **Insurance Review.** Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Cayuse agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of Customer.



ORDER FORM

Prepared by: Bryan Schafer
Cayuse LLC
121 SW Salmon Street, Suite
900 Portland, Oregon 97204
bryan.schafer@cayuse.com

PREPARED FOR:

Name: Gregory Young
Company: San Bernardino
County on behalf of Arrowhead
Regional Medical Center
Address: 400 N Pepper Ave
Colton, CA 92324
United States
Phone: 909-580-6263
Email:
younggr@armc.sbcounty.gov

BILLING CONTACT:

Name: Gregory Young
Company: San Bernardino
County on behalf of Arrowhead
Regional Medical Center
Address: 400 N Pepper Ave
Colton, CA 92324
United States
Phone: 909-580-6263
Email:
younggr@armc.sbcounty.gov

TERMS:

Offer Expires: December 31, 2023

Payment Terms: All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.

Contract Term: 48 months beginning January 01, 2024

PRODUCTS & SERVICES

Software

Product	Description	Year 1 Price
iRIS: IRB Assistant Subscription	Institutional Review Board Module Subscription Including 1 Review board with 1 Committee	USD 6,500.00
iRIS: Custom Interface Subscription	Custom Interface Subscription	USD 250.00
iRIS: Custom Interface Subscription	Custom Interface Subscription	USD 250.00

1st Year Software Total: USD 7,000.00

Professional Services

Product	Description	Total Price
iRIS: Project Support Hours		USD 2,500.00

Professional Services Total: USD 2,500.00

Subscription Multi-Year Schedule

Product	Year 1	Year 2	Year 3	Year 4
iRIS: IRB Assistant Subscription	USD 6,500.00	USD 6,760.00	USD 7,030.40	USD 7,311.62
iRIS: Custom Interface Subscription	USD 250.00	USD 260.00	USD 270.40	USD 281.22
iRIS: Custom Interface Subscription	USD 250.00	USD 260.00	USD 270.40	USD 281.22
Yearly Total:	USD 7,000.00	USD 7,280.00	USD 7,571.20	USD 7,874.06

Total Contract Value USD 32,225.26

This Cayuse Order Form ("Order Form" or "OF") by and between Cayuse LLC ("CAYUSE") and San Bernardino County on behalf of Arrowhead Regional Medical Center ("Customer") details the terms of Customer's purchase of the products and services set forth above ("Product & Services"). This Order Form shall become effective on the latest date set forth in the signature block below. This Order Form is governed by the terms of the Cayuse Master Agreement between the parties dated 1/1/2023 (the "Agreement"). This Order Form and the Agreement form the entire agreement between the parties in respect of the Products and Professional Services set forth in the Product and Pricing Summary. In the case of any inconsistency between the Order Form and the Agreement, the terms of this Order Form shall prevail and supersede the terms of the Agreement to the minimum extent necessary to resolve the conflict. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Cayuse to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. This Order Form supersedes any related quotation issued by Cayuse pertaining to the Licensed Products and Professional Services set forth in the Product and Pricing Summary. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Order Form on behalf of Customer or Cayuse, as applicable.

Is a Purchase Order (PO) required for the purchase or payment of the products on this Order Form?

☐ Yes ☐ No

Sales Tax Exemption Form (If "Yes" please attach certificate)

☐ Yes ☐ No

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this order form as of the Date below:

**San Bernardino County on behalf of
Arrowhead Regional Medical Center**

By 
Name **Dawn Rowe**
Title **Chair, Board of Supervisors**

Cayuse LLC

By 
John Starr (Mar 20, 2023 19:24 CDT)
Name **John Starr**
Title **CFO**

**CAYUSE**

121 SW Salmon Street - Building 1
Suite 900 (9th floor)
Portland, Oregon 97204
Ph: 503-297-2108

Invoice

Invoice #: INV5444
Invoice Date: 01/27/2023
Due Date: 03/13/2023

Bill To:

Arrowhead Regional Medical Center
400 N. Pepper Avenue
Colton, CA 92324
United States

Reference #:**Terms:** Net 45**Service Period:** 01/01/2023-12/31/2023

Description	Amount
IRB Assistant Subscription	\$6,500.00
CITI	\$250.00
SSO integration with LDAP, AD, SAML or SHIB	\$250.00
Credit of \$5,400.00 duplicated amount charged in past invoice)	\$-5,400.00
SUBTOTAL	\$1,600.00
PAYMENT/CREDITS	0.00
TOTAL DUE	\$1,600.00

ACH or Wire Information
Silicon Valley Bank
Beneficiary Name: Cayuse, LLC
Routing Number: 121140399
Account Number: 3303136396
Federal Tax ID: 85-2474156