



Contract Number

10722

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Medarcus, LLC
Contractor Representative	Varna Kadambari
Telephone Number	(571) 367-9783
Contract Term	November 18, 2019 – November 17, 2021
Original Contract Amount	\$526,000
Amendment Amount	
Total Contract Amount	\$526,000
Cost Center	9110004200

Briefly describe the general nature of the contract:

Agreement with Medarcus, LLC for SurePatient Registration and Data Quality Reporting in an amount not to exceed \$526,000 for the period of November 18, 2019 through November 17, 2021.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, County Counsel

Date 10-24-19

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

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

Date 10/23/19

SurePatient Master Software License Subscription Agreement

1. License Subscriptions.

1.1. Grant of License. Subject to all of the terms and conditions of this Software License Subscription Agreement (the "Agreement"), MEDARCUS, (the "Company") grants to Customer a non-transferable, non-sublicensable, non-exclusive license during the applicable Subscription Term (as defined below) to use the binary/object code form of the SurePatient (SP) software product specified ("Software"), but only in accordance with (a) the SP documentation ("Documentation"), (b) this Agreement and (c) any configuration or other restrictions set forth in the applicable sales agreement between the Company and the Customer (the "Order Form") or this Agreement. "Software" shall also include any Documentation and any Support and Maintenance releases of the same Software product provided to Customer under this Agreement.

1.2. RESERVED.

1.3. Subscription Terms and Renewals. The Software is licensed under each Order Form on a subscription basis ("Subscription"). The term of the Subscription shall be five (5) years commencing on the Effective Date ("Subscription Term"). If no Subscription start date is specified on the applicable Order Form, the start date shall be the date when Company delivers to Customer the license key for the Software. Within ninety (90) days prior to the end of the Subscription period, Company shall provide Customer a renewal quote stating the then-current Subscription rates.

1.4. Installation and Copies. Customer may copy and install on Customer's computers for use only by Customer's employees, patients, Facilities, Affiliates, and Contractors (each as defined in Section 1.5 below) as many copies of the Software as is designated on the applicable Order Form. Customer may also make a reasonable number of copies of the Software for back-up and archival purposes.

1.5. Use by Facilities, Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Customer's

Facilities, Affiliates and Contractors may use the licenses granted to Customer, provided that (a) such use is only for Customer's or such Affiliate's benefit, (b) Customer agrees to remain responsible for each such Facility, Affiliate's and Contractor's compliance with the terms and conditions of this Agreement and (c) upon request Customer will identify each such Facility, Affiliate and Contractor. Use of the Software by the Facilities, Affiliates, Contractors and Customer in the aggregate must be within the restrictions in the applicable Order Form. "Facility" means any clinical facility operated by Customer. "Affiliate" means local government agencies, departments and special districts governed by the San Bernardino County Board of Supervisors, or other local governmental body or corporation, including applicable K-12 schools and community colleges, where Customer is authorized and empowered to expend public funds for such entity located within the County of San Bernardino's applicable jurisdictional and geographical boundaries. "Contractor" means any third party engaged by Customer to perform services on behalf of Customer.

1.6. License Restrictions. Customer shall not (and shall not allow any third party to):

- (a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Company);
- (b) distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes;
- (c) remove any product identification, proprietary, copyright or other notices contained in the Software;
- (d) modify any part of the Software, create a derivative work of any part of the Software, or incorporate the Software

into or with other software, except to the extent expressly authorized in writing by Company;

- (e) or publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

2. Ownership.

Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Company and its suppliers have and will retain all rights, title and interest in and to the Software (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited license right to the Software and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise.

3. Payment and Delivery.

3.1. Payment. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made in U.S. dollars. Unless otherwise specified on the applicable Order Form, all Professional Services fees, training fees, and setup fees are due within sixty (60) days of Customer’s receipt of Company’s invoice. Subscription fees are payable as follows: (a) for each initial Subscription Term under an Order Form, within sixty days of the effective date of such Order Form, unless otherwise specified therein. Except as exempt by law, Customer shall be responsible for all taxes, withholdings, duties and levies arising from the order.

3.2. RESERVED

3.3. Excess Usage of Software. If Customer has exceeded the number of Software instances as set forth on the Order Form during the report then Customer shall pay for the additional usage on a subsequent invoice.

3.4. Delivery. All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Order Form.

4. Term of Agreement.

Term. This Agreement is effective as of November 18, 2019 (the “Effective Date”) and expires November 17, 2021. Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Customer and Company each reserve the right to terminate this Agreement, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to Company for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Company shall promptly discontinue services unless the notice directs otherwise.

4.1. Termination. Upon any expiration or termination of this Agreement, Customer shall cease any and all use of any Software and destroy all copies thereof.

4.2. Survival. Sections 1.6 (License Restrictions), 2 (Ownership), 3 (Payment and Delivery), 4 (Term of Agreement), 5.3 (Disclaimer), 8 (Limitation of Remedies and Damages), 10 (Confidential Information), 12 (General), and Customer’s right to Work Product and ownership of Customer Content described in Section 7 shall survive any termination or expiration of this Agreement.

5. Limited Warranty and Disclaimer.

5.1. Limited Warranty. Company warrants to Customer that for a period of ninety (90) days from the Effective Date (the “Warranty Period”), the Software shall operate in substantial conformity with the Documentation. Company does not warrant that Customer’s use of the Software will be uninterrupted or error-free, will not result in data loss, or that any security mechanisms implemented by the Software will not have inherent limitations. Company’s sole liability (and Customer’s exclusive remedy) for any breach of this warranty shall be, in

Company's sole discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around which corrects the reported nonconformity, to replace the non-conforming Software with conforming Software, or if Company determines such remedies to be impracticable within a reasonable period of time, to terminate the applicable Subscription Term and refund the Subscription fee paid for the non-conforming Software. Company shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period.

5.2. Exclusions. The above warranty shall not apply: (a) if the Software is used with hardware or software not specified in the Documentation; (b) if any modifications are made to the Software by Customer or any third party; (c) to defects in the Software due to accident, abuse or improper use by Customer; or (d) to items provided on a no charge or evaluation basis.

5.3. Disclaimer. THIS SECTION 5 CONTAINS A LIMITED WARRANTY AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5 THE SOFTWARE AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER COMPANY NOR ANY OF ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.

6. Support & Maintenance.

Company shall provide the support and maintenance services set forth on Exhibit A ("Support and Maintenance") for each Subscription Term.

7. Professional Services.

7.1. Professional Services. Company shall provide the number of person-days of

professional consulting services ("Professional Services") purchased in the applicable Order Form. The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of either or both of:

- (a) assistance with Software installation, deployment, and usage; or
- (b) development or delivery of additional related Company copyrighted software or code. Company shall retain all right, title and interest in and to any such work product, code or software and any derivative, enhancement or modification thereof created by Company (or its agents) ("Work Product"). Customer will have Government Purpose Rights to the Work Product. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by Company or jointly by Company and Customer may be used by either party without obligation or notice or accounting. Company grants to Customer the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product; the right to release or disclose the Work Product outside Customer for any government purpose; and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any Customer government purpose. Such recipients of the Work Product may include, without limitation, Customer contractors, California state government, other California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose. Professional Services may be ordered by Customer pursuant to a Statement of Work ("SOW") describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before Company shall

commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the Order Form. Customer will reimburse Company for reasonable travel and lodging expenses as incurred for preapproved travel.

7.2. Customer Content. Customer hereby grants Company a limited right to use Customer's name or materials provided to Company in connection with the Professional Services (the "Customer Content") solely for the purpose of performing the Professional Services for Customer. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Content.

8. Limitation of Remedies and Damages.

8.1. NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR CLAIMS ARISING UNDER COMPANY'S INDEMNIFICATION OBLIGATIONS, OR FROM COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, COMPANY'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER SHALL NOT EXCEED ONE MILLION DOLLARS (US\$1,000,000).

8.3. RESERVED

8.4. The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. Indemnification and Insurance.

Company shall maintain and provide insurance as set forth in Exhibit B, hereto. Company shall defend, indemnify and hold harmless Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, U.S. trademark, or trade secret ("Intellectual Property Rights") asserted against Customer by a third party based upon Customer's use of the Software in accordance with the terms of this Agreement. 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 Company promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Company of its obligations only if and to the extent that such delay or failure materially prejudices Company's ability to defend such lawsuit or claim. Customer will give Company sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Company 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 Software. In the event that Company fails to or elects not to defend Customer against any claim for which Customer is entitled to indemnity by Company, then Company 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, Customer will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Customer to Company. This shall not apply to any judgment or settlement amount, which amounts Customer shall be entitled to notify, invoice or debit Company's account at any time; and Customer, at its sole discretion, may settle the claim or suit. If Customer's use of any of the Software is, or in Company's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Company may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Software; or if (a) and (b) are commercially impracticable, (c) terminate the

Agreement and refund to Customer the pro-rata portion of the Subscription fees paid by Customer allocable to the unused remainder of the Subscription Term. The foregoing indemnification obligation of Company shall not apply: (1) if the Software is modified by any person other than Company, but solely to the extent the alleged infringement is caused by such modification; (2) if the Software is combined with other non-Company products or process not authorized by Company, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software; or (4) to any unsupported release of the Software. THIS SECTION 9 SETS FORTH COMPANY'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

10. Confidential Information.

Each party acknowledges that all code, inventions, knowhow, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") may constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure. This Agreement is subject to 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 Company believes that any portion of this Agreement (including any attachments, amendments, SOWs, and SLAs), materials, or Work Product provided to the Customer is exempt from public disclosure, Company must clearly mark that portion "Confidential" or "Proprietary". Company also must include a brief description that sets out the reasons for exemption from disclosure. Customer will use reasonable means to protect such information, but will not be liable for inadvertent disclosure of the information. Information marked "Confidential" or "Proprietary" in its entirety will not be honored, and Customer will not deny public disclosure of any information so marked. Company represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations and agrees to reimburse Customer for, and to indemnify, defend, and hold

harmless Customer, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to Customer's non-disclosure of any such information. If the Receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the Disclosing Party, it will, to the extent legally permissible, promptly notify the Disclosing Party and if requested by the Disclosing Party, tender to the Disclosing Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the Disclosing Party will then be entitled to comply with the request to the extent permitted by law.

11. Customer Acknowledgement.

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

12. General.

12.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns, provided no such assignment is in violation of the provisions of this Agreement. Neither party shall assign this Agreement (or any part thereof) without the advance written consent of the other party. Company may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Company provides Customer with ten (10) days' prior written notice of such assignment and Customer has the right to terminate this Agreement, if required by applicable law. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 12.1 will be null and void.

12.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.3. Governing Law; Jurisdiction and Venue.

This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this 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, County of San Bernardino, San Bernardino District.

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

12.5. Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth above and shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

12.6. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a

writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer or Company will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.7. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that Company offers subscription-based products and that, in order to provide improved customer experience, Company may make changes to the Software (including Company or underlying systems) or Documentation. In such event, Company will update the Documentation accordingly.

12.8. Audit Rights. Upon Company's written request, Customer shall certify in a signed writing that Customer's use of the Software is in full compliance with the terms of this Agreement (including any copy and user limitations). With prior reasonable notice of at least 10 days, Company may audit the copies of the Software in use by Customer provided such audit is during regular business hours, but (a) may not conduct more than one (1) such audit in any given calendar year. The audit may be conducted by Company employees, agents, or representatives at Customer's designated location during normal business hours, for the sole purpose of determining the accuracy of the payments required to be made to Company pursuant to the provisions of this Agreement. In the event that an audit discloses an underpayment to Company, Customer shall promptly remit payment to Company equal to such underpayment. In the event that an audit discloses an overpayment to Company, Customer may offset such overpayment from future payments to Company. Company shall be solely responsible for the costs of any audit.

12.9. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.10. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

12.11. Federal Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with the Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.

12.12. Export Compliance. Customer acknowledges that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial

Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

12.13. Third-Party Code. The Software may contain or be provided with components subject to the terms and conditions of third party "open source" software licenses ("Open Source Software"). Open Source Software may be identified in Documentation, or Company shall provide a list of the Open Source Software and applicable license for a particular version of the Software to Customer. Provided that Company has delivered a copy of the Open Source Software license to Customer, to the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering. Customer agrees that they have read and understood the Third Party Open Source Software disclosures in the "Terms and Conditions" segment of Company's website, located at: <https://MEDARCUS.com/SurePatient/thirdpartyterms>.

12.14. Debarment and Suspension. Company certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment,

declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Company further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

- 12.15. Improper Consideration.** Company shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of Customer in an attempt to secure favorable treatment regarding this Agreement. Customer, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of Customer with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. Company shall immediately report any attempt by a Customer officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Company. The report shall be made to the supervisor or manager charged with supervision of the employee or the San Bernardino County Administrative Office. In the event of a termination under this provision, Customer is entitled to pursue any available legal remedies.

EXHIBIT A

COMMERCIAL SOFTWARE SUPPORT POLICY

I. Overview

This Commercial Software Support Policy ("Support Policy") describes the policies and procedures under which MEDARCUS, LLC ("Company") provides support and maintenance services ("Support") for its proprietary commercial software product ("Software"). Support is provided for the Software pursuant to the separate Master Software License Subscription Agreement under which Customer has purchased Support and is subject to the terms and conditions of that separate agreement and the terms of this Support Policy. Support is provided for the Subscription Term specified in the Order Form or Master Software License Subscription Agreement, or for the period otherwise specified in the Master Software License Subscription Agreement. Support is provided through Company's online web-based support portal (the "Support Portal"), and if indicated on the Support Matrix (see Schedule 1, attached), also by telephone.

This Support Policy sets forth expectations for Support between the Customer and Company's Customer Support team, including:

- (a) Who is authorized to submit issues;
- (b) How to submit issues;
- (c) What types of issues are supported; and,
- (d) How and when Company resolves and closes reported issues.

II. Scope of Support.

What Support Includes.

Company shall provide Customer with Support consisting of the following:

- (a) The number of web-based Incident (as defined below) submissions up to the number of designated Contacts (as defined below) of Customer as specified on the Support Matrix;
- (b) Long Term Support ("LTS") Releases (as defined below) of the Software; and,

- (c) The provision of expert level guidance and troubleshooting to Customer in connection with questions and issues arising from the following Customer activities with respect to the Software:

- a. **Installation and Downloads:** Support for installation includes providing guidance and troubleshooting in connection with Customer's downloading and installing of the Software.
- b. **Basic Configuration Issues:** Support for configuration includes troubleshooting Customer's configuration settings for existing installations on Supported Platforms (as defined below) to ensure proper operation and connectivity.
- c. **Usage Issues:** Company support team members will answer the Customer's "how to" questions related to standard and intended product usage.

Assistance with New Releases. Company support team members will assist the Customer with specific issues encountered when you update from one supported release of the Software to another supported release. Customer should update to the latest release of the Software to ensure that they have the latest patches and features. Assistance with updates from unsupported releases falls outside the scope of Support.

LTS Releases: means generally any release announced on <https://MEDARCUS.com/SurePatient/support>, the Company Support Web page, which is designated as a LTS and can include commercially released major new releases, modifications or enhancements to the same

Software. The Support Policy covers an LTS release for 24 months. Any new version of the same Software as designated by a change in the number(s) to far-right decimal in version number is considered part of the LTS release. For instance, if version 1.1 is released July 1, 2018, it will be supported until July 1, 2019, and any new versions like 1.2, 1.3, etc., will be supported until this July 1st 2019 date.

Non-LTS releases: means commercially released major new releases, modifications or enhancements to the same Software which are not declared as a LTS release on The Support web page. Non-LTS releases are not covered by "The Support Policy."

What Support Excludes.

The following are excluded from Company's Support obligations:

- (a) Software that is used on or in conjunction with hardware or software other than as specified in the applicable Documentation;
- (b) Altered or modified Software, unless altered or modified by Company;
- (c) Defects in the Software due to accident, hardware malfunction, abuse or improper use;
- (d) Support for unsupported releases or updates from unsupported releases;
- (e) "Beta" releases, evaluation software or other software provided at no charge;
- (f) Any Software sold separately by Company, including, without limitation, consulting code, unless generally made available to Company's subscription customers at no additional charge for the Software;
- (g) Training, customization, integration and any issues arising from non-standard usage of the Software;
- (h) Any on-site services or remote access services (unless Company requests remote access to assist Company in understanding an issue); and,

- (i) Problems caused by version mismatch (as described in Section II below).

Company separately offers a range of fee based professional services to address the issues related to:

- (a) Product training
- (b) Product customizations
- (c) Custom integrations
- (d) Performance tuning
- (e) Custom build strategies
- (f) Process improvements
- (g) Any other Incidents that fall outside the scope of Support

Software Available.

Version Mismatch. To avoid problems with the Software, only the supported versions of operating systems, databases, and other system software are supported.

III. Incident Submission and Resolution

Customer shall obtain Support by reporting individual issues to the Company. Each individual issue reported to Company shall be tracked from initial report through final resolution, each such issue, an "Incident". Customer is entitled to the number of Incidents specified in the Support Matrix.

Submitting Incidents

Who May Submit Incidents.

Support is intended to provide assistance to the Customer for issues and questions beyond what is covered in documentation and introductory material. The Customer is expected to make every effort to ensure that the individuals submitting incident reports are designated as authorized contacts and are qualified to support the Customer teams internally. To be qualified, these individuals should know the system, environment, policies, and practices in use by the Customer, and they should also be proficient users of the Software. Each such qualified contact is a "Contact".

Customer shall be entitled to designate the number of Contacts specified in the Support Matrix as authorized to submit support Incidents. Customer is responsible for designating at least one authorized Contact at time of purchase. That individual may submit change requests to the list of authorized

support Contacts in writing through the channel(s) specified for the plan selected.

How to Submit Incidents.

Incidents are to be submitted to Company by a Contact through the communication channel(s) (Support Portal and where applicable, by phone) specified for the applicable Support plan in the Support Matrix. The Support Matrix specifies which communication channels are available for each plan offered.

How to Report an Incident.

In order to expedite the resolution of Incidents, Company expects that Customer will make every attempt possible to:

- (a) Verify that the Incident is reproducible on the Supported Platforms for the Software (as applicable);
- (b) Provide information necessary to help Company track, prioritize, reproduce or investigate the Incident, such as: Customer name and organization;
- (c) A full description of the issue and expected results;
- (d) Category of issues: general question, defect, enhancement request, and so forth;
- (e) Steps to reproduce the issue and relevant data;
- (f) Any applicable log files or console output
- (g) Exact wording of all issue related error messages;
- (h) Any special circumstances surrounding the discovery of the issue, i.e. first occurrence or occurred after what specific event, Customer's business impact of problem and suggested priority for resolution; and,
- (i) Identifying issue number in any ongoing communications with Company on an existing issue.

Support Response and Incident Resolution Incident Response.

For each Incident reported by Customer in accordance with these procedures, Company shall:

- (a) Confirm receipt of the reported Incident within the acknowledgement time specified in the Support Matrix;
- (b) Set a Priority Level for the Incident in accordance with the terms below;
- (c) Begin responding to the Incident within the response time specified in the Support Matrix;
- (d) Analyze the Incident and, as applicable, verify the existence of the problem(s) resulting in the Incident, which may include requesting that Customer provide additional information, logs and re-execution of commands to help identify the root cause and dependencies of the reported issue;
- (e) Give Customer direction and assistance in resolving the Incident;
- (f) Keep a record of ongoing communications with Customer; and,
- (g) Use reasonable commercial efforts to resolve the Incident in accordance with the target resolution times set forth in the Support Matrix.

Priority Levels.

Company will prioritize Incidents according to the following criteria:

- L1 Issues which make the Software completely inaccessible or the majority of its functionality unusable for Customer
- L2 Issues that significantly degrades performance of the Software or materially restricts Customer's use of or the functionality of the Software
- L3 Issues that causes only a minor impact on Customer's use of the Software
- L4 Any other request for guidance or information

Resolution and Closure of Incidents.

Incidents shall be closed in the following manner:

- (a) For solvable issues, depending on the nature of the issue, the resolution may take the form of an explanation, recommendation, usage instructions, workaround instructions, or advising Customer of an available software fix.
- (b) For unsolvable issues, Company undertakes to provide an explanation why the issue is not solvable, and provide the reporting Customer suggestions for a work-around or other ways to mitigate the issue.
- (c) In the event that custom or unsupported modules are used, Company may ask, in the course of attempting to resolve the issue, that the Customer remove any unsupported custom solution or modules. If the problem disappears upon removal of an unsupported plug-in or module, then the Company may consider the issue to be resolved.
- (d) For issues outside of scope of Support, Company may also close issues by identifying the Incident as outside the scope of the Support or arising from a version, platform or usage case which is excluded from the Support Policy.

EXHIBIT B

INSURANCE REQUIREMENTS

1. Company agrees to provide insurance set forth in accordance with the requirements herein. If Company uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Company agrees to amend, supplement or endorse the existing coverage to do so.
2. Without in anyway affecting the indemnity herein provided and in addition thereto, Company shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
 - a. Commercial/General Liability Insurance – Company shall carry General Liability Insurance covering all operations performed by or on behalf of Company 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. Personal injury.
 - v. Contractual liability.
 - vi. \$2,000,000 general aggregate limit.
 - b. 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.
 - c. 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
 - d. 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.
3. Additional Insured – All policies, except for Errors and Omissions and/or 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.
4. Waiver of Subrogation Rights – Company shall require the carriers of required coverages to waive all rights of subrogation

against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Company and Company's employees or agents from waiving the right of subrogation prior to a loss or claim. Company hereby waives all rights of subrogation against Customer.

5. 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.
6. Severability of Interests – Company 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 Company and Customer or between Customer and any other insured or additional insured under the policy.
7. Proof of Coverage – Company 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 without thirty (30) days written notice to Customer, and Company shall maintain such insurance from the time Company commences performance hereunder until the expiration or termination of the Agreement. Within fifteen (15) days of the commencement of this Agreement, Company 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.
8. Acceptability of Insurance Carrier – Unless otherwise approved by Customer, 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".
9. 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 Customer.
10. 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 contract or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Company or Customer payments to the Company will be reduced to pay for Customer purchased insurance.
11. Insurance Review – Insurance requirements are subject to periodic review by Customer. Customer is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Customer 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 Customer determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, Customer 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.
12. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Company agrees to execute any such amendment within thirty (30) days of receipt.
13. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.

Schedule 1

Software Support Matrix

POLICY TERMS

Coverage Hours	Business Hours ¹
Supported Channels	Support Portal
Supported Contacts	1
Max. # of Incidents	15

TARGET RESPONSE TIME

Acknowledgement Time	2 Hours for all Incidents
Response Time	L1 – 8 business hours L2 – 24 business hours L3 – 72 hours
Target Resolution Time	L1 – 48 hours L2 – 2 weeks L3 – Next LTS Release

SUBSCRIPTION TERM

Term	The same period as the then-current Software Subscription Term
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¹ Business hours are 9 a.m. to 5p.m. Eastern Standard Time, Monday thru Friday except Company holidays, as posted on the Customer Support Web page. All times are relative to when the issues are first submitted to Company as timestamped by support web page submission. All times and days are relative to Company business hours/days.



MASTER SOFTWARE LICENSE AGREEMENT SCHEDULE

Order Form

This Order Form, effective as of the date of last party signature below (the "Effective Date") is between the following Customer ("Customer"),

Customer Name: COUNTY OF SAN BERNARDINO

Address: _____

Phone: _____

Address: _____

WWW: _____

City/St/Zip: _____

Company Contact

Name: Varna Kadambari

Email: vkadambari@medarcus.com

Title: CEO, MEDARCUS LLC

Phone: 214-491-0747

and MEDARCUS, LLC a Delaware corporation, located at 15920 Pomona Rincon Road, Suite 202, Chino Hills CA 91709 ("Company"). This Order Form (the "Order"), together with the terms and conditions of the Master Software License Agreement ("MSLA") executed between the parties and incorporated herein by reference, contain the full agreement of Company and Customer as to the purchase and provision of the Software and/or services listed below. Accordingly, Customer agrees to purchase and Company to deliver the following Software Licenses, Support, Training and/or implementation services as specified below. Licenses and related services will be separately invoiced in accordance with the terms and conditions set forth in each section below. Terms not defined in this Order shall have the meaning given to them in the MSLA.

Software License and Support Service

Licensed Software	Licensed Site	Subscription Price
SurePatient Registration	ARMC, Colton CA Up to two (2) virtual machines	\$110,000.00
SurePatient Data Quality Reports	ARMC, Colton CA Up to two (2) virtual machines	\$110,000.00
Installation	Installation on two (2) virtual machines	\$27,000.00
MEDITECH Registration Interface	Installation on MEDITECH user interface system	\$15,000.00
Subtotal		\$262,000.00

Company offers implementation and Training services to assist with implementation of the Software and training of Customer. Implementation and Training services will be provided by Company to Customer in accordance with the terms and conditions of the Master Software Licensing Agreement executed between Customer and Company and to which this Order refers and incorporates by reference.

Software License and Support Service

Service	Description	Units	Rate/Unit	Subtotal
Install Registration and Data Quality Reports on customer virtual machines	Connect Registration model at registration points and configure propriety Data Quality Reports, industry standard reports, and up to two (2) local reports as defined by the registration department and agreed upon by Company (subject to data availability)	1	Included in license	\$0
Support Services, Year 1		12	\$10,000/Month	\$120,000.00
Support Services, Year 2		12	\$12,000/Month	\$144,000.00

Implementation and Training. Implementation services may be provided on Customer site or at a facility designated by Customer upon agreement of parties. For implementation services delivered at a facility designated by Customer. Training services for standard courses are provided at a location designated by Company. Custom courses may be provided at a facility designated by Customer. For custom courses delivered at a facility designated by Customer, Full payment is due within sixty (60) days of Customer's receipt of the invoice. Paid training courses will act as a credit towards specified classes and will expire if not taken within twelve (12) months from the effective date of this Order. Refunds on training courses will only be allowed if Company does not make available the training course within twelve (12) months of this agreement. All Professional Services (as defined in the MSLA) shall be governed by a Professional Services Agreement executed between the parties and provided under the terms of a Statement of Work signed by authorized representatives of both parties.

Contact Info

Bill To:	Arrowhead Regional Medical Center	Ship To:	Arrowhead Regional Medical Center
Name:		Name:	
Address:	400 N Pepper St Colton CA 92324	Address:	400 N Pepper St Colton CA 92324
Phone:		Phone:	
Email:		Email:	


Acceptance of Order Form and Software License and Services Agreement

Total Price for All Licenses and Services <i>(excluding travel and expenses)</i>	\$526,000.00
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I have read and agree to be bound by all provisions of this Order, including the terms and conditions of the Master Software License Agreement incorporated herein. This Agreement is not valid until signed by an authorized representative of both parties.

MEDARCUS, LLC

**Customer: COUNTY OF SAN BERNARDINO ON
BEHALF OF ARROWHEAD
REGIONAL MEDICAL CENTER**

By: 
Name: Varna Kadambari
Title: Chief Executive Officer
Date: 10/15/2019

By: 
Name: Curt Hagman
Title: Chairman, Board of Supervisors
Date: NOV 05 2019

Please make payments to:

via ACH or Wire electronic remittance:
MEDARCUS, LLC

ROUTING# 322271627
ACCOUNT# 512277739

JP MORGAN CHASE NA - Business Banking
CA2-4559
3800 Grand Ave
Chino, CA 91701

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
SANTO DOMINGO
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO