



**IMO® LICENSED SOLUTIONS
AMENDED AND RESTATED TERMS AND CONDITIONS**

This Amended and Restated Terms and Conditions ("Agreement"), dated _____ (the "Effective Date"), is entered into by and among Intelligent Medical Objects, Inc. ("IMO"), a Delaware corporation; and the County of San Bernardino on behalf of Arrowhead Regional Medical Center ("Client").

BACKGROUND

WHEREAS, IMO and Client entered into an Agreement dated February 21, 2018 for use of IMO products in conjunction with the MEDITECH electronic medical record software ("Meditech Agreement").

WHEREAS, Client and IMO wish to amend the Meditech Agreement to enable Client to license IMO products for use within other electronic medical record software applications, including the Epic Systems Corporation ("Epic") electronic medical record software.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties (each a "Party" and collectively the "Parties") agree as follows:

For purposes of this Agreement, capitalized terms have the meanings set forth herein or as otherwise defined in Section 32 below.

1. Meditech Agreement. The terms and conditions of the Meditech Agreement shall continue to apply to the products and services licensed by Client pursuant to the Meditech Agreement. Except as otherwise set forth herein, the terms of the Meditech Agreement shall have no effect on the Licensed Solutions licensed by Client hereunder.
2. Licensed Solutions. IMO grants to Client and Users a non-exclusive, personal, non-transferable, limited license to use the Licensed Solutions in the Territory, subject to the terms of this Agreement and the applicable Order Document. Client will not (a) cause or permit the Licensed Solutions, in whole or in part, to be available to any other person, entity or business other than authorized Users; (b) copy, reverse engineer, create a cache of, decompile or disassemble the Licensed Solutions, in whole or in part, or otherwise attempt to discover the source code to the software used by the Licensed Solutions; (d) modify, combine, integrate, render interoperable, or otherwise access for purposes of automating data conversion or transfer, the Licensed Solutions or associated software with any other software or services not provided or approved by IMO in an Order Document; (e) share, sell, rent, lease, or otherwise distribute access to the Licensed Solutions, or use the Licensed Solutions to operate any timesharing, service bureau, or similar business; (f) alter, destroy or otherwise remove any proprietary notices within the Licensed Solutions or Documentation; or (g) disclose the results of any benchmark tests to any third parties without IMO's prior written consent. Client will obtain no rights to the Licensed Solutions except for the limited rights to use the Services expressly granted by this Agreement. Notwithstanding the foregoing, if applicable, Client shall be permitted to prepare and use one copy of the Licensed Solutions and Documentation as may be necessary for purposes of: (i) hardware or system maintenance or repair; (ii) software, hardware or system testing; or (iii) backup and disaster recovery.
3. Client Responsibilities. Client represents that it has the authority to bind each User to the confidentiality and use restrictions set forth in this Agreement. Client will ensure that its Users, employees, contractors, agents, and representatives comply with all of Client obligations under the Agreement, and Client is responsible for their acts and omissions relating to the Agreement as though they were those of Client. Client will also credential all Users of the Licensed Solutions and determine the correct privileges for each User. Client is solely responsible for the maintenance and use of Client's hardware, network, internet connectivity, and software. Client will comply with all Documentation and with all Applicable Laws. Client will use reasonable efforts to prevent unauthorized use of the Licensed Solutions, and to terminate any unauthorized use. Client will promptly notify IMO of any unauthorized use of, or access to, the Licensed Solutions of which it becomes aware. Client agrees to provide information requested

by IMO to verify Client's compliance with this Agreement. Client is also responsible for its security and privacy compliance, including obtaining consents and authorizations where necessary, and implementing reasonable security capabilities and policies and procedures to minimize or prevent unlawful access by Client or its Users, and access by unauthorized persons.

4. IMO Responsibilities. IMO agrees to provide the Services and Licensed Solutions as set forth in each Order Document. IMO has implemented reasonable security measures, systems, and procedures designed to protect against anticipated threats or hazards to the security or integrity of Client's Confidential Information. IMO represents and warrants that it has the right to provide the Licensed Solutions to Client subject to the terms of this Agreement. IMO will provide Updates to the Licensed Solutions in accordance with IMO's published release schedule, located at <http://www.imohealth.com/releases>.

5. Third Party Components. Third Party Components will be provided under the applicable terms of the third party supplier. The Order Document will identify applicable pass-through terms. Unless otherwise set forth in the applicable pass-through provisions, IMO grants to Client a non-exclusive, non-transferable sublicense to use the Third Party Components on the terms for end users in the license granted to IMO by the applicable Third Party Component supplier.

6. Term and Termination.

(a) Term. The term of the Agreement is from July 14, 2020 through July 13, 2025 (the "**Term**"), unless terminated earlier as permitted herein.

(b) ***Intentionally omitted.***

(c) Termination. Either party may terminate this Agreement by providing written notice to the other if the other party breaches this Agreement. Such termination will become effective (i) immediately in the event such breach is unable to be cured within any cure period, or (ii) 30 days after written notification of breach if the breaching party fails to cure the breach within the 30-day time period.

(d) Effect of Termination. Unless otherwise agreed in an Order Document, upon termination of this Agreement for any reason, Client will, within 15 days, return to IMO, delete, or destroy all documents, software and other materials or deliverables received from IMO or containing any of IMO's products or Confidential Information, in whole or in part (and all copies thereof) and pay all outstanding fees owed under this Agreement. If so requested by IMO, Client will deliver to IMO a certificate executed by one of its duly authorized officers confirming compliance with the return or destruction obligations set forth herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice IMO shall promptly discontinue services unless the notice directs otherwise.

(e) Suspension of Services. IMO will make a good faith effort to contact and provide notice to Client in advance of any suspension. As reasonably practicable under the circumstances, IMO will endeavor to resolve together with Client any circumstance that may give rise to IMO's suspension rights, which circumstances include, without limitation, the following: (i) a material risk to the security or performance of the Licensed Solutions, the network, or any other IMO client or business partner; or (ii) use of the Licensed Solutions in violation of the Agreement or Applicable Laws. IMO acknowledges that suspending Client's right to access or use some or part of the Licensed Solutions is a significant action, and, therefore, IMO will not exercise this remedy except in good faith and as necessary to resolve the issue giving rise to IMO's right to suspend the Licensed Solutions.

(f) ***Intentionally omitted.***

7. Payments and Billing.

(a) Fees. IMO will submit invoices in accordance with each applicable Order Document. Unless otherwise specified in an Order Document, Client will pay all invoices within 45 days after the receipt of invoice date. Except as otherwise set forth herein or in an Order Document, payment obligations are non-cancelable and fees paid are nonrefundable.

(b) Taxes. Client is responsible for any applicable taxes, including without limitation, any sales, use, levies, duties, or any value added or similar taxes payable with respect to Client's order of Licensed Solutions or Services assessable by any local, state, provincial, federal, or foreign jurisdiction. Unless expressly specified otherwise in any Order Document, all fees, rates and estimates exclude sales taxes. IMO is solely responsible for taxes based upon IMO's net income, assets, payroll, property, and employees.

(c) Payment Disputes. If Client wishes to dispute an invoice (or any other claim that a stated amount is owed to IMO), then Client must (i) timely pay any undisputed portion and (ii) assert any payment dispute in writing to IMO's accounting department at accountsreceivable@imo-online.com within 30 days of the date of the invoice giving rise to the dispute. The parties will work in good faith to resolve any disputed invoices and/or amounts. Upon resolution of a disputed amount and/or invoice, Client will promptly pay IMO the remaining balance that was agreed to between the parties.

(d) Annual Increases. Unless otherwise agreed in writing, Licensed Solution fees are subject to annual increases at the level of then-current standard pricing. IMO agrees to provide 90 days advanced notice of any such increase. Such notice may be in the form of an invoice or any other form of notice commonly used by IMO to communicate with Client. Client acknowledges that the following do not constitute fee increases: (i) additional fees due to an increased usage or volume attributable to Client within the pricing structure set forth in the Order Document, (ii) additional fees for any Upgrade or an additional Licensed Solution or Service that Client orders, and (iii) expiration of any discount or incentive programs to which Client was previously entitled.

(e) Electronic Payment. Client will make commercially reasonable efforts to utilize IMO's electronic payment program by returning the completed enrollment form received with the initial IMO invoice for initial EFT payment account setup within 15 days of Client's receipt of IMO's invoice. By returning the completed enrollment form to IMO, Client authorizes the financial institutions involved in the processing of Client's payments to IMO to receive confidential information necessary to effect enrollment in the EFT payment methods, and to answer inquiries and resolve issues related to enrollment and payments. This information includes, but is not limited to, payment instructions, tax information, account numbers, and payment transaction details.

8. Confidentiality. Except as permitted under this Agreement, IMO and Client will not, nor will they permit their respective employees, agents, attorneys, or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information of the other party. IMO and Client will each (a) secure and protect the other party's Confidential Information using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but no less than a reasonable degree of care, and (b) require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Client will use IMO Confidential Information accessed on restricted portions of e-imo.com only for the purpose of supporting its permitted use of the Licensed Solutions or Services. Either party may disclose the other party's Confidential Information to the extent required by Applicable Laws, including without limitation any applicable Freedom of Information Act or sunshine law, or by order of a court or other governmental entity, in which case the disclosing party will notify the other party as soon as practicable prior to such disclosure and no later than five business days after receipt of the order or request. The parties agree that breach of this Section would cause irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, a will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security. This Section does not transfer ownership of Confidential Information or grant a license thereto. Each party retains all right, title, and interest in and to all its Confidential

Information. 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 IMO believes that any portion of these Terms (including any attachments, amendments, SOWs, and SLAs), materials, or work product provided to the Client is exempt from public disclosure, IMO must clearly identify as such in these Terms or mark that portion "Confidential" or "Proprietary". Client will ensure that such information is safeguarded.

9. HIPAA. For Licensed Solutions or Services requiring IMO's use or disclosure of PHI, the parties agree to execute a Business Associate Agreement as required by Applicable Laws.

10. Data. Client retains all rights with regard to Client's Data and Confidential Information, and IMO may only use such information as expressly permitted in this Agreement or as agreed in an Order Document. IMO may use Data to perform, support, and improve the Licensed Solutions. IMO will strictly comply with Applicable Laws with respect to Data and Aggregate Data. "Aggregate Data" means anonymized sets of data that have been gathered by IMO for the purpose of expressing information in summary form. Aggregate Data does not include any information that could be used to identify, or re-identify, Client or Client's patients. Nothing in this Agreement transfers or conveys to IMO any ownership interest in the Data or Client's Confidential Information.

11. Mutual Warranties. Each party represents and warrants to the other party that (a) it has the authority to enter into this Agreement and perform its obligations hereunder; (b) the Agreement does not conflict with any other agreement entered into by it; and (c) it will conduct business in accordance with all Applicable Laws.

12. IMO Warranties.

(a) Technical Warranty. IMO warrants that (i) as long as Client is operating a Supported Release for that Licensed Solution, the Licensed Solution will, without Material Error, perform in all material respects in accordance with the Documentation; and (ii) IMO will use commercially reasonable efforts, using commercially available antivirus software, to ensure that the Licensed Solutions provided to Client contain no computer virus, Trojan horse, worm, or other similar malicious code. In the event of a breach of this warranty, IMO will repair or replace the failing item of Licensed Solution so that it performs in accordance with such warranty. IMO does not warrant that the Licensed Solutions are free from all bugs, errors, or omissions. If after 30 days, IMO cannot repair or replace the Licensed Solution as set forth herein, Client may terminate the Agreement upon immediate notice to IMO, and IMO will refund Client a pro rata amount of any prepaid fees applicable to the unused portion of the Order Document Term of the terminated Licensed Solution (excluding, for clarification, any implementation fees unless the claim arises in Client's Initial Order Document Term). CLIENT'S RIGHTS UNDER THIS SECTION CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND IMO'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY BREACH OF THIS WARRANTY.

(b) Services Warranty. IMO warrants that it will perform the Services in a professional manner in accordance with the applicable Order Document.

13. Warranty Disclaimer. THE LICENSED SOLUTIONS AND SERVICES ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. EXCEPT AS SET FORTH HEREIN, IMO DISCLAIMS ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE AND ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. IMO DOES NOT WARRANT THAT THE LICENSED SOLUTIONS OR SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ALL DEFECTS WILL BE CORRECTED, OR WILL MEET CLIENT'S REQUIREMENTS. IMO makes no representations or warranties regarding the Third Party Components.

14. Professional Responsibility. Client acknowledges and agrees that the Licensed Solutions and Services are information management tools that require the involvement of professional medical personnel and the information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client further acknowledges and agrees that the Licensed Solutions and Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines. Client will be solely responsible for the professional and technical services provided by Client and Client Users. IMO makes no representations concerning the completeness, accuracy or utility of any information in the Licensed Solutions or Services. IMO has no liability for the consequences to Client or Client's patients of Client's use of the Licensed Solutions or Services.

15. Ownership and Use. As between Client and IMO, IMO and IMO's licensors retain and own all right, title, and interest in all intellectual property rights in the Licensed Solutions, Services, Updates, Upgrades, Work Product, Documentation, IMO's Confidential Information, and all enhancements, revisions or improvements to, or derivative works the foregoing. If Client provides IMO with any suggested improvements, or requests additions or changes to the Licensed Solutions or Services, Client grants IMO a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggested improvements, additions or changes.

16. Indemnity by IMO. IMO will defend, indemnify and hold Client and its officers, directors, and agents harmless against third party claims, costs, liabilities, judgments, settlements, penalties, and causes of action ("**Third Party Claims**") and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of and alleging that the use of the Licensed Solutions infringes on a United States patent, trademark or copyright. Client will provide IMO with prompt notice of any such claim so that IMO's indemnification duties under this Section are not materially adversely affected.

If the Licensed Solutions, or any portion thereof, is, or in IMO's opinion is likely to be, claimed to infringe or otherwise violate any third-party intellectual property right, then IMO may, at its option, do any of the following: (a) obtain the right for Client to continue using the Licensed Solutions as permitted by this Agreement; (b) replace or modify the materials that infringe or are alleged to infringe so that the Licensed Solutions are non-infringing, provided there is no material loss of functionality; or (c) if IMO reasonably concludes that it will not be commercially reasonable to do either of the above, terminate this Agreement in its entirety or with respect to the affected part or feature of the Licensed Solutions, effective immediately on written notice to Client. Upon termination under this Section, Client will cease all use of the Licensed Solutions immediately upon receipt of notice from IMO and IMO will promptly refund to Client, on a pro rata basis, the share of any license fees prepaid by Client for the future portion of the Term that would have remained but for such termination.

IMO's obligations set forth in this Section do not apply to the extent that the Third Party Claim is based upon: (i) the use of any item of Licensed Solutions in combination with any product, service or activity (or any part thereof) not provided or recommended in writing by IMO; (ii) the use of Licensed Solutions in violation of this Agreement; (iii) the use of Licensed Solutions not updated to the latest version offered by IMO, where the latest version incorporates modifications that avoid the infringement claim; or (iv) revisions or additions to the Licensed Solutions made by Client or Users.

17. Client agrees that it is solely responsible for the proper use of the Service, that it will independently verify that the proper application of information obtained from the Service, and that it will not rely in any way on the Service as a substitute for exercising independent professional judgment in the use and application of the Service. Client acknowledges that the Service is provided on an "as is" basis and IMO is not responsible for any damages arising from errors or omissions in the Service. Client agrees and acknowledges that IMO and its officers, directors, parent company and agents bears no liability for claims from the (i) use of the Service by End-Users; (ii) the performance of these Terms, or breach thereof, by Client or any of its agents or employees; or (iii) Client's negligence; provided, the foregoing shall not apply to claims covered under Section 11(b) or caused by IMO's gross negligence.

18. Indemnification Procedure. The indemnifying party will have sole control of the defense of any such action, including appeals, negotiations, and any settlement compromise thereof; provided: (a) the non-indemnifying party will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations; and (b) such approval by the non-indemnifying party will not be unreasonably withheld or delayed.

19. Limitation of Damages. EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS WILL EXCEED THE GREATER OF \$225,000 OR TOTAL LICENSE FEES PAID TO IMOFOR THE APPLICABLE LICENSE SOLUTION FOR THE 12 MONTHS PRECEDING THE CLAIM. IN NO CASE WILL EITHER PARTY BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DIMINUTION IN VALUE. THE LIABILITIES LIMITED BY THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF SUCH PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF A PARTY'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION, A PARTY'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE. IMO is not liable for any damages of any kind or nature related to or arising from the Third Party Components. Any liability limitations set forth in the third party pass-through provisions state the maximum liability of the applicable supplier with respect to that product or service.

20. Force Majeure. Neither Client nor IMO will have the responsibility for any delay or failure of performance resulting from causes beyond its reasonable control and without its fault or negligence, such as acts of God, fires, floods, natural disasters, epidemics, quarantine restrictions, other catastrophes, wars, civil disturbances, terrorism, riots, or civil or military authorities (a "**Force Majeure Event**"). In such event, the delayed party will perform its obligations within a reasonable time after the cause of the delay or failure has been remedied. Both parties will use reasonable efforts to mitigate the effect(s) of a Force Majeure Event. Both parties will have the right to terminate this Agreement (and any applicable Order Document) if a Force Majeure Event prevents the other party from performing its obligations for a period of more than 90 days.

21. Availability of Records. Until four years after the furnishing of services hereunder, IMO will make available to the Secretary of the Department of Health and Human Services and the U.S. Comptroller General, or their representatives, its books, documents, and records necessary to verify the nature and extent of the costs of those services, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980.

22. Entire Agreement; Severability. This Agreement, any Order Document and other terms or legal notices published by IMO for the Licensed Solutions, will constitute the entire agreement between Client and IMO concerning use of the Licensed Solutions and Services. If any provision of this Agreement will be deemed by a court of competent jurisdiction to be unenforceable or illegal, then such unenforceable or illegal provision will be deemed stricken (but only to the extent that, and in the locations where, such prohibition will be applicable). The remaining terms and provisions of this Agreement will remain in full force and effect. If Client submits its own form of purchase order to request products or services from IMO, any terms and conditions on the purchase order are of no force or effect and are superseded by this Agreement.

23. Waiver and Modification. No provision of this Agreement may be terminated, modified or waived unless such termination, modification or waiver is set forth in a writing executed by Client and IMO. No waiver of any term will be deemed a further or continuing waiver of such term or any other term, and IMO's failure to assert any right or provision under this Agreement will not constitute a waiver of such right or provision.

24. Assignment. Upon reasonable prior notice to the other party, either party may assign its rights or obligations under this Agreement to any successor to its business by merger, change of control, sale of all or substantially all its assets or consolidation. Any other assignment requires the prior written consent of the non-assigning party of these Terms, which will not be unreasonably withheld or delayed. This Agreement and the license

issued hereunder will be binding upon and inure to the benefit of the parties, their respective permitted successors or assigns.

25. Governing Law – This Agreement and all Order Documents are governed by the laws of the State of Delaware.

26. Independent Contractor. In performing their obligations hereunder, the parties are acting as separate and independent entities and neither party is an agent or employee of the other party. Except with respect to Third Party Components, this Agreement will not be interpreted so as to cause either party to be responsible to any third party for the acts, omissions or products of the other party.

27. Notices. All notices and communications required or permitted under this Agreement will be in writing and any communication or delivery hereunder will be deemed to have been duly made (a) to Client if mailed to either Client's electronic mail address or by registered or certified mail, postage prepaid, sent by nationally recognized overnight delivery addressed to Client's address as set forth on an Order Document, and (b) to IMO if mailed via electronic mail to: legal@imo-online.com. All notices will be effective upon the earliest of: (i) actual receipt by the party to which notice is given; (ii) the next business day after electronic transmission; (iii) the date of confirmed delivery if sent by nationally recognized overnight delivery; or (iv) the fifth day following mailing by registered or certified mail, postage prepaid.

28. Survival. No termination of this Agreement will in any way affect or impair the powers, obligations, duties, rights, indemnities, liabilities, covenants, warranties, and/or representations of either party with respect to times and/or events occurring prior to such termination, including the obligation to make payments that arose prior to the termination date but will not be paid until after the termination date. All provisions of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership provisions, order of precedence, warranty disclaimers, indemnity and limitations of liability.

29. U.S. Government Users. The Licensed Solutions are commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which were developed exclusively at the private expense by Intelligent Medical Objects, Inc., 9600 W Bryn Mawr Suite 100 Rosemont, IL 60018. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.2277015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

30. Headings. The section headings throughout this Agreement are for convenient reference only, and will in no way be deemed to limit, modify, or add to the interpretation, construction or meaning or any provision of this Agreement.

31. Conflicts. The following order of precedence will be followed in resolving any inconsistencies between this Agreement and the terms of any Order Document, Exhibits, attachments, addenda and other documents to be attached hereto: (i) any addendum between the parties; (ii) the Order Document; (iii) the terms of this Agreement; (iv) the terms of the Exhibits and attachments to this Agreement, provided that no order of precedence will be applied among such Exhibits and attachments.

32. Defined Terms. Whenever used in these Terms, the following terms will have the meanings set forth below.

(a) "IMO **Affiliate**" means an entity that controls, is controlled by, or is under common control with a party. For this definition, "control" means direct or indirect ownership of more than 50% of the voting interests of the subject entity. "Client Affiliates" include local government agencies, departments and

Board-governed special districts, or other local governmental body or corporation, including applicable K-12 schools and community colleges, where County is authorized and empowered to expend public funds for such entity located within the County of San Bernardino's applicable jurisdictional and geographical boundaries.

- (b) **"Agreement"** means these Terms and Conditions.
- (c) **"Applicable Laws"** means all applicable local, state, federal and international laws and regulations.
- (d) **"Client"** means the legal entity that executes the terms of this Agreement, and its Affiliates.
- (e) **"Confidential Information"** means all technical, business, financial, and other information that is disclosed by either party to the other, whether orally or in writing, any disputes between the parties, Licensed Solutions, Work Product, Data, Documentation, all information and materials accessible on e-imo.com affiliates pages, and all non-public information related to IMO products, services and/or methodologies. "Confidential Information" does not include information (i) publicly available through no breach of this Agreement, (ii) independently developed or previously known by Client or IMO, or (iii) rightfully acquired from a third party not under an obligation of confidentiality.
- (f) **"Data"** means data that is collected, stored, processed or generated through Client's use of the Licensed Solutions or Services.
- (g) **"Documentation"** means the printed and on-line materials, user guides, product specifications, training manuals and other similar information that assist Users, as updated from time to time.
- (h) **"HIPAA"** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder.
- (i) **"IMO"** means Intelligent Medical Objects, Inc., a Delaware corporation, and its Affiliates.
- (j) **"Licensed Solutions"** means the terminology products and/or software programs developed by IMO and identified in an Order Document and all items of applicable Documentation. It also includes Updates, as well as any IMO developed content. "Licensed Solutions" does not include source code, or any Third Party Components.
- (k) **"Material Error"** means either an error that materially, adversely affects operation of the entire Licensed Solution or that creates a serious loss of functionality important in the daily operation of a single module and for which a work around is not available.
- (l) **"Order Document"** means the document (such as a schedule, statement of work, or sales order) setting forth the items being purchased or licensed by Client, scope of use, pricing, payment terms, and any other relevant terms, which will be a part of and be governed by the terms and conditions of this Agreement.
- (m) **"PHI"** has the same meaning as the term "protected health information" as defined by HIPAA, as applied to the information created, received, maintained or transmitted by IMO from or on behalf of Client.
- (n) **"Services"** means the services provided by IMO and set forth in an Order Document.
- (o) **"Supported Release"** means the then-current Upgrade for the Licensed Solution and the next to last Upgrade of the Licensed Solution for a period of 12 months from the availability of the current Upgrade.

(p) **“Territory”** means the United States of America and its territories, unless otherwise indicated in an Order Document.

(q) **“Third Party Components”** means all third party software and content listed on an Order Document.

(r) **“Updates”** means any update, release, or other adaptation or modification of the Licensed Solutions, including any updated documentation, that are made generally available to licensees of the Licensed Solutions with no additional charge during the life of such Licensed Solution, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Licensed Solution, but does not include any Upgrade.

(s) **“Upgrade”** means any new version or feature of the Licensed Solutions that IMO may from time to time introduce and market generally as a distinct licensed product or new functionality, and which IMO may make available to Client at an additional cost.

(t) **“User”** means any employee, contractor, representative, or other person acting on Client’s behalf who is authorized by Client to use the Licensed Solutions and who has been supplied with access to the Licensed Solutions by either Client or IMO, at Client’s written request.

(u) **“Work Product”** means any documentation, techniques, methodologies, inventions, analysis frameworks, software, or procedures developed, conceived, or introduced by IMO in the course of IMO providing the Licensed Solutions or performing Services, whether acting alone or in conjunction with IMO or its employees, Users, affiliates or others.

Signatures

WHEREFORE, the Parties, intending to be legally bound by these terms and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, enter into these Amended and Restated Terms and Conditions.

Intelligent Medical Objects, Inc.

Client

By:  Ann Barnes

By: _____

Name Ann Barnes

Name _____

Title Chief Executive Officer

Title _____

Date 8/25/2020

Date _____

SALES ORDER

The terms and conditions stated in this Sales Order, including the Terms and Conditions attached hereto (the “**Terms**”), are part of the IMO® Licensed Solutions Amended and Restated Terms and Conditions executed by Intelligent Medical Objects, Inc. (“**IMO**”) dated September 29, 2020, the terms of which are incorporated by reference herein (the “**Agreement**”). Capitalized terms not defined in this Sales Order and the Terms will have the meaning attributed to them in the Agreement.

1. **Client:** County of San Bernardino on behalf of Arrowhead Regional Medical Center
2. **Software Vendor:** Epic Systems Corporation (“**Epic**”)
3. **Effective Date:** December 31, 2020
4. **Licensed Solutions and Pricing:**

<u>Licensed Solutions and Services</u>	<u>Initial Term</u>	<u>AVE</u>	<u>Fees</u>
IMO Core	01/01/2021– 12/31/21	<u>500,001-</u> <u>1,000,000</u>	\$75,000 (“Annual Fee”) \$1,500 One-time
Portion attributed to ProblemIT (licensed under the Agreement)			-\$21,263
Year 1 Total			<u>\$55,237</u>
IMO Core	01/01/2022– 12/31/2022	<u>500,001-</u> <u>1,000,000</u>	\$75,000 (“Annual Fee”)
Portion attributed to ProblemIT (licensed under the Agreement)			-\$21,263
Year 2 Total			<u>\$53,737</u>
IMO Core	01/01/2023– 07/13/2023	<u>500,001-</u> <u>1,000,000</u>	\$31,346
Year 3 Total			<u>\$31,346</u>
*7 months to coincide with MSA term date.			

Annual Visit Equivalents (“**AVE**”) are the combined volume of annual ambulatory visits and annual inpatient day equivalents. One Inpatient Day is equivalent to four Annual Visit Equivalents. One annual ambulatory visit is equal to one Annual Visit Equivalent. Client’s AVE shall include the total size of the Client in terms of Annual Visit Equivalents for all Client sites that have access to the Licensed Solutions. Volume is based on the licensed volume of the Software Vendor’s electronic medical record software (highest ambulatory application + highest inpatient application). Licensed Solutions are licensed for use with all of Software Vendor’s electronic medical record software. License includes production and non-production use such as testing, training, etc.

The Annual Fee for each year is determined at the beginning of each license year for the estimated AVE for that year. This Annual Fee is based on the number of Annual Visit Equivalents as reported by Client or the Software Vendor to IMO. IMO reserves the right to adjust the Annual Fee should IMO determine that the Annual Visit Equivalents reported to IMO were incorrect or if Client exceeds the Annual Visit Equivalents as set forth herein.

5. **Term:** The Initial Term (as noted in the Sales Order) hereunder will start on the Effective Date and may renew for two (2) successive one (1) year periods thereafter (each, a “**Renewal Term**”), upon mutual agreement of the Parties. The Initial Term and any Renewal Terms are referred to herein as the “**Term**.” An electronic notice with a reminder of the expiration date of the then current term will be sent by IMO to the Client’s Primary and Billing Contact at least one-hundred and twenty (120) days prior to the end of the then current Term.
6. **Payment:** Payment of the initial annual Subscription Fee, initial Implementation Fee and initial Maintenance Fee is due forty-five (45) days after the Effective Date, and subsequent annual payments of all fees are due on each anniversary of the Effective Date during the Term hereof.
7. **Adjustments:** IMO will notify Client of any updates to Client’s Annual Fee at least 60 days prior to the end of Client’s current contract year. Such notice may be in the form of an invoice or any other form of notice commonly used by IMO to communicate with Client. IMO agrees that any increase in Annual Fees shall not exceed the greater of 5 percent of Client’s existing fees; or the change in the CPI Medical Care Services Index, except in the following circumstances: additional fees due to an increase in the number of Annual Visit Equivalents; additional fees for any Upgrade or an additional Licensed Solution or service ordered by Client; and expiration of any discount or incentive programs to which Client was previously entitled.
8. **Third Party Components.** Client acknowledges that the Licensed Solution includes SNOMED Clinical Terms (SNOMED CT®) which is used by permission of the SNOMED International. All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. “SNOMED” and “SNOMED CT” are registered trademarks of SNOMED International. Additionally, Client will abide by the provisions found at the link below for the use of third party content, which may be updated from time to time. The following link contains the applicable third party content terms of use: <https://www.imohealth.com/wp-content/uploads/2019/08/UB-04-Terms.pdf> (NUBC)
9. **HIPAA.** The Parties agree to comply with the Business Associate Agreement executed by the Parties and attached hereto as Exhibit A (“BAA”), which is incorporated herein by reference. “PHI” has the same meaning as the term “protected health information” as defined by the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder (“HIPAA”) as applied to the information created, received, maintained or transmitted by IMO from or on behalf of Client.

10. No Modification: In no event will any terms and conditions contained or referenced in any purchase order prepared for this Sales Order amend, supersede, replace or otherwise modify this Sales Order, the Terms or the Agreement in any respect.

SIGNATURE PAGE FOLLOWS

SIGNATURES

In consideration of the foregoing, the mutual covenants contained herein and in the Terms, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties below enter into this Sales Order, effective as of the Effective Date set forth above, and agree to the Terms herein.

Client

Intelligent Medical Objects, Inc.

By: _____
Name: _____
Title: _____
Date: _____


By:  _____
Name: Ann Barnes
Title: Chief Executive Officer
Date: 8/25/2020

Exhibit A

HIPAA BUSINESS ASSOCIATE ADDENDUM

WHEREAS, IMO (or "**Business Associate**") may, pursuant to the agreement to which this HIPAA Business Associate BAA (this "**BAA**") is attached (the "**Agreement**"), perform certain services on behalf of or for Client (or "**Covered Entity**") that require IMO to access, create and use health information that is subject to the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended (collectively, "**HIPAA**"); and

WHEREAS, this BAA serves to establish the responsibilities of both parties regarding Protected Health Information ("**PHI**"), and to bring the Agreement into compliance with HIPAA.

NOW, THEREFORE, the parties agree to the following additional terms and conditions to those otherwise in the Agreement:

1. Definitions. Capitalized terms used in this BAA, but not otherwise defined, shall have the same meanings ascribed to them in HIPAA.
2. No Third Party Beneficiary. Nothing in this BAA is intended, nor shall be deemed, to confer any benefits on any third party.
3. Permitted Uses and Disclosures. Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Client as specified in the Agreement. Business Associate will not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity. Except as otherwise limited in the Agreement, Business Associate may:
 - (a) use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and as permitted by HIPAA;
 - (b) disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that the PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.
 - (c) use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law;
 - (d) use PHI to create de-identified health information in accordance with 45 C.F.R. §164.514(b) and may disclose de-identified health information for any purpose permitted by law; and
 - (e) use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(j)(1).
4. Responsibilities of Business Associate. Business Associate agrees:
 - (a) to use appropriate safeguards, and to comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
 - (b) to report to Covered Entity promptly, but in no case longer than 15 business days, any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware as required by 45 C.F.R. § 164.410, including a Breach of Unsecured PHI and any successful Security Incident of which it becomes aware. The parties acknowledge and agree that this section 4(b) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity

shall be required. “**Unsuccessful Security Incidents**” means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI. The contact information for the Business Associate and Covered Entity employees to whom reports of unauthorized use or disclosure of PHI, Breaches of Unsecured PHI and successful Security Incidents under this Section shall be made as provided below (as such information may be updated from time to time between the parties). Except as otherwise set forth herein, notification shall be made using the methods as provided in the relevant Underlying Agreement;

If to Business Associate:

HIPAA Privacy Officer
Intelligent Medical Objects, Inc.
9600 W Bryn Mawr Suite 100
Rosemont, IL 60018
Phone: (847) 728-4975
Email: legal@imo-online.com

- (c) to take reasonable steps to mitigate, to the extent practicable, any known harmful effect of a use or disclosure of PHI in violation of the requirements of this BAA. Upon request, Business Associate shall promptly provide Covered Entity with information reasonably related to its discovery, investigation and mitigation activities associated with a Breach that affects Covered Entity;
- (d) to make PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate available to Covered Entity for Covered Entity to comply with an Individual’s right of access to their PHI in compliance with 45 C.F.R. §164.524; provided, however, that unless otherwise expressly set forth in the Agreement, Covered Entity acknowledges that Business Associate does not maintain any Designated Record Set on behalf of Covered Entity;
- (e) to make PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate available to Covered Entity for amendment and incorporate any amendment(s) to PHI that Covered Entity directs, in accordance with 45 C.F.R. §164.526; provided, however, that unless otherwise expressly set forth in the Agreement, Covered Entity acknowledges that Business Associate does not maintain any Designated Record Set on behalf of Covered Entity;
- (f) to make the information required to provide an accounting of disclosures of PHI with respect to the Individual available to Covered Entity in response to a request from an Individual in accordance with 45 C.F.R. §164.528;
- (g) to the extent this Agreement requires Business Associate to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 C.F.R. Part 164, to comply with the requirements of Subpart E that apply to Covered entity in the performance of such obligation(s);
- (h) to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the Department of Health and Human Services or his/her designee (the “**Secretary**”), in a time and manner designated by the Secretary, for purposes of determining Covered Entity’s compliance with the HIPAA;
- (i) to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to substantially the same restrictions and conditions that apply to Business Associate with respect to such information in accordance with 45 C.F.R. § 164.502(e)(1)(ii);
- (j) if Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of HIPAA, to take reasonable steps to cure the breach or end the

violation, as applicable, and if such steps are unsuccessful, terminate the contract or arrangement with such entity, if feasible;

- (k) to the extent required by the “minimum necessary” requirements of HIPAA, Business Associate shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure;
- (l) to refrain from receiving any remuneration in exchange for any Individual’s PHI unless such exchange (i) is pursuant to a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual, or (ii) satisfies one of the exceptions enumerated in the HIPAA regulations and specifically Section 13405(d)(2) of the HITECH Act;
- (m) to refrain from marketing activities that would violate HIPAA and specifically Section 13406 of the HITECH Act; and
- (n) to provide training to applicable workforce members as required by HIPAA.

5. Responsibilities of Covered Entity. Covered Entity shall:

- (a) provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice;
- (b) provide Business Associate, in writing, with any changes in, or revocation of, permission by Individual to the use or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses or disclosures. Upon receipt by Business Associate of such notice of changes, Business Associate shall cease the use and disclosure of any such Individual’s PHI except to the extent it has relied on such use or disclosure, or where an exception under HIPAA expressly applies;
- (c) notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522; and
- (d) not request or require Business Associate to use and/or disclose PHI in a manner not permitted by HIPAA.

6. Termination.

- (a) Either party may immediately terminate this Agreement if such party (the “**Non-Breaching Party**”) determines that the other party (the “**Breaching Party**”) has breached a material term of this BAA. Alternatively, the Non-Breaching Party may choose to provide the Breaching Party with written notice of the existence of an alleged material breach and afford the Breaching Party an opportunity to cure the alleged breach. Failure to cure the material breach within 30 days of the written notice constitutes grounds for immediate termination of this Agreement.
- (b) Effect of Termination:
 - (1) Except as provided in paragraph (2) of this Section, upon termination of this Agreement for cause, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This paragraph shall apply to PHI that is in the possession of Business Associate and its Subcontractors or agents. Business Associate, its Subcontractors or agents shall retain no copies of the PHI.
 - (2) In the event that Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Indemnification. Business Associate shall reimburse, indemnify and hold harmless Covered Entity for all Indemnification Amounts (as defined in this Section) to the extent resulting from the negligence of the Business Associate that causes (a) a breach of this BAA, (b) a Security Incident or (c) a Breach of PHI

maintained by Business Associate or Business Associate's agent or Subcontractor, subject to the provisions of the Agreement. "*Indemnification Amounts*" means: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to individuals or government agencies; credit monitoring for affected individuals; damages or settlement amounts payable to affected individuals; and reasonable attorneys' fees paid by Covered Entity. Notwithstanding the foregoing or any contrary provisions set forth in the Agreement, in no event shall Business Associate's liability pursuant to this BAA exceed an aggregate amount of fees paid by Client for the Licensed Solutions for the 12 months preceding the claim.



SALES ORDER

This Sales Order is a "Sales Order" subject to the IMO 2.0 Terminology Suite Sales Order executed by the parties on February 21, 2018 (the "Agreement"). By executing this Sales Order, Client agrees to the terms and conditions of the Agreement. Except as otherwise defined in this Sales Order, capitalized words have the meaning ascribed to them in the Agreement.

1. **Client:** *County of San Bernardino on behalf of Arrowhead Regional Medical Center*
2. **Client Application:** Medical Information Technology, Inc.
3. **Effective Date:** 2/21/2021
4. **Term:** One (1) Year
5. **Licensed Solutions and Pricing:**

<u>Licensed Solutions</u>	<u>METRIC</u>	<u>Fees (Annual Fees unless otherwise noted)</u>
IMO® 2.0 ETP	\$361,622,694 NPR	\$135,214.34
Implementation Fee	One-Time	\$0.00
Migration Fee	0 Migrations	\$0.00
Maintenance Fee	Annually	\$1,000
CPT Editorial Content Pass Through Fee	0 Users	\$0.00
Support		\$0.00
	<u>Total</u>	\$136,214.34

The prices reflected in the pricing chart above shall be valid only through 10/31/20

6. **Price Notes:** Client's annual Fee is based on Client's published Net Patient Revenue (NPR) volume as specified by the American Hospital Directory (<http://ahd.com>). IMO will adjust the annual Fee on either: (i)

each anniversary of the Effective Date of these Terms if Client’s NPR volume changes; or (ii) a change in the number of facilities that utilize the Licensed Solutions.

- 7. **Services:** If Client has not elected a support package, IMO will invoice Client at the rate of \$175 per hour (in 15 minute increments) for support services requested by Client as described in the Documentation (“Services”). IMO will invoice Client at the beginning of each month for all Services provided in the preceding month.
- 8. **Term:** After the Term, this Sales Order may renew upon mutual agreement of the parties in writing.
- 9. **Payment:** IMO will invoice Client for the applicable fees upon full execution of the Sales Order by both parties and in advance of each anniversary of the Effective Date during the Term. All payments are due Net 45 days from the date of invoice. Payment obligations are non-cancelable and fees paid are nonrefundable.
- 10. **Adjustments:** IMO may increase Fees with 60 days prior written notice to Client. Such notice may be in the form of an invoice or any other form of notice commonly used by IMO to communicate with Client. IMO agrees that any increase in Fees shall not exceed the greater of 5 percent of Client’s existing fees; or the change in the CPI Medical Care Services Index, except in the following circumstances: additional fees due to an increase in Client’s Net Patient Revenue; additional fees for any Upgrade or an additional Licensed Solution or service ordered by Client; and expiration of any discount or incentive programs to which Client was previously entitled.
- 11. **Modification:** In no event will any terms and conditions contained or referenced in any purchase order prepared for this Sales Order amend, supersede, replace or otherwise modify this Sales Order, or the Agreement in any respect.

SIGNATURES

In consideration of the foregoing, the mutual covenants contained herein and in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties below enter into this Sales Order, effective as of the Effective Date set forth above, and agree to the terms herein.

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

By: _____
Name: _____
Title: _____
Date: _____

Executed on behalf of
Intelligent Medical Objects, Inc.

DocuSigned by:
Anne Barnes
By: _____
Name: Anne Barnes
Title: CEO
Date: August 26, 2020

Client Notice Contact: Rattana Guerrero
Country of San Bernardino on
behalf of Arrowhead Regional
Medical Center
400 N. Pepper Avenue
Colton, California 92324-1819

Client Billing Contact: accounts payable@armc.sbcounty.gov
Accounts Payable
400 N. Pepper Avenue
Colton, Ca. 92324
909-580-2668