

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



Contract Number  
20-1061

SAP Number

### Arrowhead Regional Medical Center

Department Contract Representative William L. Gilbert  
Telephone Number (909) 580-6150

Contractor Data Innovations LLC  
Contractor Representative Ben Zemetra  
Telephone Number (626) 419-3711  
Contract Term N/A  
Original Contract Amount Non-Financial  
Amendment Amount \_\_\_\_\_  
Total Contract Amount Non-Financial  
Cost Center \_\_\_\_\_

**Briefly describe the general nature of the contract:** A non-financial End User License Agreement with Data Innovations LLC, for use of software used in conjunction with Roche laboratory equipment

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Bonnie Uphold  
Bonnie Uphold, Deputy County Counsel

Date 10-19-20

Reviewed for Contract Compliance

\_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

William L. Gilbert  
William L. Gilbert, Director

Date 10/20/2020



## DATA INNOVATIONS

### END USER LICENSE AGREEMENT (EULA) – DOC ID 4136, V23.0

THIS END-USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT (the “AGREEMENT”) concerning the license and use of Software (as defined herein) between you, the end user, either individually or as an authorized representative of the company using the Software (“You” or “Your” respectively), and Data Innovations LLC, a Delaware corporation, with offices located at 120 Kimball Avenue, Suite 100, South Burlington, Vermont, 05403, USA; Data Innovations Cooperatief U.A., a Dutch Corporation; Data Innovations Europe S.A., a Belgian corporation, 34 avenue Jacques Brel, 1200 Brussels, Belgium; D.I. Hong Kong Limited, a Hong Kong corporation, Unit 1303, Laws Commercial Plaza, 788 Cheung Sha Wan Road, Hong Kong and Data Innovations Latin America Ltda., a Sao Paulo corporation, Rua Cotoxo, 303 Cj 71, Perdizes Tower II, Sao Paulo, Brazil, 05021 (“Data Innovations”).

PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE SOFTWARE YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: USE, TRANSFERABILITY, WARRANTY AND LIABILITY CONTAINED IN THE SECTIONS BELOW. BY SELECTING “I ACCEPT” BELOW AND USING ALL OR ANY PORTION OF THE SOFTWARE, YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT IMMEDIATELY UN-INSTALL THE SOFTWARE AND DESTROY ALL COPIES OF THE SOFTWARE IN YOUR POSSESSION OR UNDER YOUR CONTROL.

#### 1) Definitions.

- a) “Computer” means an electronic device, owned by You, that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
  - (1) “Confidential Information” means all data and information regarding the business or technical operations of Data Innovations of a confidential nature that affords Data Innovations a competitive advantage, including but not limited to (i) the Software, and Feedback, (ii) information regarding its products and product development, suppliers, marketing strategies, services, finance, operations, prices, business opportunities, customers, sales, internal performance results and personnel, (iii) all designs, models, documentation, reports, data, specifications, source code, object code, flow charts, file record layouts, databases, inventions know-how and trade secrets, improvements, concepts and discoveries, whether or not patentable or copyrightable, relating to the Software, (iv) any other information that is specifically designated by Data Innovations as confidential or proprietary; and (v) the terms and conditions of the Agreement. Confidential Information may be communicated orally, visually, in writing or in any other recorded or tangible form. Data and information shall be considered to be Confidential Information hereunder (A) if Data Innovations has marked them as such, (B) if Data Innovations, orally or in writing, has advised You of their confidential nature, or (C) if, due to their character or nature, a reasonable person would treat them as confidential Information shall not include information that is already in the public domain other than as a result of a breach by You; (2) becomes generally known or available to the public other than as a result of a breach by You; (3) is disclosed to You by a third party without the obligation of confidentiality; or (4) is created by You independent of any use or reference to the Confidential Information. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public.
- b) “Documentation” means all related explanatory written materials, manuals, or files for the Software.
- c) “Driver” means the software developed by Data Innovations to connect laboratory devices and information systems to the Software. Drivers communicate via TCP/IP, Serial, File I/O, ODBC and more.
- d) “Feedback” means all ideas, suggestions, improvements, reports, corrections, and other contributions that You provide to Data Innovations, an authorized business partner of Data Innovations (“Business Partner”), or otherwise make with respect to the Software.
- e) “Intellectual Property Rights” means all patents, improvements, concepts and discoveries (whether patentable or not), copyrights, models, designs, trademarks, trade secret rights, service marks, trade names, brand names, trade dress, and other proprietary rights or applications thereof which pertain to the Software, whether registered or not.
- f) “Permitted Number” means one (1) unless expressly indicated otherwise in a separate written form of agreement relating to the license of the Software (whether directly with Data Innovations or through a sublicense arrangement with a Business Partner).
- g) “Software” means (i) the object code form of the contents of the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided (ii) the Documentation, (iii) all Drivers, and (iv) all Updates.
- h) “Update(s)” means an error correction, patch, bug fix, modification, enhancement, improvement, upgrade, modified version, updates, addition, new release, and copies of the Software, if any, licensed to You by Data Innovations (directly or through a sublicense arrangement with a Business Partner).
- i) “Use”, “Used” or “Using” means to access, install, download, execute, display or otherwise benefit from using the functionality of the Software in accordance with the Documentation.



- 2) **Ownership.** You acknowledge and agree that:
- a) The Software is proprietary and confidential to Data Innovations.
  - b) Data Innovations owns all exclusive, right, title and interest in and to the Intellectual Property Rights in the Software, including all Updates.
  - c) Data Innovations (whether directly or through a sublicense arrangement with a Business Partner) grants You a license to Use the Software only in accordance with the terms of this Agreement.
  - d) Data Innovations reserves all rights not expressly granted pursuant to this Agreement.
  - e) This Agreement is not a sale of the Software, and You acquire only the right to Use the Software and do not acquire any rights, title to, or ownership in, the Software or any Intellectual Property Rights in the Software, including all future Updates, compilations and translations of the Software, or any copies thereof.
  - f) All Feedback shall become the property of Data Innovations. Data Innovations may utilize all such Feedback without any obligation to You and You hereby agree to assign any such right to Data Innovations.
  - g) You will not challenge Data Innovations' rights to, or otherwise attempt to assert any rights in, the Software.
  - h) You shall promptly notify Data Innovations of any unauthorized access to the Software and all infringements, limitations, illegal use, or misuse of the Intellectual Property Rights that come to Your attention.
  - i) You will not remove, alter or obscure any of Data Innovations' copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indicia of Data Innovations' ownership from the Software or any portion thereof.
  - j) The Software is provided with restricted rights. All unpublished-rights are reserved by Data Innovations under the copyright laws of the United States.
  - k) YOU SHALL NOT EXCEED THE SCOPE OF THE LICENSES GRANTED HEREIN.
- 3) **Software License.** Subject to Your compliance with the terms of this Agreement, Data Innovations (directly or through a sublicense arrangement with a Business Partner) grants to You a non-exclusive, non-transferable, non-sublicensable, revocable, perpetual (except for Software that is licensed on a subscription basis as indicated on an applicable Data Innovations quote) license to Use the Software only as allowed herein and for the purposes described in the Documentation.
- a) **General Use.** You may install and Use one (1) copy of the Software on the Permitted Number of Computers. Use of the Software after termination of this Agreement is strictly forbidden.
  - b) **Evaluation.** If You have received the Software for evaluation purposes (either directly from Data Innovations by mail or via download from Data Innovations' website) You may install and Use one (1) copy of the Software strictly for the sole purpose of allowing You to evaluate the suitability of the Software for Your internal, end-use purposes ("Trial Version"). You may Use the Trial Version only for the set period of time, as described below for the specific Software ("Trial Period"). You may not Use the Trial Version in a live production environment, for commercial purposes. Upon expiration of the Trial Period the Software will cease to function however, no data will be lost. In the event You choose to license the Software for General Use, You must contact Data Innovations to obtain the appropriate unlock code/license file ("General Use Key"). Upon receipt of the General Use Key, Your license and Use of the Software shall be governed by the terms and conditions set forth herein. If You choose not to license the Software then this Agreement shall automatically terminate and the terms of Section 11(c) herein shall immediately take effect.  
Trial Periods:  
*EP Evaluator® Software:* fourteen (14) days beginning immediately upon initial Use.  
*All other Data Innovations' Software:* thirty (30) days beginning from the date of delivery.
  - c) **Reproduction.** You shall not copy the Software without the prior written approval of Data Innovations. Notwithstanding the foregoing, You may make one backup copy of the Software, into machine readable form, for archival and disaster recovery purposes, provided Your backup copy is not in Use on any Computer. All backup copies shall remain the property of Data Innovations and are subject to the terms and conditions of this Agreement. You shall maintain a record of the number and location of all copies of Software, including copies merged with other software, and shall make those records available to Data Innovations upon request. Any backup copy of the Software that You make must contain the same titles, trademarks, copyright notices, legends and other proprietary notices that appear on or in the Software.
  - d) **No Modification.** You shall not, and shall not permit any third party to, (i) modify, adapt, alter or translate (excluding any language translation features that are part of the Software, and default project data files) the Software or (ii) reverse engineer, decompile, disassemble, create derivative works of any part of the Software, attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software including, without limitation, any such mechanism used to restrict or control the functionality of the Software; or otherwise attempt to discover the source code or the underlying ideas, algorithms, structure or organization form of the Software, except to the extent You may be expressly permitted to decompile under applicable law. Data Innovations reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.



- e) Transfer. You may not, rent, lease, sublicense, assign, distribute, sell or transfer Your rights in the Software, use the Software for commercial time-sharing, or for service bureau use, or authorize all or any portion of the Software to be copied onto another user's Computer except as may be expressly permitted herein. You may, however, transfer the Software from one Computer to another, so long as it is erased from Your old Computer before loading it into Your new Computer.
- f) Updates. If the Software is an Update to a previous version of the Software, You must possess a valid license to such previous version in order to Use such Update. All Updates are provided to You on a license exchange basis. You agree that by Using an Update You voluntarily terminate Your right to Use any previous version of the Software and will transfer all data to the new Update.

#### 4) Warranties.

- a) Data Innovations warrants that for as long as You have a valid maintenance and support services agreement ("M&S Agreement") in effect for this Software and have paid all applicable fees due under the M&S Agreement, the Software, when properly installed and used in accordance with the applicable Documentation, will substantially perform in accordance with the Documentation provided with the Software. Your exclusive remedy under the limited warranty set forth herein and the sole obligation of Data Innovations for breach of this warranty shall be for Data Innovations to use commercially reasonable efforts, to correct any reproducible error of the Software to conform to the Documentation, at no additional charge.
- b) Data Innovations warrants that any media upon which Data Innovations provides the Software to You shall be free of defects in materials and workmanship for a period of ninety (90) days from delivery of such media to You. As Your exclusive remedy and the sole obligation of Data Innovations for breach of this warranty, Data Innovations shall provide You with a new copy of such Software in non-defective media at no additional charge.
- c) Data Innovations warrants that the Software, furnished hereunder and used within the scope of this Agreement, shall not infringe or misappropriate a U.S. patent issued as of the Effective Date (as defined herein), copyright, trademark or trade secret of a third party. As Your exclusive remedy under the warranty set forth herein and the sole obligation of Data Innovations for breach of this warranty, Data Innovations will, at its sole option and expense, choose to (a) modify the infringing Software so that they are non-infringing; (b) replace the infringing Software with non-infringing Software which are functionally equivalent; (c) obtain a license for You to continue to use the Software as provided hereunder at no cost to You; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the license for the infringing Software and refund the prorated Fees paid for the infringing Software, based on a five (5) year period from the Effective Date (as defined herein). THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF DATA INNOVATIONS AND YOUR SOLE AND EXCLUSIVE REMEDY AND RECOURSE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S RIGHTS BY THE SOFTWARE. Notwithstanding the foregoing, this warranty obligation shall not extend to any claims of infringement arising out of or related to (i) use of the Software outside the scope of the Documentation, (ii) a modification of the Software by anyone other than Data Innovations or its authorized agent; (iii) the incorporation into the Software of any feature or information provided by or requested by You; (iv) a combination of the Software with any third party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or (v) the use of a version of the Software other than the then-current version made available to You, if the infringement would have been avoided by use of the then-current version and You have been made aware of this fact by Data Innovations.

#### 5) Disclaimer of Warranties.

- a) Data Innovations does not warrant that Your Use of the Software will be error free, virus free or that You will be able to operate the Software without problems or interruptions.
- b) DATA INNOVATIONS DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE.
- c) THE SOFTWARE IS PROVIDED "AS IS" AND EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 5 AND ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, DATA INNOVATIONS DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS AND OTHER TERMS (WHETHER ORAL, WRITTEN, EXPRESS OR IMPLIED) WHETHER STATUTORY, ARISING BY LAW OR CUSTOM, USAGE OR OTHERWISE, RELATING TO THIS AGREEMENT OR TO THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, TO THE FULLEST EXTENT ALLOWABLE BY LAW, TERMS AS TO TITLE, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THERE ARE NO WARRANTIES BEYOND THE DESCRIPTION OF THE FACE HEREOF. YOU ARE RESPONSIBLE FOR THE RESULTS TO BE ACHIEVED FROM USING THE SOFTWARE.

#### 6) Limitation of Liability.

- a) IN NO EVENT WILL DATA INNOVATIONS BE LIABLE TO YOU UNDER ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES OF ANY KIND OR NATURE WHATSOEVER, WHETHER FORESEEABLE OR UNFORESEEABLE, SUFFERED BY YOU, INCLUDING



WITHOUT LIMITATION LOSS OF GOOD WILL, LOST PROFITS, WORK STOPPAGE, DATA OR CONTENT LOSS, COMPUTER FAILURE OR MALFUNCTION, BUSINESS INTERRUPTIONS, LOSS OF INCOME, DAMAGES DUE TO FORCE MAJEURE, OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, EVEN IF DATA INNOVATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF PURPOSE OF ANY LIMITED REMEDY. DATA INNOVATIONS SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) LOSS OF DATA, (ii) FOR TRANSACTIONS PERFORMED USING THE SOFTWARE; OR (iii) MODIFICATIONS TO THE SOFTWARE BY YOU, WHETHER MADE BY YOU OR ANY THIRD PARTY, WHETHER SUFFERED BY YOU OR ANY THIRD PARTY. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. Data Innovations' aggregate liability under or in connection with this Agreement for any and all causes whatsoever, and Your maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, will not exceed the fees paid for the Software that accompanies this Agreement, if any, for the six (6) months immediately preceding the breach for which the damages are claimed. Data Innovations shall not be liable for any claims or damages of third parties. The existence of one or more claims will not enlarge this limit. You acknowledge that Data Innovations' pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy specified in this Agreement fails of its essential purpose.

- b) Data Innovations shall not be liable for disturbances and failure of Internet connections.
  - c) Data Innovations shall not be liable for Your data input in the Software and You will hold Data Innovations harmless against any damage claimed in relation to the use of such data.
  - d) Data Innovations shall not be liable for damages due to force majeure, including unavailability of the server due to power failure or disturbance or equipment failures and/or Software maintenance.
- 7) **Indemnity.** You will indemnify, defend and hold Data Innovations, its affiliates and all officers, directors, employees and agents thereof (hereinafter referred to as "Indemnitees") harmless from all claims, liabilities, demands, suits, judgements, decrees, proceedings, or actions (including reasonable attorneys' fees incurred in connection therewith) losses, damages and expenses associated with a claim asserted against Data Innovations, arising out of bodily injury (including death) or damage to property or persons which may be sustained by any third party that occurs in connection with Your operation of Your business, to the extent that such injury or damage is caused in whole or in part by the willful misconduct, grossly negligent acts, errors, or omissions of You.
- 8) **Audit Right.** During normal business hours and at any time during which the Software or Documentation are being utilized, Data Innovations, or its authorized representative or licensors, shall have the right upon reasonable advance notice to audit and inspect Your Use of the Software, in order to verify compliance with the terms of this Agreement. If You are found not to be in substantial compliance with Your obligations, You shall pay the reasonable expenses incurred by Data Innovations associated with such inspection and will promptly take measures to come into compliance.
- 9) **Government.** The Software (i) was developed at private expense and is the proprietary information of Data Innovations; (ii) was not developed with government funds; (iii) is a trade secret of Data Innovations for all purposes of the Freedom of Information Act; (iv) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication or disclosure of the Software is subject to the restrictions set forth by Data Innovations and the restrictions set forth in subparagraph c(1) and c(2) of Commercial Computer Software - Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Furthermore, if the Software is being licensed to U.S. Government end users, the Software and related Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211 through 12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation is licensed (A) only as Commercial Items and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
- 10) **Confidential Information**
- a) Confidential Information of Data Innovations, including permitted copies, shall be deemed the property of Data Innovations.
  - b) In order to protect the rights of Data Innovations in its Confidential Information, You agree to take all reasonable steps and the same protective precautions to protect the Confidential Information from disclosure to third parties as with Your own proprietary and confidential information. You shall use the Confidential Information only as expressly permitted, or as permitted under the applicable California Public Records Act as may be amended. You shall not, without the prior written consent of Data Innovations, disclose, provide, or make available any of the Confidential Information of Data Innovations in any form to any person or third party, except to Your bona fide employees, officers, directors, or third parties whose access is necessary to enable such party to exercise its rights hereunder and then only to those who are subject to written use and disclosure restrictions at least as protective as those set forth herein. You agree that prior to disclosing any Confidential Information of Data Innovations to any third party, You will obtain from that third party a written



acknowledgment that such third party will be bound by the same terms as specified in this Agreement with respect to the Confidential Information and naming Data Innovations, as the case may be, as a third party beneficiary. You shall take all steps reasonably necessary to prevent and restrain unauthorized or inadvertent use, disclosure, delivery, publication, dissemination or reproduction of such Confidential Information.

You acknowledge and agree that You will not permit any third party, nor any employee, representative, or agent thereof, that develops, markets or licenses computer programs with functionality similar to the functionality of the Software to have access to Data Innovations' Confidential Information, which includes the Software.

In the event You become compelled to disclose any of the Confidential Information under a valid judicial order, You shall give Data Innovations immediate notice so that it may seek a protective order or other appropriate remedy. Disclosure of Confidential Information under a valid judicial order shall, in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information.

#### 11) Term and Termination.

- a) This Agreement shall be effective upon Your selecting "I Accept" below ("Effective Date") and shall terminate (i) immediately upon written notice by Data Innovations if You breach any term of this Agreement or fail to pay the required Software fees, or (ii) in the case of a Trial Version, automatically upon the expiration of the Trial Period should You choose not to license the Software.
- b) This Agreement will terminate automatically if all or a substantial portion of Your assets are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the You for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or You are adjudged bankrupt.
- c) Upon termination of this Agreement all licenses and rights granted to You hereunder shall terminate and You will immediately (i) cease Using the Software, and any other Confidential Information in Your possession, (ii) un-install the Software, (iii) return to Data Innovations or destroy all copies of the Software, Intellectual Property and any other Confidential Information in Your possession or control, including any backup copies of the Software, and any other Confidential Information that are fixed or resident in the memory or hard disks of any Computer and (iv) certify to Data Innovations such destruction / return within thirty (30) days following such termination.
- d) Notwithstanding the termination of this Agreement for any reason, the provisions of Section 1, 2, 5, 6, 7, 9, 10, 11, 13, 14 and Section 15 shall survive the termination of this Agreement and remain in full force and effect, but this shall not imply or create any continued right to Use the Software after termination of this Agreement.

**12) Export Rules.** You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, You represent and warrant that You are not a citizen, or otherwise located within, an embargoed nation and that You are not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if You fail to comply with the terms of this Agreement.

**13) Governing Law.** This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Vermont, United States without regard to conflicts of law principles of any jurisdiction. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**14) Disputes.** Any and all disputes, controversies, differences or claims arising from or related to this Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Agreement (a "Dispute"), shall be settled or resolved in the following manner:

- a) To initiate Dispute resolution, a party must give written notice to the other party as to the details of the Dispute ("Dispute Notice"). Upon receipt of the Dispute Notice the parties shall designate representatives to confer or meet with each within a reasonable period of time (as agreed upon by the parties) to discuss and attempt to resolve the Dispute.
- b) If the Dispute cannot be settled by Internal Resolution then the parties will attempt to settle their Disputes by third party mediation ("Mediation"). To initiate mediation, a party must give written notice requesting mediation to the other party to the Dispute. The parties will nominate an independent third party trained as a mediator ("the Mediator") who will act fairly and with complete impartiality towards the parties. The language of any mediation shall be English.
- c) The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, without breach of this Agreement.
- d) In the event mediation fails to resolve a Dispute, then any party who engaged in good faith in the mediation process may pursue its rights under this Agreement in any court of competent jurisdiction in the State of Vermont, United States.

#### 15) General Provisions.

- a) Equitable Relief. You acknowledge that the Confidential Information is the unique property of Data Innovations and of extreme value, and that unauthorized use or disclosure thereof would cause Data Innovations irreparable



# End User License Agreement



harm for which monetary damages would be an inadequate remedy. Therefore, notwithstanding the Dispute Resolution section set forth herein, if You fail to abide by Your license grants and obligations of confidentiality under this Agreement, Data Innovations shall be entitled to immediate and/or permanent injunctive relief, in addition to any other rights and remedies available to it at law or in equity.

- b) **Assignment.** You may not assign, sublicense, share, pledge, rent or transfer any of Your rights under this Agreement without the prior written consent of Data Innovations, which shall not be unreasonably withheld. This restriction on assignment or transfer shall apply to assignments or transfers by operation of law, as well as by contract, merger or consolidation. Any attempted assignment or transfer in violation of the foregoing shall be null and void. Upon prior written consent from Data Innovations, and under such terms and conditions as Data Innovations considers appropriate, You may assign all of Your rights under this Agreement to another entity provided that: (i) You also assign (A) this Agreement, and (B) the Software and all other software or hardware bundled or pre-installed with the Software, including all copies, Updates and prior versions, to such person or entity; (ii) You retain no copies, including backups and copies stored on a Computer; and (iii) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which You legally purchased a license grant to the Software.
- c) **Severability.** If any part of this Agreement is found void and unenforceable by an arbitrator or a court of competent jurisdiction, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.
- d) **Entire Agreement.** This is the entire agreement between Data Innovations and You relating to the Software and it supersedes any prior representations, proposals, discussions, undertakings, communications, agreements, advertisements, and understandings, whether written or oral, relating to the Software, and shall govern and control with respect to the subject matter herein. Any terms and conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by You that are in addition to or different from this Agreement. All such terms and conditions are hereby expressly rejected, except that a separate, signed agreement entered into between Data Innovations and You relating to the license of the Software, supersedes and replaces this Agreement and shall govern.
- e) **Amendment.** This Agreement may only be modified, altered or amended by a writing signed by an authorized officer of Data Innovations.
- f) **Text.** The text of this Agreement herein written in the English language is the authentic text and any difficulties or uncertainties in the interpretation arising shall be resolved by reference to this text.
- g) **No Waiver.** Failure on any occasion by either party to enforce any term of this Agreement shall not prevent enforcement on any other occasion.

16) **Caché.** The Caché™ product delivered and used with the Data Innovations' Instrument Manager™ software is the proprietary software of InterSystems Corporation ("InterSystems") and is licensed to You directly by InterSystems pursuant to the terms and conditions set forth in the following Schedule A, ("InterSystems End User License & Service Agreement").

IN WITNESS WHEREOF, Customer and DI have executed this Master Agreement as of the dates of signature below.

DATA INNOVATIONS LLC

COUNTY OF SAN BERNARDINO ON BEHALF OF  
ARROWHEAD REGIONAL MEDICAL CENTER

Signature

Signature

Matthew Wilcox

Curt Hagman

Name

Name

V.P. of Finance

Chairman, Board of Supervisors

Title

Title

September 22, 2020

OCT 27 2020

Date

Date

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



## SCHEDULE A



## End User License &amp; Services Agreement

1. This Agreement is between InterSystems Corporation ("ISC") and you the customer (hereinafter "you") that has ordered license(s) to use ISC's proprietary software (the "Licensed Software") and/or services ("Services") from ISC as a part of your agreement with Data Innovations.
2. Upon ISC's acceptance of your order (the "Effective Date") and the payment of the appropriate fee (the "License Fee") to ISC, ISC shall grant to you a nontransferable and nonexclusive 30-year license to use the Licensed Software internally solely in the conduct of your business (the "License"). For the avoidance of doubt, the "Licensed Software" shall not include any open source or third party software that may be shipped with, installed with or used in conjunction with ISC's proprietary software. No license shall be granted upon the physical delivery of any software to you. The granting of each License is subject to the approval of ISC, who has the right to disapprove any such request. A Trade In shall be deemed to be the cancellation of your old License and the granting of a new License. Services ordered by you shall be provided in accordance with the terms and conditions contained in ISC's Price List ("Price List") in effect on the date such Services are rendered, provided that ISC has received the appropriate fee therefor ("Service Fee"). If you ordered a License or Services through an Application Partner ("AP"), you may only use the Licensed Software and Services in conjunction with such AP's software.
3. To enter into a License, you must accept the terms of this Agreement as a schedule to your agreement with Data Innovations.
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