

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



Contract Number

23-440

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative
Telephone Number

William L. Gilbert
(909) 580-6150

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

Canon Medical Informatics, Inc.
Karen Kopel
(415) 308-3071
June 24, 2023 through June 23, 2028
\$273,192
\$273,192

Briefly describe the general nature of the contract: Software Maintenance and Support Services Agreement, including non-standard terms, with Canon Medical Informatics, Inc. to update and maintain the Vitrea 3D workstations for imaging software for interventional radiology/neurology, in the amount of \$273,192 for the five-year period of June 24, 2023 through June 23, 2028.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*

Bonnie Uphold, Supervising Deputy County Counsel

Date 5-12-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

William L. Gilbert
William L. Gilbert, Director

Date

5/16/23

San Bernardino County on behalf of Arrowhead Regional Medical Center

Quotation #: 15971

Date: 2/1/2023

Valid Until: 5/26/2023

Currency: US Dollar

Contract Affiliation: Direct

To

Accounts Payable
Arrowhead Regional Medical Center
Materials Management/Accounting
400 N Pepper Avenue
Colton CA 92324-1819

From

Karen Kopel
Sr. Account Manager
Phone: (952) 487-9883
Mobile: (415) 308-3071
Fax: (952) 487-9779
Email: Karen.Kopel@mi.medical.canon

Premier Maintenance Includes

Vitreia Advanced Visualization	Premier
Software Updates and Upgrades	•
Rapid Response Remote Technical Support	•
Access to Education Live Webinars	•
Access to Education Online Library	•
Standard Support Hours (Monday through Friday 7a.m. – 7p.m.)	•
Access to Online Technical Knowledgebase	•
Canon Account Manager (AM)	•
Hardware Support Assistance	•
24/7 Technical Support	•
Proactive System Activity Review with AM	•
Education Credits*	•
On-site Assistance for Critical Issues**	•
<p>* Education credits can be added to any tier at an additional cost.</p> <p>** Critical issues qualify for onsite assistance when they meet all the following criteria:</p> <ul style="list-style-type: none"> Identified as residing within software provided by Canon Open longer than 24 hours Causes the enterprise system to be non-operational, in the reasonable judgement of Canon and the customer Has not been identified as a software defect that can be fixed by a software patch 	

Premier Maintenance Services

Item Name	Description	Qty	Start Date	End Date
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitreia, Additional Concurrent User VCC500903	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitreia, Performance Option Pkg USA-System VPO500904	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitreia, Mirada Nuclear Medicine App VMN500905	1	6/24/2023	6/23/2028

Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Mirada Nuclear Medicine Add'l User MNA500906	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Software Concurrent User 5090114897-CCU	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Enterprise Deployment 5090114897-ENT	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Multi Modality Viewer Unlimited User CRB1302183	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Enterprise Enablement-System VESADLCC1307043-ENB	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, Additional Concurrent User VESADLCC1307043-CCU	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, INVIA 4DM Essentials - SPECT App-System VIE593672	1	6/24/2023	6/23/2028
Services, SW M&S Enterprise, Premier VS-VIT-MSVAPREMIER	Vitrea, INVIA SPECT Reconstruction App-System VIR593673	1	6/24/2023	6/23/2028
VS-VIT-ANNUALEDUNITSWR	Services, Annual Education Units, With Renewal	60	6/24/2023	6/23/2028

Transaction Details

Customer hereby contracts to the following number of years of Extended Software Maintenance & Support: **5 Years**

Cost Summary

Annual Maintenance:	\$54,638.40
Term:	5 Years
Total Maintenance:	\$273,192.00
Due Now:	\$54,638.40

Notes

- 1) This Quote is conditioned on and subject to the Software License Agreement as attached hereto and incorporated herein.
- 2) This order sets forth all of the products and services being provided.
- 3) Any purchase order provided by Licensee is valid only for purposes of identifying the "bill to" and "ship to" addresses. Any additional, conflicting, or different terms are hereby expressly rejected.
- 4) Canon Medical Informatics will assist with the initial diagnosis of hardware related issues to the use of Canon Medical Informatics software, but Canon Medical Informatics is not responsible for maintenance and/or support of hardware. Periodic hardware upgrades/replacements may be required to take full advantage of the performance of new software releases. Hardware upgrades/replacements are not included as part of Software Maintenance & Support and are the responsibility of the customer.
- 5) Payment Terms: Subject to credit approval, the 1st payment is due 60 days from invoicing. Future maintenance payments due at least 30 days before the start date of the service period. Canon Medical Informatics reserves the right to require prepayment if credit approval is not obtained. If you license additional Products, increase your Study Volume or add to the number of Concurrent Users licensed hereunder during a Software Maintenance and Support period, the initial Software Maintenance and Support period for the additional Products shall be prorated so that its annual commencement and termination are concurrent with the Software Maintenance and Support period for your other Products. Thereafter, your Software Maintenance and Support renewal fee will increase by the annual Software Maintenance and Support amount per Product, Study or Concurrent User set forth in the Quote. You may also receive incremental education units as set forth in the Quote. These incremental education units will expire.
- 6) Taxes, fees, and related expenses, such as sales tax, use tax, and import fees, are additional.
- 7) Purchaser represents and warrants that it has the full legal power and authority to bind end-user named above to the terms and conditions of this Quote and any attached Agreements.

ARTICLE 1: LICENSE GRANT AND USE

1.1 **License Grant.** Under this Agreement ("Agreement"), Canon Medical Informatics, Inc. (hereinafter, "Company") hereby grants San Bernardino County (hereinafter, "Licensee") a nonexclusive, non-transferable license to use the object code version of the Products identified on the Quote to which this Agreement is incorporated. Licensee's use of the Company Products is limited to a single DICOM-compliant workstation, unless the Quote identifies the Products as System Products, in which case, Licensee's use is limited to a single Server System. Such usage is also subject to the number of Concurrent or Base Users licensed, or, if your license is based on Study Volume, Storage Size or by Site, by an unlimited number of users, as enumerated in the Quote. Products that are not Company Products or are Third Party Products may be used only on a single computer or server for each quantity of Third Party Products licensed, unless they are identified in the Quote as System Products. Licensee's use of Company's medical imaging Products shall be limited to use by Licensee's physicians, radiologic technicians, or other medical personnel under a physician's supervision. All Products are to be used solely for data management and/or medical visualization and presentation purposes in connection with Licensee's ordinary and customary patient care operations. All software identified or installed as "Test Lab" will only be available with Software Maintenance and Support and may be used only in a non-clinical setting for the purpose of evaluating whether the software operates in accordance with its warranty. Test Lab software may not be used for patient care or communication.

1.2 **Restrictions on Use.** Unless otherwise set forth in the Quote, Licensee may not make any Product available to third parties or use it to process third party data without the prior written permission of Company, and agreement to any applicable additional fees. If such permission is granted, Licensee will ensure that any permitted third party is subject to the terms and conditions of this Agreement and will be responsible for such third party's compliance herewith. Licensee may not, or allow a third party on Licensee's behalf to (i) engage in, cause or permit the reverse engineering, disassembly, recompilation, modification or any similar manipulation of any Product; (ii) create derivative works of any Product; (iv) use the Products in any manner for benchmarking testing or comparative or competitive analyses; or (v) sublicense, loan, lease, distribute, assign or otherwise transfer any Product or copies thereof, in whole or in part, or otherwise make any Product available to any non- approved third parties.

1.3 **Copying.** Subject to Licensee's right to use Products throughout Licensee's System, as set forth in Article 1.1, Licensee may not copy any Product, except that Licensee may make and maintain one (1) copy of each Product for archival purposes. All copies must include all Company and its licensors' copyright, proprietary rights and other notices included on or in such Product.

1.4 **Ownership.** The Products furnished to Licensee by Company are licensed, not sold, to Licensee. Except for the rights expressly granted to Licensee under this License, all right, title and interest in each Product shall at all times remain the property of Company and its licensors. Licensee understands and agree that Licensee takes title only to the media on which a Product is provided, and that each Product shall remain the property of, and proprietary to, Company or the licensors of any third-party software products. If any computer hardware is sold to Licensee, Licensee will own such hardware.

1.5 **Remote Access and Security Obligations.** Certain Products furnished to Licensee under this Agreement may allow users to use the Products and/or view data over the internet or in other remote manners. Licensee must ensure that any remote access to and remote use of the Products is only by Licensee's authorized users and is in accordance with the terms and conditions of this Agreement. Additionally, Licensee is responsible for maintaining appropriate security to detect and/or prevent (i) access by unauthorized users, (ii) unauthorized use of any Product, and (iii) wrongful use of or access to protected health information and Licensee's operational data, and Licensee must indemnify and hold Company harmless from any losses, judgments, damages or expenses (including attorneys' fees) arising out of or resulting from remote access or use of Licensee Data (as defined below) or any violation of Section 1.6.

1.6 **Data Protection.** Licensee shall ensure that any and all images, information, or data, including without limitation, personal data, used by Licensee in connection with the Products ("Licensee Data") is collected, processed, transferred and used in full compliance with Applicable Data Protection Laws (as defined below) and that it has all obtained all necessary authorizations and consents from any data subjects to process Licensee Data. Licensee shall adopt and maintain appropriate organizational, technical and security measures prior to any such collection, processing or transfer in order to protect against unauthorized access to or use of Licensee Data. Licensee acknowledges and agrees that it is responsible for the security safeguards applicable to its systems and understands and accepts the specifications and requirements provided to Licensee. The parties will comply with all applicable data protection laws including without limitation, as required by the applicable jurisdiction and to the extent applicable to the obligations under this Agreement, (i) the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and all implementing regulations, as may be modified or amended from time to time (statutes and regulations separately or together, "HIPAA"); (ii) the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR) and any EU Member State laws implementing the GDPR; and the Canadian Personal Information Protection and Electronic Documents Act (PIPEDA).

ARTICLE 2: FEES AND PAYMENT

2.1 Payment.

(a) Licensee shall pay the fees for the Products, implementation services and hardware within thirty (30) days after delivery of invoice. All payments made by credit card will be subject to a three percent (3%) credit card processing fee.

(b) If Licensee licenses additional Products or increases your Study Volume, Storage Size, or number of Concurrent Users or Sites, Licensee will pay the difference between the then-current license fee list price for the Company Products at the new appropriate Study Volume and/or Storage Size and the then-current license fee list price for the previously established Study Volume and/or Storage Size, plus the applicable difference in fees for Software Maintenance and Support service as described in Article 6. This fee will be due within thirty days (30) of receipt of invoice.

(c) Mergers, acquisitions and divestitures will be treated as potential changes in Licensee's Study Volume, as will entering into other agreements with outside institutions that allow them rights to use the Company Products or otherwise increase Licensee's Study Volume and/or Storage Size, requiring a certification of your new Study Volume and/or Storage Size within thirty (30) days of such event. However, a license may not be split or downgraded to a lower level.

2.2 Payment for Software Maintenance and Support and Other Services. Payment for Software Maintenance and Support is due thirty (30) days in advance of each support term. Payment for other services is due thirty (30) days from receipt of the invoice for such services.

2.3 Taxes and Costs of Collection. Licensee is responsible for all applicable taxes related to the products and services provided under this Agreement, except for taxes based on Company's income.

2.4 Accounting and Audit Rights. Licensee agrees to keep true and accurate books, accounts and records for the purpose of verifying Licensee's Study Volume and/or Storage Size and that Licensee, including Licensee's use of the Products, complies with this Agreement. Company shall have the right to audit those books, accounts, and records upon reasonable advance written notice. Company shall bear the cost of any such audit, and Licensee shall promptly pay any additional license amounts owed as a result of the audit. Company agrees to treat Licensee's books, accounts and records as confidential at all times.

ARTICLE 3: DELIVERY

All Products will be delivered electronically unless otherwise required by you. Electronic deliveries shall be deemed delivered when Company provides you access codes allowing you to download the Products over the internet. Should you require physical delivery of the Products, all physical deliveries shall be F.O.B. the warehouse or other facility of Company or the manufacturer of third party products. Each Product and/or hardware will be delivered, as Company elects (i) by shipment via common carrier; or (ii) Licensee's agent or any other person Licensee specifies. Each Product will be accepted upon delivery.

ARTICLE 4: CONFIDENTIAL INFORMATION

The Products and their associated documentation, are proprietary trade secret information of Company. To the extent permitted by law, Licensee agrees to maintain the confidentiality of the Products and their documentation, as well as any other information or data of Company which it designates or which Licensee knows or has reason to believe is proprietary to Company ("Confidential Information"), in at least the same manner as Licensee maintains the confidentiality of Licensee's own proprietary information. Licensee may use the Confidential Information during the term of this Agreement only as permitted hereunder or as necessary in order to use the Products in accordance with this Agreement. Licensee shall not disclose or provide any Confidential Information to any third party and shall take necessary measures to prevent any unauthorized disclosure by Licensee's employees, agents, contractors or consultants during the term hereof including appropriate individual nondisclosure agreements. Company acknowledges that Licensee's obligations under this Article 4 is subject to Licensee's compliance with local and state open meetings and public records laws, including without limitation, 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).

ARTICLE 5: WARRANTIES; DISCLAIMERS; DAMAGES LIMITATION; INSURANCE

51 Limited Warranty. Company warrants that the software delivery method through which the Products are provided will, upon delivery, be free from defects. Company warrants that the Services will be performed in workmanlike manner in accordance with industry standards.

52 EXCLUSIVE REMEDY. COMPANY'S ENTIRE LIABILITY, AND LICENSEE'S EXCLUSIVE REMEDY, FOR ANY WARRANTY CLAIM SHALL BE FOR COMPANY TO REMEDIATE ANY DEFECTIVE SOFTWARE DELIVERY METHOD WHICH PREVENTS THE AFFECTED PRODUCT FROM SATISFYING THE LIMITED WARRANTY.

53 WARRANTY DISCLAIMER. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE IN CONNECTION WITH THE PRODUCTS OR SERVICES PROVIDED BY COMPANY UNDER THIS AGREEMENT, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR USE, ALL OF WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY COMPANY AND ITS LICENSORS. REPAIR OR REPLACEMENT OF A PRODUCT DOES NOT EXTEND ITS WARRANTY PERIOD. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ANY SERVICES ARE PROVIDED ON AN "AS IS" BASIS, ALL FAULTS INCLUDED AND WITHOUT ANY WARRANTIES. Company and its licensors do not warrant (i) that the operation of any Product will be uninterrupted or error-free; (ii) that any errors in any Product will be corrected; (iii) that any Product will operate in the combinations that may be selected for use; or (iv) that any Product will operate in the combinations that Licensee may select for use, including operations that may be affected by factors outside the control of Company, including Licensee's network environment and the speed of your internet connection. With the exception of Vitrea Connection, Licensee acknowledges that the Products are not intended for data storage and that Licensee is responsible for storage and retention of its data. The Products are provided as an aid or adjunct to processes or decisions that can be made without use of the functionality within the Products, and clinical judgments and experience are necessary for proper use. Medical diagnosis is the responsibility of the user.

54 Hardware Warranty. Company will transfer to Licensee any warranties it receives from the manufacturer of any hardware ("OEM") furnished to Licensee by Company, but Company provides no additional warranties beyond those provided by the OEM. Licensee agrees to resolve any malfunction, fault or defect with respect to such hardware products directly with the OEM.

55 DAMAGES LIMITATION. COMPANY AND ITS LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY CLAIM ARISING FROM OR RELATED TO ANY USE OF THE PRODUCTS OTHER THAN AS A SUPPLEMENT TO STANDARD METHODS OF INTERPRETING RADIOLOGIC IMAGES, NOR SHALL COMPANY OR ITS LICENSORS BE LIABLE FOR ANY LOST DATA, LOST PROFITS, LOST REVENUE, OR ANY OTHER FORM OF CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR PUNITIVE LOSS OR DAMAGE, EVEN IF COMPANY OR, IN THE CASE OF THIRD PARTY PRODUCTS, ITS LICENSORS, SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL COMPANY'S LIABILITY OF ANY KIND UNDER ANY THEORY, INCLUDING CONTRACT AND TORT, WITH RESPECT TO THE PRODUCTS AND SERVICES COVERED BY THIS AGREEMENT AND ALL OTHER PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNTS DUE AND OWING HEREUNDER. Company shall have no obligation with respect to any Product resulting from its (a) not being properly installed or maintained, other than by Company; (b) modification, other than by Company; (c) use or combination with products not validated in writing by Company; (d) use in a manner other than as approved or cleared by the U.S. Food

and Drug Administration or the applicable regulatory body; or (e) Licensee's failure to use the latest version of the Products made available to Licensee by Company.

56 Indemnification. Company will indemnify, defend, and hold harmless Licensee and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses arising directly from Company's infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) for the Products provided under this Agreement. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Licensee, or Licensee receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Licensee will use reasonable efforts to notify Company promptly of such lawsuit or claim. Licensee's failure to provide or delay in providing such notice will relieve Company of its obligations only if and to the extent that such delay or failure materially prejudices Company's ability to defend such lawsuit or claim. Licensee will give Company sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Company may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against Licensee, (b) contains no admission of liability or wrongdoing by Licensee, and (c) imposes no obligations upon Licensee other than an obligation to stop using the goods or services that are the subject of the claim. Company shall have no liability under this Section if: (i) the allegation of infringement is a result of a modification of the Products not performed or approved by Company, (ii) the Product is not being used in accordance with the Documentation, or (iii) the alleged infringement is a result of use of the Product in combination with any non- Company supplied third party product.

57 Insurance. Company shall secure and maintain throughout the Agreement term the types of insurance with business-appropriate limits and shall provide proof of insurance upon request from Licensee.

ARTICLE 6: SOFTWARE MAINTENANCE AND SUPPORT

6.1 Description of Software Maintenance and Support. Maintenance and Support commences upon delivery of the Products. During any period in which Licensee is current in Licensee's payment of fees for Software Maintenance and Support, Licensee will receive Software Maintenance and Support more fully described in this Article 6, and education units more fully described in Article 7. Pursuant to Article 6.5, Licensee's Software Maintenance and Support Services will automatically renew on a recurring annual basis. If mutually agreed upon between the parties, Company may provide Licensee with certain monitoring services via remote access by Company, subject to the terms of this Agreement. In some cases, when troubleshooting, Company may incidentally see protected health information. Company will comply with all applicable laws and regulations as it relates to exposure to any protected health information. To assist in the provision of Maintenance and Support services, Company may run real-time, anonymized monitoring and alerting tools relative to the Products to monitor whether systems and applications are performing as expected. Company may access and retain this performance and usage data, in accordance with its own record retention standards, and use it in an anonymized way for its internal product development and improvement purposes.

6.2 Updates and Upgrades. Provided Licensee has paid all amounts due for Maintenance and Support, Company shall make available to Licensee in the form of executable code, or revisions to the documentation, as the case may be: (i) corrections or fixes to errors in the Products that are reported by Licensee or other users (an "Update") and (ii) upgrades to the Products which add or improve functionality or performance of the Products but which do not solely correct or fix an error in the Products (an "Upgrade"). Upgrades and Updates, together with associated documentation, will be provided as and when made generally available to Product licensees. Licensee should be aware that, because Software Maintenance and Support makes available to Licensee the most recent version of the Products, certain Updates or Upgrades may require Licensee to upgrade the hardware and/or operating system on which Licensee operates the Products.

6.3 Telephone Consultation. During any other period in which Licensee is current in Licensee's payment of fees for Software Maintenance and Support, Licensee can receive telephone consultation concerning use and operation of the Products from our technical support staff. Such consultation shall be available during the hours set forth in the Quote.

6.4 Licensee's Obligations. To enable Company to provide Software Maintenance and Support, Licensee shall designate a team of trained internal representatives, who will be responsible for receiving calls from Licensee's users of the Products and determining whether to notify Company regarding the reported issues. Licensee's designated representatives must promptly advise Company, by telephone at 800-208-3005, if Licensee becomes aware of any errors in any Product. In connection with such reports, Licensee shall provide Company with sufficient information so that it may reproduce the reported errors in its laboratory setting, and any other data or information reasonably requested by Company as necessary for its error Update activities. Licensee shall also provide Company reasonable access to Licensee's facility, System and/or data communication resources, including a dedicated secure connection for remote access and application performance monitoring of only Company products, the server(s) on which the products reside and the operating system(s) environment within which the product(s) operate. Remote access to Licensee's System from outside of the continental United States is prohibited unless approved in advance by Licensee's Chief Information Security Officer. Company may charge Licensee at its standard rates for time and expenses for any additional work it performs, including but not limited to diagnosing a reported problem as residing outside of a Product licensed hereunder, or resulting from Licensee's not performing Licensee's obligations. Licensee shall promptly install and thereafter use any Updates or Upgrades made available by Company.

6.5 Software Maintenance and Support. If Licensee has purchased Software Maintenance and Support, Licensee will be billed sixty (60) days in advance of each annual Software Maintenance and Support period at the annual Software Maintenance and Support amount set forth in the Quote. Payment for Software Maintenance and Support is due at least thirty (30) days in advance of each annual support term. If Licensee has purchased Software Maintenance and Support for Third Party Products, Company reserves the right to increase the price of or terminate the Software Maintenance and Support for such Products at the end of any annual term by giving Licensee written notice at least sixty (60) days in advance of any annual Software Maintenance and Support period. Upon receipt of a written notice of a price increase for Software Maintenance and Support on Third Party Products, Licensee can elect to cancel such Software Maintenance and Support for such Products by giving written notice thirty (30) days in advance of the Software Maintenance and Support period, and Licensee's price for Software Maintenance and Support will be reduced accordingly. If Licensee licenses additional Products or increases Licensee's Study Volume, Storage Size, or Concurrent, or Base Users while Licensee is under Software Maintenance and Support, Licensee's annual Software Maintenance and Support amount will increase as described in Article 6.7. Upon termination of Software Maintenance and Support for any reason, all services shall immediately terminate, and, except as set forth above with regard to termination of Third Party Products, any amounts unpaid for any portion of the initial

term or any renewal term shall be immediately due.

6.6 **Renewal.** At the end of each applicable Software Maintenance and Support period, Software Maintenance and Support may be renewed on the same terms and conditions as stated herein for successive twelve (12) month periods upon mutual written agreement signed by authorized representatives of each party. Software Maintenance and Support shall be provided during each renewal period at the then-current prices charged by Company. Company shall have no obligation to provide any service or Updates during any period in which Licensee has not paid.

6.7 **Licenses of Additional Products and Increases in Study Volume, Storage Size, or Number of Concurrent, or Base Users.** If Licensee licenses additional Products, increases Study Volume, Storage Size, or Concurrent, or Base Users licensed hereunder, during a Software Maintenance and Support period, the initial Software Maintenance and Support period for the additional Products shall be prorated so that its annual commencement and termination are concurrent with the Software Maintenance and Support period for Licensee's other Products. Thereafter, in addition to paying the additional license fee as described in Article 2, Licensee's Software Maintenance and Support renewal fee will increase by the annual Software Maintenance and Support amount per Product, Study or Concurrent, or Base User set forth in the Quote.

6.8 **Disclaimer and End of Life.** Company shall have no obligation to provide services for a version of a Product for more than two versions to the most currently commercially release version of said Product. Provision of Software Maintenance and Support does not include the obligation to provide to Licensee any products, modules or systems developed by Company or its licensors that are marketed by Company as distinct products, modules or systems from the Products within the packages Licensee licensed. Licensee acknowledges and agrees to abide by Company's end of lifepolicies.

6.9 **Antivirus.** Licensee is responsible for the acquisition, implementation and utilization of antivirus software and operating system service packs on all workstations and servers using the Products.

ARTICLE 7: PRODUCT IMPLEMENTATION

7.1 **Installation.** Installation of the Products consists of project management, coordinating an installation plan with Licensee, and loading each Product on computer(s) or server(s) at Licensee's designated site and activating the license for such Product. Licensee will install all Upgrades and Updates, unless Licensee wishes for Company to install such Updates and Upgrades, for an additional charge. Licensee agrees to provide Company with certain information about the environment in which the Products are to be installed, including information about the network and configuration Licensee plans for the Products, as well as names and contact information for information technology and clinical personnel responsible for the installation. Installation services to be provided and fees for installation services shall be included in the Quote. Company may charge Licensee additional time and expenses if the time it incurs to perform the installation is extended, if it receives incorrect or incomplete information from Licensee, or if installation is delayed because of the unavailability of Licensee's environment or responsible parties. Fees for initial installation and any additional services are based on Company's then-current standard rates. All rights to Installation will expire twelve (12) months from the date of delivery of the Products. Licensee shall be responsible for installing hardware Products in a single location of Licensee's choice. No hardware installation services are to be provided by Company under this Agreement, unless otherwise stated in a separate written agreement.

7.2 **Education.** Licensee may receive initial and/or ongoing user and administrator education as part of Licensee's purchase of the Products. Licensee may also receive incremental education units as set forth in a Quote. Education may include collaborative development of an Education Plan, and any combination of classroom, distance, online and virtual learning (eLearning) that is workflow-based clinical functionality for Users (physicians and technologists) and IT-based for Administrators.

User education consists of basic Product functionality overview and specific Clinical Package workflows while manipulating images in multiple dimensions. Administrator education consists of hardware configuration, System setup, deployment and administration of licenses for the Products, basic troubleshooting, and DICOM connectivity. All rights to receive education units expire on an annual basis, commencing with the date of delivery of the Products or date of invoicing if purchased separately. Incremental education units expire concurrently with other education units received by Licensee during the same period. Virtual education units may be activated at any time during an annual period, however a user's access to virtual education units expires thirty (30) days from the date of activation. Education credits do not carry over from year to year. Licensee's annual education units may be used to receive education during that year, according to Company's then current education offerings and the number of units to be used to receive any particular offering. Education units used for on-site learning at Licensee's location must be scheduled for consecutive days with a two-day minimum. Education units used for classes at a Company location include tuition only for the event. Cancellation of on-site education sessions or registrations for open enrollment classes fewer than two weeks in advance of the event causes forfeiture of the associated education units.

7.3 **Other Services.** Any services not set forth herein, including but not limited to additional installation, education, data migration, HIS/RIS/EMR/PACS integration(s), custom report generation, or any other services, will be set forth in a separate agreement. Related to any additional services, Licensee agrees to provide Company with all requested information and administrative and technical support as such are reasonably requested by Company.

ARTICLE 8: TERM AND TERMINATION

8.1 **Term.** This Agreement shall commence on June 24, 2023 and expire on June 23, 2028.

8.2 **Termination.**

(a) Either party may terminate this Agreement at any time if the other party breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach.

(b) Either party may terminate Software Maintenance and Support at the end of the full contracted duration without cause by providing Company with written notice at least ninety (90) days prior to the expiration of any period for which Licensee has contracted.

(c) Company may terminate this Agreement and all Licenses and services hereunder if Licensee (i) fails to pay the appropriate fees based on increases in Licensee's Study Volume or Storage Size, or fails to provide Company the Annual Facility and Study Volume and

Storage Size Report per Section 2; (ii) misrepresents Licensee's Study Volume or Storage Size in order to reduce Licensee's obligation to Company; (iii) as contemplated by Section 9.2; (iv) becomes insolvent or commences, or has commenced against Licensee (without dismissal within sixty (60) days), any bankruptcy, insolvency, liquidation, or similar proceeding under any U.S. or foreign law; (v) makes an assignment for the benefit of Licensee's creditors; (vi) admits in writing Licensee's inability to satisfy Licensee's debts in the ordinary course of business or that Licensee's business or financial condition indicates that Licensee is unable to continue as a going concern; (vii) takes an action resulting in or directed to ceasing, on a permanent basis, Licensee's business or relevant operations; and (viii) or Licensee's principals, are presently debarred or suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from participation in grants or contracts by any federal, state, or local department or agency. Licensee agrees to allow remote access to Company to discontinue Licensee's use of the Products.

8.3 Effect of Termination. Upon termination of this Agreement for any reason, all software licenses and services shall immediately terminate, and Licensee shall return to Company all Confidential Information, to the extent permitted by applicable law. Articles 1, 4, 5, 9, and 10 shall survive any termination of this Agreement. Termination of this Agreement shall not relieve Licensee from paying any amounts to be paid under contracts executed prior to the date of termination. Upon any termination of a software license, Licensee shall (a) immediately cease all use of any Product covered by such software license; and (b) certify in writing to Company within thirty (30) days after such termination that Licensee has destroyed, permanently erased or returned to Company such Product and all copies thereof. In the event Licensee desires to have Company assist with any data migration or wind down activities not already included in the Quote, the parties will enter into a separate quote at Company's then-current rate for such services.

ARTICLE 9: ADVERSE REACTIONS; RECALLS

9.1 Adverse Event Reporting. Licensee shall inform Company, by telephone or facsimile, within forty-eight (48) hours after Licensee concludes that use of or errors in any Product may threaten human safety or life, describing in reasonable detail the facts giving rise to such perceived threat. Unless otherwise required by applicable local laws, Licensee shall advise Company of any such threat prior to making any report or filing with the U.S. Food and Drug Administration ("FDA") or any comparable regulatory body in other countries.

9.2 Product Recall; Corrective Action. If Company believes that a corrective action with respect to any Product is desirable or required by law, or if the FDA or any other any governmental agency having jurisdiction shall request or order any corrective action with respect to such Product, including any recall, customer notice, restriction, change, corrective action, market action or Product correction, Company shall promptly notify Licensee. Licensee shall comply with all reasonable directions regarding such corrective action, including the return of the affected Product(s) to Company at Company's expense or promptly adopt and install any correction made available to Licensee by Company. If any Product is required to be returned to Company pursuant to this Section 9.2 and no replacement is provided therefore, Company shall refund to Licensee any unearned license fees paid (the amount of the license fee Licensee paid for the Product, less a reasonable value for use determined by prorating the license fee paid on a thirty-six (36) month straight line amortization method, commencing with delivery).

ARTICLE 10: MISCELLANEOUS

10.1 Assignment. Neither party may assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns. Any prohibited assignment shall be null and void.

10.2 Notices. Notices under this Agreement shall be given by registered or certified mail, postage prepaid, return receipt requested, by private courier service, or by facsimile addressed to the respective addresses of the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices so given shall be effective upon the earlier of (a) receipt of the notice, or (b) the fifth (5th) day following domestic mailing or the tenth (10th) day following international mailing.

10.3 Exports and U.S. Government Rights. The Products furnished to Licensee may be subject to export and other restrictions under the laws and regulations of the United States of America. Licensee hereby agrees that it shall not transfer, export or re-export, directly or indirectly, any Product or technical data received from Company to any destination or entity subject to export or other restrictions under the laws and regulations of the United States of America unless prior written authorization is obtained from Company and the appropriate United States agency. The Products are provided with Restricted Rights. Use, duplication or disclosure by the U.S. government is subject to restrictions as set forth in (a) this Agreement pursuant to DFARs 227.7202-3(a); (b) subparagraph (b)(4) of the Rights in Technical Data and Computer Software clause at DFARs 252.227-7013; or (c) the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Contractor/manufacturer is Company, Inc., 5850 Opus Parkway, Suite 300, Minnetonka, MN 55343 U.S.A.

10.4 Entire Agreement. This Agreement, along with the Quote and any applicable Statement of Work, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and proposals, whether oral or written, related to the same subject matter. Terms and conditions in a customer purchase order shall not apply between the parties. Any additional, conflicting or different terms are hereby expressly rejected. This Agreement may be executed in two or more counterparts and each such counterpart shall be deemed an original hereof. This Agreement may not be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by authorized representatives of both parties hereto. If any provision of this Agreement is found unenforceable under any of the laws or regulations applicable thereto, such provision terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other provisions of this Agreement. No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right

10.5 Relationship. This Agreement does not make either party the employee, agent or legal representative of the other for any purpose whatsoever; each party shall be acting as an independent contractor. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. This Agreement does not provide any rights to any third party, except that Company's licensors may enforce this agreement solely with respect to such licensor's software.

10.6 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California excluding (a) its choice of law rules, and (b) the United Nations Convention on the International Sale of Goods. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party

hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

10.7 **Force Majeure.** If the performance of any obligation hereunder, except the making of payments hereunder, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident, strikes or labor disputes, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

10.8 **Compliance.** Licensee agrees to (i) comply with all applicable local, state, national and foreign laws and regulations in connection with Licensee's use of the Products, including without limitation those related to data privacy, copyright and transmission of technical or personal data; and (ii) use reasonable security precautions for providing access to the Products by its employees or other individuals and to prevent unauthorized access to the Products. Licensee is fully responsible for all data it introduces into or uses with the Products, including without limitations adequate data protection and backup, and neither Company nor any of its licensors shall have any obligation or liability with respect thereto.

10.9 **Order of Precedence.** In the event of a conflict between the terms of this Agreement and any terms set forth in any Quote, Statement of Work, addendum or other exhibit incorporated into this Agreement, precedence shall be given to the documents as follows, unless expressly stated and agreed upon by the parties, in writing: (a) this Agreement; (b) the Quote; (c) the Statement of Work; and (d) all other exhibits.

10.10 Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features.

10.11 **Electronic Signature.** The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 11: DEFINITIONS

11.1 "Annual Facility and Study and Storage Size Volume Report" means a report to be completed and executed by an authorized official of Licensee on an annual basis.

11.2 "Annual Measurement Period" means an annual twelve-month period beginning upon delivery on which Licensee's Study Volume or Storage Size will be measured.

11.3 "Concurrent User" or "Base User" means a user that has logged on to Company Products.

11.4 "Licensee" means San Bernardino County.

11.5 "Product" means a computer software product, in object code form only, and any related user documentation as made available to Licensee by Company, as identified in the Quote, and all Upgrades and Updates to the Product.

11.6 "Site" means the physical location of a healthcare facility (i.e. a hospital), including subsidiary clinics and/or imaging centers. A Site does not include affiliated healthcare facilities (i.e. other hospitals within the same health system, trust, IDN, GPO, or similar type buying group).

11.7 "Storage Size" means storage size used by Licensee's system during the Annual Measurement Period. Licensee's purchased level Storage Size shall be set forth on the Quote.

11.8 "Study" means: 1) for Vitrea and Vitrea Connection, a collection of *one or more* medical images generated for a single patient from a single modality resource, as a single Digital Imaging and Communications in Medicine unique identifier (DICOM UID); 2) for Vitrea View, an image with a Study Instance Unique Identifier (SIUID); and 3) for Vitrea Intelligence, a collection of *one or more* medical images, generated for a single patient, with a unique Accession Number.

11.9 "Study Volume" means the total number of Studies generated by Licensee's System during your Annual Measurement Period. Licensee's purchased level of Study Volume shall be set forth on the Quote.

11.10 "System" and related terms:

- (a) "Enterprise Enablement Software" means the Vitrea Management and Administration software services for an Enterprise Server System deployment.
- (b) "Server System" means a System utilizing one instance of the Enterprise Enablement Software.
- (c) "System(s)" means the entirety of Concurrent Users, Base Users, Product, System Product, and hardware within the structure of a single workstation or single Server System.
- (d) "System Product" means an application that is available to all authorized Concurrent or Base Users of the System.

11.11 "Third Party Products" means software products manufactured by third parties, which are licensed to Licensee through Company, as part of this Agreement.

11.12 "Company Products" means those Products contained within various configurations manufactured and offered by Company that you

may license under this Agreement. Company Products do not include software or hardware manufactured by third parties, but which acquisition will be governed by the terms and conditions of this Agreement.

If and to the extent Licensee purchases any Microsoft products through Company, included but not limited to Microsoft SQL Server, Microsoft SQL Server Management Studio and/or Remote Desktop Services ("RDS"):

- A. Terms and Conditions. Microsoft standard terms and conditions shall apply to its respective products. If Licensee does not consent to the Microsoft License Terms, Licensee should discontinue use of the Microsoft products.
- B. Warranties and Disclaimer of Warranties. Any warranties for Microsoft SQL Server and/or RDS are set forth in the Microsoft License Terms. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- C. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF USE OR INSTALLATION OF MICROSOFT SQL SERVER.
- D. Be advised that Microsoft may charge additional fees if the underlying Maintenance and Support agreement lapses and Licensee seeks to restore coverage.
- E. Reports. Licensee hereby grants Company permission to inform Microsoft of Licensee's entity's name and address, including the country in which Licensee is located.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► Dawn Rowe
Dawn Rowe, Chair, Board of Supervisors

Dated:

MAY 23 2023

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

By



Deputy

CANON MEDICAL INFORMATICS, INC.

By

► Scott Owens

(Authorized signature - sign in blue ink)

Name

SCOTT OWENS

(Print or type name of person signing contract)

Title

CONTROLLER

(Print or Type)

Dated:

May 19, 2023

Address

5850 Opus Parkway, Suite 300, Minnetonka, MN 55343

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

County Counsel

Date

►
Date

►
Date