AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND DATA INNOVATIONS LLC

This Software, Professional Services and Maintenance and Support Services Agreement and all schedules and exhibits attached hereto (collectively the "Agreement" or "Master Agreement") is entered into this **9th day of January, 2024**, ("Effective Date") by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County" or "Customer" and Data Innovations LLC, with principal offices at 463 Mountain View Drive, Colchester, VT 05446, hereinafter called "Contractor" or "DI."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such software and services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of provision of software, maintenance and support, and professional services.

Now, therefore, it is agreed by the parties (also, the "Parties") to this Agreement as follows:

1.   **General Terms and Conditions.**

DI shall provide to Customer the Software and the Services in accordance with the following general terms and conditions ("General Terms and Conditions"), the attached Schedules and Exhibits, and any Quotes or Statements of Work. All capitalized terms not otherwise defined in the main part of the Agreement shall have the meaning set forth in the Definitions Schedule, Exhibit D, attached herein. The following Schedules and Exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

> Exhibit A—On-Premises Software Schedule
> Exhibit A-1—On-Premises Software Schedule – Perpetual License
> Exhibit A-2—On-Premises Software Schedule – InterSystems
> Exhibit B—Maintenance and Support Services Terms and Conditions Schedule
> Exhibit B-1—Maintenance and Support Services – On-Premises Software – Perpetual License
> Exhibit C—Professional Services Terms and Conditions Schedule
> Exhibit D--Definitions
> Exhibit E- Statement of Work - Direct Customer (Beaker Implementation)
> Exhibit F - Quote # O-010682-49143
> Attachment G—HIPAA Business Associate Requirements
> Attachment H—§ 504 Compliance

<center>GENERAL TERMS AND CONDITIONS</center>

2.   **Software to be provided and Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement, Contractor shall provide the Software and perform the Services for County in accordance with the terms and conditions set forth in this Agreement. DI's performance is dependent on Customer carrying out its obligations as set forth in this Master Agreement, and the applicable PS Agreement, and Customer acknowledges that the Professional Services Fees take into account these obligations. DI shall not be responsible for any delay in the performance of, or an inability to perform, any of its obligations contained in this Master Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Master Agreement.

3.   **Payments and Fees**

a.   In consideration of the Software and Services and any accompanying licenses provided by Contractor to Customer in accordance with all terms and conditions set forth in this Agreement, County shall pay Contractor the Fees and Billable Expenses set forth in each applicable Quote, SOW or Schedule, plus Applicable Taxes. In no event shall the County's total fiscal obligation under this Agreement exceed **THREE HUNDRED TWENTY-FOUR THOUSAND SEVEN HUNDRED ELEVEN DOLLARS** ($324,711.00).

b)   DI shall invoice Customer for all Fees, Billable Expenses and Applicable Taxes due hereunder and unless otherwise specified in an applicable Quote, SOW or Schedule, all amounts billed will be due and payable net 60 days terms, except for a Disputed Fee. All invoices must be approved by the County Health CIO or their designee. Invoices must be sent to: hs_hit_accountspayable@smcgov.org. Processing time may be delayed if invoices are not submitted electronically.

c)   A Quote will be deemed to have been accepted and agreed to by Customer, by either Customer i) signing and returning an executed copy of the Quote to DI; or ii) submitting a

purchase order to DI for the Software or Services detailed on the Quote, provided the purchase order specifically references the Quote number and the value on the purchase order matches the value on the Quote.

d)	All discounts, if any, provided under this Master Agreement are intended to comply with the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, Customer must fully and accurately reflect in cost reports or other submissions to federal healthcare programs all discounts provided under this Master Agreement and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, must make available information provided to Customer by DI concerning the discounts.

e)	Except for a Disputed Fee, any payments not received by DI by the Due Date will be considered past due, and to the extent legally permissible, interest will accrue at the rate of zero percent (0%) per year from the Due Date until all outstanding payments are paid.

f)	In the event of a Disputed Fee, Customer shall pay the undisputed amount and notify DI of the Disputed Fee in writing within thirty (30) business days of the invoice date. Customer shall not be required to pay interest on any reasonable and documented Disputed Fees. If the Parties are unable to resolve the dispute themselves, the Parties agree to submit this Dispute to resolution pursuant to Section 25h) ("**Disputes**").

g)	If Customer is not subject to any or all Applicable Taxes, then Customer is responsible for submitting the applicable documentation to DI. If this document is not provided prior to Delivery of the Software or completion of the Services, Applicable Taxes will be calculated and included on the Customer's invoice.

h)	Future Software and Services purchases:

If, during the Term of the Agreement, Customer requests to license additional Software and/or Services not described in the attached Quote, such additional licenses and/or purchases shall be calculated as additional Fees under a new Quote, and are not included in the Total Fees payable under this Quote. Any new Quotes shall be subject to the terms and conditions of this Master Agreement.

## 4.	Term

Subject to compliance with all terms and conditions set forth herein, the term of this Agreement shall begin on the Effective Date and end on **January 8, 2029**.

**5.	Termination Without Cause.** This Master Agreement and any effective PS Agreement may be terminated by Contractor or by the Chief of San Mateo County Health or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party.

**b.	Termination for Bankruptcy.** This Master Agreement, and any effective PS Agreement, will terminate automatically if all or a substantial portion of either Party's 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 Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or a Party is adjudged bankrupt.

**c.	Termination with Cause**.

i)	This Master Agreement may be terminated immediately if either Party violates the confidentiality obligations or the license grants and restrictions set forth herein; or

ii)   This Master Agreement may be terminated upon written notice upon the material breach by the other Party of its obligations (including nonpayment of Fees or Billable Expenses), when such breach has not been cured within thirty (30) days after the breaching Party has received written notice thereof.

d.   Effect of Termination. Upon any termination of this Master Agreement:

i)   DI shall cease performing the Services and except for termination by DI for the uncured material breach of Customer pursuant to Section 5c) above, ("Termination with Cause"), all fully paid Software and Work Product licenses shall remain in effect.   In case of termination by DI pursuant to Section 5c) above, all licenses granted herein, and under any applicable PS Agreement, if any, shall immediately terminate, and Customer shall immediately cease using any delivered Software and Work Product and Customer shall promptly return all Software and Work Product to DI.

ii)   The Receiving Party agrees to immediately cease using the Confidential Information of the Disclosing Party and each Party shall promptly return to the Disclosing Party or destroy all Confidential Information of the other Party that it may have in its possession or control together with all copies thereof (including erasing such Confidential Information from all memory or data storage apparatus) and certify to the Disclosing Party such destruction / return within ten (10) days of such termination. Notwithstanding the foregoing, if the Receiving Party determines that returning or destroying the Confidential Information is infeasible, the Receiving Party shall provide to the Disclosing Party notification of the conditions that make return or destruction infeasible.   The Receiving Party shall extend the protections of this Master Agreement to such Confidential Information and limit further uses and disclosures of such Confidential Information to those purposes that make return or destruction infeasible, for so long as the Receiving Party maintains such Confidential Information.

iii)   Except for Disputed Fees, any applicable Fees and Billable Expenses owed by Customer shall become due and payable in accordance with the terms of this Agreement.

6.   Relationship of Parties

Contractor agrees and understands that the Services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7.   Indemnification

a. By Customer.

i) Customer will defend, indemnify, and hold DI harmless from all Claims and Losses associated with a claim asserted against DI, 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 Customer's operation of its business, to the extent that such injury or damage is caused in whole or in part by: (i) the willful misconduct, grossly negligent acts, errors, or omissions of Customer .

ii) Customer will defend, indemnify, and hold DI harmless from all Claims and Losses associated with a claim asserted against DI, arising out of (i) an Affiliate's breach of any obligation under this Agreement or (ii) any bodily injury (including death) or damage to property or persons, which may be sustained by any third party, that occurs in connection with an Affiliate's operation of its 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 its Affiliates.

b. By Contractor.

(i)   Contractor shall defend, indemnify and save harmless County and its officers, agents, employees, and servants from all Claims and Losses associated with a claim asserted against County arising out of injuries to or death of any person, or damage to property that occurs in connection with the performance by Contractor of its obligations under this Agreement, 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 Contractor; (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.

(ii)   Intellectual Property Infringement Indemnification

DI agrees to defend, indemnify, and hold Customer harmless from all Claims and Losses brought against Customer alleging that the Software or Work Product, and notwithstanding anything to the contrary in the ISC EULA, or ISC Product furnished and Used within the scope of this Master Agreement infringes or misappropriates a U.S. patent, copyright, trademark or trade secret of a third party, and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) use of the Software or Work Product or ISC Product outside the scope of the Documentation, (ii) a modification of the Software or Work Product or ISC Product by anyone other than DI or its authorized agent; (iii) a combination of the Software or Work Product or ISC Product with any third-party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or (iv) the use of a version of the Software or Work Product or ISC Product other than the then-current version made available to Customer, if the infringement would have been avoided by use of the then-current version and Customer has been made aware of this fact by DI. In the event the Software or Work Product or ISC Product are held or are believed by DI to infringe, DI will, at its sole option and expense, choose to (a) modify the infringing Software or Work Product or ISC Product so that they are non-infringing; (b) replace the infringing Software or Work Product or ISC Product with non-infringing Software or Work Product or ISC Product which are functionally equivalent; (c) obtain a license for Customer to continue to use the Software or Work Product or ISC Product as provided hereunder at no cost to Customer; or if none of (a), (b), or (c) is commercially reasonable, then (d) DI will do the following:

1. for Software or ISC Product licensed on a perpetual basis, terminate the license for the infringing Software or ISC Product and refund the prorated Fees paid for the infringing Software or ISC Product, based on a five (5) year period from the Effective Date; or
2. for Work Product, terminate the license for the infringing Work Product and refund the prorated Professional Services Fees paid for the infringing Work Product, based on a five (5) year period from the Effective Date.

THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF DI AND CUSTOMER'S 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, ISC PRODUCT OR WORK PRODUCT.

C.   **Indemnification Procedure.** The indemnification obligations of a Party under this section are conditioned upon the indemnified Party: (a) giving prompt written notice of the claim to the indemnifying Party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying Party; and (c) providing reasonable cooperation to the indemnifying Party and, at the request and expense of the indemnifying Party, assistance in the defense or settlement of the

claim. The indemnifying Party shall not enter into any defense or settlement strategy, a settlement or compromise that includes an admission or finding of fault or liability on the part of the indemnified Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

8. **INTELLECTUAL PROPERTY**. The Parties acknowledge and agree that:

a. DI, or its licensors, own all exclusive right, title, and interest in and to the Intellectual Property Rights in the DI Property. Customer shall not take any action inconsistent with such title and ownership. All title rights and Intellectual Property Rights may be protected by applicable copyright or other intellectual property laws and treaties.

b. This Master Agreement is not a sale of the DI Property, and Customer does not acquire any ownership rights or title or any Intellectual Property Rights in the DI Property. Customer acquires only the restricted right to Use the DI Property subject to the license grants herein.

c. DI may utilize all Feedback without any obligation to Customer.

d. Customer shall notify DI of any unauthorized access to the DI Property and all infringements, limitations, illegal use, or misuse of the Intellectual Property Rights that come to Customer's attention.

e. Customer will not remove, alter, or obscure any copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indicia of ownership contained on or in the DI Property or any portion thereof and Customer will reproduce all such notices on all copies permitted to be made by Customer under this Master Agreement.

f. Customer agrees not to use trademarks or other business names of DI for any purpose or to take any actions which are harmful to or inconsistent with the rights of DI in its trademarks, service marks, and trade names.

g. The Software (i) was developed at private expense and is the proprietary information of DI or its licensors; (ii) was not developed with government funds; (iii) is a trade secret of DI or its licensors, 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 DI 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.

h. Customer owns all exclusive right, title and interest, including Intellectual Property Rights in the Customer Data. DI shall not take any action inconsistent with such title and ownership. DI hereby agrees to assign any such right to Customer.

i. Customer grants to DI during the term of this Master Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Customer Data, solely as necessary to perform the Services and as otherwise may be agreed in writing by the Customer.

9. **CONFIDENTIAL INFORMATION.**

a. **Confidentiality.** Subject to operation of the California Public Records Act (Cal. Gov. Code §§ 7920.000 et seq.) which governs County's obligation to respond and produce records of its business, including this Agreement, each Party shall maintain the Confidential Information of the other Party in strict confidence until such time as the Confidential Information falls under one of the exceptions listed in the Definitions Schedule, section J) (A) – (D) ("**Confidential Information**")

above. Each Party shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information, using the same protective precautions as such Party uses to protect its own Confidential Information. Each Party shall use the Confidential Information of the other Party only during the term of this Master Agreement and as expressly permitted herein, and shall not disclose such Confidential Information to any other person or third party without prior written consent of the Disclosing Party, except to its employees and independent contractors who are subject to written use and disclosure restrictions at least as protective as those set forth herein and only as is reasonably required in connection with the exercise of its rights and obligations under this Master Agreement.

b. **Disclosure and Right to Object.** Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to law, a valid order or requirement of a court or government agency, provided that the Receiving Party gives prompt notice to the Disclosing Party upon receiving the order or learning of the requirement so that it may seek a protective order or other appropriate remedy at its sole expense and without contribution from the other Party. Any such disclosure by the Receiving Party of the Confidential Information of the Disclosing Party, shall not be deemed a breach of this Master Agreement and shall, in no way, be deemed to change, affect, or diminish the confidential status of such Confidential Information. Customer acknowledges and agrees that it 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 DI's Confidential Information, which includes the Software. Contractor will indemnify and hold County harmless against any costs, fees, attorneys fees, fines, and awards of damages in the event that Contractor chooses to pursue a protective order or other appropriate remedy prohibiting disclosure.

10. GENERAL WARRANTIES AND DISCLAIMERS.

a. Customer Warranty. Customer is solely responsible for obtaining and represents and warrants that, prior to uploading any Customer Data into the Software, it owns or has obtained all necessary consents, licenses, approvals, and rights in the Customer Data necessary so that the use of such Customer Data by DI to provide Services to Customer does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.

b. **DI Warranties.**

1. DI warrants that it owns, or has the right to, license, the Software.
2. DI Software and Services warranties are set forth in the applicable Schedules.

c. **Hardware Warranty.** Any Hardware purchased from DI is covered by the manufacturer's warranty. Hardware warranty coverage begins on the date of DI's initial purchase from the manufacturer.

d. **Mutual Warranty.**

1. The Parties each have the power and the authority to enter into and perform this Master Agreement.

e. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS MASTER AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SERVICES OR WORK PRODUCTS. DI EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED AND EXPRESS WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DI DOES NOT REPRESENT NOR WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, MALWARE FREE OR THAT CUSTOMER WILL BE ABLE TO ACCESS AND USE, OR OPERATE THE SOFTWARE, WITHOUT PROBLEMS OR INTERRUPTIONS. SUBJECT TO THE TERMS AND CONDITIONS OF THIS MASTER AGREEMENT AND PROVIDED THE SOFTWARE IS PERFORMING SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION,

CUSTOMER IS RESPONSIBLE FOR THE RESULTS TO BE ACHIEVED FROM USING THE SOFTWARE AND WORK PRODUCT AND RECEIVING THE SERVICES.

11. LIMITATION OF LIABILITY. EXCEPT AS REQUIRED BY LAW OR AS STATED OTHERWISE IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR EXEMPLARY, DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR CONTENT AS A RESULT OF CUSTOMER FAILING TO BACK UP DATA, BUSINESS INTERRUPTIONS, LOSS OF INCOME, LOSS OF GOOD WILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, DAMAGES DUE TO FORCE MAJEURE, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, WORK PRODUCT, OR SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, AND (D) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. DI SHALL NOT BE LIABLE FOR (A) DISTURBANCES AND FAILURE OF INTERNET CONNECTIONS, OR (B) CUSTOMER'S DATA INPUT IN THE SOFTWARE, OR DI'S USE OF CUSTOMER DATA. A Party's total aggregate liability for any damages arising out of or related to this Master Agreement, for any and all causes whatsoever, and the other Party's maximum remedy, regardless of the form of action, whether in contract, tort, or otherwise, will not exceed One-Million Dollars ($1,000,000.00).

The existence of one or more claims will not enlarge this limit. Customer acknowledges that the pricing set forth herein reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy is specified in this Master Agreement.

Notwithstanding anything to the contrary in the ISC EULA, it is further agreed that DI shall assume ISC's liability under Section 5 of the ISC EULA with respect to the ISC Product, and that Customer's maximum remedy under such provision shall be the same as the total aggregate liability set forth above.

12. Assignability and Subcontracting

 a. **Subcontracting**: Contractor may (i) assign and re-assign personnel as it deems appropriate in its discretion to perform the Services and (ii) subcontract the performance of Services under this Agreement without the prior written consent of County provided Contractor remains liable for the Services to the same extent as if such Services had been performed by Contractor's employees.

b. **Assignment**: Neither Party may assign (whether by operation of law or otherwise), sublicense, share, pledge, rent, or transfer any of its rights under this Master Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party shall have the right, without acquiring consent from the other Party, to assign its rights and obligations hereunder (including any PS Agreements) upon change of control, or by sale of assets, reorganization, merger, consolidation, or otherwise, provided such assignment: a) is not to a direct competitor of the other Party; (b) does not interfere with a Party's performance obligations under this Master Agreement; (c) does not change the scope of the Services and the intent contemplated by the Parties under this Master Agreement and any PS Agreement; or (d) is not pursuant to bankruptcy proceeding. Further, any assignment by Customer: (x) must include the assignment of all 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; (y) must not retain any copies of the Software, including backups and copies stored on a Computer; and (z) the receiving party accepts the terms and conditions of this Master Agreement and any other terms and conditions upon which Customer legally licensed

the Software.   Any assignment or transfer in violation of the above is void. This Master Agreement will be binding on the Parties, their successors, and permitted assigns.

13. <u>Insurance</u>
a. <u>General Requirements</u>

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and general liability shall include contractual liability coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy. If not available from insurer, Contractor shall provide the notice.

b. <u>Workers' Compensation and Employer's Liability Insurance</u>

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. <u>Liability Insurance</u>

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall not be less than the amounts specified below:

i.   Commercial General Liability…………. $1,000,000 per occurrence and annual aggregate

ii.   Commercial Automobile Liability Insurance…………. $1,000,000 per occurrence

iii.   Professional Liability……….………………. $1,000,000 per incident and annual aggregate

iv.   Cyber Liability……………………………..$5,000,000 per incident and annual aggregate

County and its officers, agents, employees, and servants shall be included as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary

insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Additional insured status for General Liability applies to claims arising caused in whole or in party by the acts or omissions of the Contractor or those acting on the Contractor's behalf. Additional insured status for Automobile liability applies to vicarious liability arising from the Contractor's use or a permissive users use of a motor vehicle. Additional insured status for Cyber Liability applies to claims arising from and to the extent caused by the Contractor's negligence. Additional insured status for professional but only for the wrongful acts of Contractor.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, terminate this Agreement in accordance with the termination provisions set forth herein.

14. Compliance With Laws

The Parties warrant that they shall comply with all applicable laws and regulations governing the provision, access and Use of the Software and Services.

The Parties agree to abide by the terms of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.107 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Upon County's reasonable request, Contractor will submit documentation of compliance.

15. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any Services provided pursuant to this Agreement (except as limited by the scope of Services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon reasonable request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing Services to members of the public under this Agreement.

d. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

e. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

f. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and shall be subject to the termination provisions of this Agreement.

16. Access and Retention of Books and Records

Upon written request of the Secretary of Health and Human Services, the Comptroller General, or County, or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of $10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor's representative by virtue of this Agreement.

17. Merger Clause; Amendments

This Agreement, including the Exhibits (Schedules), Quotes and any attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. Any "click-through" or "shrink-wrap" terms and conditions delivered with the Software or any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by Customer (whether in hard copy, electronic form, or by reference) that are different from or in addition to those set forth herein are hereby expressly rejected and shall not be binding on the Parties, even if signed and returned, unless both Parties hereto expressly agree, in an instrument separate from and in addition to the purchase order, acknowledgement, or confirmation, to be bound by such separate or additional terms and conditions. Additionally, DI shall not be bound by any terms or conditions of Customer or any third party that Customer utilizes for its business activities (including but not limited to vendor registrations, security/privacy reviews, or for purchase order and payment related processes) sent to DI electronically, including links to a website, application, or "click to approve" or "click to acknowledge" pages that are different from or in addition to those set forth herein, and such terms are hereby expressly rejected and shall not be binding on the Parties. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

18. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Consistent with the requirements set forth in Section 25 (**Additional General Terms**) subsection h., below, any dispute arising out of this Agreement shall be venued in or transferred or removed to a court with jurisdiction to hear the dispute of the Defendant's choice.

19. Notices

General. Notwithstanding the foregoing, all general correspondence regarding the basic, day-to-day performance and general operations under this Master Agreement, including notices that

relate to Updates, the availability, or interoperability of the Software or Services may be made by email, or by DI through its website and/or via the My DI Community, or Customer Web Portal. Legal. Any notice, request, demand, or other communication required or permitted under this Agreement shall be in writing and deemed to be properly given when: (1) personally served; or (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

> In the case of County, to:

> > Name/Title: Stephen Dean / County Health CIO
> > County of San Mateo / County Health / Health Information Division
> > > 801 Gateway
> > > South San Francisco, CA 94080

> In the case of Contractor, to:

> > Name/Title: Premila Peters, President and CEO
> > Address:
> > 463 Mountain View Drive, Colchester, VT 05446
> > Telephone: 802-658-2850

20. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

21. Disentanglement.

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of Services or the County's activities; provided, however, that County shall pay Contractor on a time and materials basis, at the then-applicable rates subject to a written agreement between the parties, for all additional Services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree to the specific electronic format.

Upon any termination of the Agreement, regardless of the nature or timing of the termination, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue to receive from Contractor all maintenance and support services,

at the then-applicable rates provided, however, that the annual support and maintenance fee shall be prorated and paid in advance on a monthly basis during such time, and the amount of such support and maintenance fee shall remain subject to the limitations set forth in the Agreement regarding any increase in such fee.

22. <u>Disaster and Emergency Response Plan</u>

Contractor will have in place and maintain comprehensive disaster recovery and business continuity plans ("Disaster Recovery Plan") that specifies the procedures to be followed with respect to the continued provision of Services described herein in the event Contractor's facilities or equipment are destroyed or damaged. Contractor shall promptly implement such Disaster Recovery Plan upon the occurrence of a disaster or business interruption. Contractor shall test the operation and effectiveness of such Disaster Recovery Plan at least annually and upon reasonable request, furnish to the County a summary of the results thereof.

23. <u>Reimbursable Travel Expenses</u>

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

a.   Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.

b.   Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.

c.   Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when services were provided to the County. Contractor must substantiate in writing to the County the actual services rendered and the specific dates.

d.   Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. "Local Travel" means travel entirely within a fifty-mile radius of the Contractor's office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor's use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.

e.   The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at http://www.gsa.gov/portal/content/104877 or by searching www.gsa.gov for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current CONUS rate; for work

being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.

f. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride-shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.

g. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.

h. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.

24. Prevailing Wage

When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2-Wages, Chapter 1, Part 7, Division 2, Section 1770 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at www.dir.ca.gov/DLSR or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works.

25. ADDITIONAL GENERAL TERMS.

a) Third-Party Software.

iii) Open-Source Software and Bundled Software: Open-Source Software and Bundled Software are licensed for use by Customer, directly by the third-party vendors of such software, and DI makes no representation or warranty of any kind regarding such software, and shall have no liability associated with its use. Customer is to look to the license agreements of such software vendors for terms and conditions of use, warranties and liabilities as set forth on the Third-Party Software List.

iv) Distributed Software and Embedded Software: Distributed Software and Embedded Software are licensed for Use by Customer subject to terms and conditions set forth in this Master Agreement for the Software.

v) A copy of the Third-Party Software List will be provided upon request.

b) **Professional Judgment.** The Software is provided as an aid in the practice of healthcare and is not intended as a substitute for professional judgment. Customer

acknowledges and agrees that DI is not engaged in the practice of medicine and that DI shall not be responsible for any medical practice management and patient care decisions made using the Software and Services. The Customer is responsible for the supervision, management, and control of its use of the Software including, but not limited to, ensuring that proper controls are in place to validate content input into the Software, and the data and results obtained through its use. Customer acknowledges that all processes, forms, and reports contained within the Software or Services may be subject to errors and are not a substitute for the exercise of professional judgment.

c) **Audit Right**. During normal business hours and at any time during which the Software and/or Services are being utilized, DI, or its authorized representative or licensors, shall have the right, upon reasonable notice, either remotely or at Customer's premises, to audit and inspect Customer's Use of the Software or Services, in order to verify compliance with the terms of this Master Agreement. If Customer is found to not be in substantial compliance with its obligations, Customer shall pay the reasonable expenses incurred by DI associated with such audit and will promptly take measures to come into compliance.

d) **Force Majeure.** Except with regard to payments due DI, neither Party shall be liable for any delays or failures in its performance due to an event of Force Majeure.

e) **Hiring.** During the term of this Master Agreement and for a period of one (1) year thereafter, neither Party shall hire any employee of the other without prior written approval. The foregoing notwithstanding, neither Party will be deemed to have breached this section by (a) hiring personnel responding to non-targeted job postings or (b) hiring personnel of the other Party that have been terminated or notified of pending termination by the other Party.

f) **Export.** Customer agrees that the Software will not be shipped, transferred, or exported into any country in any manner prohibited by the Export Laws. Nor will Customer allow the Software or Services to be accessed and Used in in any manner prohibited by the Export Laws. In addition, if the Software is identified as export controlled items under the Export Laws, Customer represents and warrants that Customer is not a citizen, or otherwise located within, an embargoed nation and that Customer is 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 Customer fails to comply with the terms of this Master Agreement.

g) **Equitable Relief**. The Parties agree that any breach of a Party's confidentiality obligations or a breach of the license grant and restrictions set forth in this Master Agreement, and any PS Agreement, may result in irreparable injury to the other Party for which there is no adequate remedy at law. Therefore, notwithstanding the Disputes section set forth herein, in the event of any breach or threatened breach of such obligations, the non-breaching Party will be entitled to seek immediate and/or permanent injunctive relief as well as equitable relief in addition to its other available legal remedies.

h) **Disputes.** Any Disputes, shall be settled or resolved in the following manner:

    i) <u>Internal Resolution.</u> The Parties shall first engage in Internal Resolution. To initiate Internal Resolution, a Party must provide the other Party with a Dispute Notice. Upon receipt of the Dispute Notice, the Parties shall designate representatives to confer or meet with each other within a reasonable period of time (as agreed upon by the Parties) to discuss and attempt to resolve the Dispute.

    ii) <u>Mediation</u>. If the Dispute cannot be settled internally by Internal Resolution, then the Parties will attempt to settle their Disputes by Mediation. The Parties will nominate a Mediator who will act fairly and with complete impartiality towards the Parties. The language of any Mediation shall be English.

<ol type="i" start="3">
<u>Relief</u>. 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 Master Agreement.
<u>Court of Competent Jurisdiction</u>. 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 Master Agreement in accordance with Section 18 (**Choice of Law; Venue**), above.

<ol type="a" start="9">
Language. The English language version of this Master Agreement shall be controlling in the interpretation or application of the terms of this Master Agreement and the Schedules.
Section Headings. Section headings contained in this Master Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Master Agreement.
No Waiver. No failure or delay by either Party in exercising any right hereunder will operate as a waiver thereof.
Relationship of the Parties. The Parties are independent contractors and nothing in this Master Agreement shall be construed to create a partnership, joint venture, or employment relationship between DI and Customer.
Third-Party Beneficiaries. Except as expressly set forth in this Master Agreement, this Master Agreement is not intended to create and does not create enforceable obligations for the benefit of any third party.
Severability. If any part of this Master Agreement is found void and unenforceable, it will not affect the validity of the balance of this Master Agreement, which shall remain valid and in full force and effect.
Counterparts. This Master Agreement, and each PS Agreement, may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.
Electronic Copies. Fully executed pdf copy or electronic transmission of this Master Agreement, and each PS Agreement, shall serve as an original and shall be considered binding upon the Parties.
Authority. Each Party represents that the individual signing on behalf of the Party is duly authorized and has the authority to execute and bind the Party indicated to this Master Agreement.

g) **Survival.** The provisions of this Master Agreement and any Open PS Agreement (as defined in the Professional Services Schedule), and the related obligations of the Parties, which by their nature should survive termination or expiration, shall survive and remain in full force and effect, but this shall not imply or create any continued right to use the Software and Work Products after termination of this Master Agreement and all Open PS Agreements if such termination is for Customer's material breach.

26. <u>AFFILIATES.</u>

<ol type="a">
DI grants Customer the following rights related to its Affiliates, subject to the terms and conditions of this Master Agreement. Affiliate may
<ol type="i">
connect to, access and Use the Software licensed by the Customer and installed at the Customer's site, and/or
license Software and Work Product, and purchase Services and/or Hardware for:
<ol type="1">
connection to the Software at Customer's site, or
installation at the Affiliate's site,

pursuant to a purchase order issued directly by the Affiliate to DI or a SOW entered into between Affiliate and DI.

b)   Prior to an Affiliate's i) connection, access and Use or ii) license and/or purchase, Customer agrees that it shall require each of its Affiliates to comply with the terms, conditions and restrictions contained in this Master Agreement, including, but not limited to, the use restrictions and confidentiality obligations, and that Customer remains responsible for all of the actions of the Affiliates, including a breach by Affiliate, and the actions of the Affiliates shall be deemed the actions of Customer.

c)   In the event of termination of this Master Agreement, all "**Effects of Termination**", as set forth in Section 5c), that apply to Customer, shall apply in the same manner to each Affiliate.

<p style="text-align:center">*   *   *</p>

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: DATA INNOVATIONS LLC

_____	November 7, 2023	Premila Peters, President and CEO
Contractor Signature	_____	_____
	Date	Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

ON-PREMISES SOFTWARE SCHEDULE

All Software licensed to Customer as On-Premises Software, is provided pursuant to the terms and conditions of the main part of the Agreement, this Schedule, and any Exhibit or Appendix attached by reference.

1) **RESTRICTIONS AND USE.**

   a) **Installation**. Customer may install and Use one (1) copy of each license of the Software granted to Customer hereunder on one (1) Computer.

   b) **Reproduction**. Customer shall not copy the Software without the prior written approval of DI. Notwithstanding the foregoing, Customer may make one backup copy of the Software, into machine readable form, for archival and disaster recovery purposes, provided Customer's backup copy is not in Use on any Computer. All backup copies shall remain the property of DI and are subject to the terms and conditions of this Master Agreement. Customer 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 DI upon request. Any backup copy of the Software that Customer makes must contain the same titles, trademarks, copyright notices, legends, and other proprietary notices that appear on or in the Software.

   c) **No Modification**. Customer shall not, and shall not permit any third party to, (i) remove or alter any copyright notices on and all copies of the Software (ii) modify, adapt, alter, or translate (excluding any language translation features that are part of the Software, and default project data files) the Software or (iii) 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 Customer may be expressly permitted to decompile under applicable law. DI reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.

   d) **Transfer**. Customer may not, rent, lease, lend, sublicense, assign, distribute, sell, or transfer Customer's 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. Customer may, however, transfer the Software from one Customer Computer to another, provided that the transfer is carried out within a reasonable timeframe. Customer may ensure that the Software is successfully loaded on the new Computer prior to erasing from Customer's old Computer.

   e) **Updates**. If the Software is an Update to a previous version of the Software, Customer must possess a valid license to such previous version in order to Use such Update. All Updates are provided to Customer on a license exchange basis. Customer agrees that by Using an Update, Customer voluntarily terminates Customer's right to Use any previous version of the Software and will transfer all data to the new Update.

2) **WARRANTIES.**

   a) **Software Warranty**. DI warrants that for as long as Customer has a valid license, has a current Maintenance and Support Services term in effect for the Software, and has paid all applicable Fees due under this Master 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. Customer's exclusive remedy under the limited warranty set forth herein and the sole obligation of

DI for breach of this warranty shall be for DI to use commercially reasonable efforts to correct any reproducible error of the Software to conform to the Documentation, at no additional charge. Notwithstanding anything to the contrary in the ISC EULA, and solely as it relates to this warranty, this warranty shall be provided by DI to Customer for the ISC Product.

b) **Malware Warranty**. DI warrants that as of the date of Delivery, the Software does not contain any Malware.

c) **Media Warranty**. DI warrants that any media upon which DI provides the Software to Customer shall be free of defects in materials and workmanship for a period of ninety (90) days from Delivery of such media to Customer. As Customer's exclusive remedy and the sole obligation of DI for breach of this warranty, DI shall provide Customer with a new copy of such Software in non-defective media at no additional charge.

3) **SPECIFIC SOFTWARE TERMS AND CONDITIONS.**

    a) **Instrument Manager™.**

        i) <u>Third-Party Software</u>. InterSystems Corporation's ("InterSystems") proprietary applications are Bundled Software delivered and used with DI's Instrument Manager™ software, subject to InterSystems' End User License & Service Agreement, attached as Exhibit 1 to this Schedule. Such Bundled software is named as follows:

            (1) Caché™ bundled with Instrument Manager™ versions up to 8.17.

            (2) InterSystems IRIS™ bundled with Instrument Manager™ versions 9.00 and greater.

EXHIBIT A-1

TO ON-PREMISES SOFTWARE SCHEDULE - PERPETUAL LICENSE

This Exhibit A-1 is attached to the On-Premises Software Schedule by reference and sets forth the additional terms, conditions and restrictions that that are specific to On-Premises Software licensed to Customer on a perpetual license basis.

1) **LICENSE AND USE.**

   a) Subject to Customer's compliance with the terms of this Master Agreement, DI grants to Customer, for the term of this Master Agreement, a non-exclusive, non-transferable, non-sublicensable, revocable, perpetual license to Use the Software, in accordance with the Documentation, only as allowed herein and solely for Customer's internal business purposes.

   b) Each Software license will be delivered with a Temporary SSK.

   c) A permanent SSK will be provided to Customer when the applicable Software Fees have been paid in full.

2) **FEES.** DI shall invoice Customer for all Software Fees as set forth on the applicable Quote.

3) **TERMINATION.** See Section 5c) ("**Effect of Termination**") of the General Terms and Conditions.

EXHIBIT A-2

ON-PREMISES SOFTWARE SCHEDULE - INTERSYSTEMS

This Exhibit A-2 is attached to the On-Premises Software Schedule by reference and sets forth the additional terms, conditions and restrictions that are specific to the license of Instrument Manager™.

INTERSYSTEMS

END USER LICENSE & 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 DI, a licensed Application Partner of ISC ("AP").

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 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 paid up License and the granting of a new paid up 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 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 DI. Your agreement with DI specifies whether your License is a paid-up License or is a subscription License. The term ("License Term") of a paid-up License shall be 30 years from the Effective Date. The License Term of a subscription License begins on the Effective Date and is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided. The License Term of a paid-up or a subscription License is subject to earlier termination in accordance with Section 6 below.

4. ISC hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with ISC's documentation relating thereto for one (1) year following the Effective Date, and (ii) all Services shall be performed in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with ISC's documentation and instructions, and upon the absence of any misuse, damage, alteration, or modification thereto. ISC SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO YOU AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION, OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR SERVICES. Your exclusive remedy for a breach of the above warranties shall

be for ISC to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Services, as applicable. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with ISC's documentation and instructions, ISC shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at ISC's option. LIMITED WARRANTY HEREIN DOES NOT INCLUDE TECHNICAL ASSISTANCE AND SOFTWARE UPDATE SERVICES AND IS NOT A SUBSTITUTE FOR SUCH SERVICES, WHICH ARE AVAILABLE FOR A SEPARATE FEE.

5. ISC's liability to you shall in no event exceed the License Fees or Services Fees received by ISC in respect of the specific Licensed Software or Services on account of which such liability arose. In no event shall ISC be liable to you for any special, incidental, exemplary, indirect, or consequential damages or lost profits.

6. Either party may terminate this Agreement upon the other's breach. You shall be liable for all fees relating to Licensed Software or Services provided prior to termination, and Sections 5, 6, 7, 8 and 10 hereof shall survive.

7. The Licensed Software and related documentation are and shall remain the sole property of ISC. You may make copies of the Licensed Software for backup and archival purposes only. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by ISC or its affiliates relating to the Licensed Software, Services or this business relationship. You agree to allow ISC or its representatives to audit your use of the Licensed Software upon five (5) days' notice by ISC, including providing access to your premises.

8. This Agreement shall be construed in accordance with and governed by the laws and regulations of the State of California.

9. You agree to comply with all applicable laws, including, but not limited to, U.S. export control or similar laws with respect to use of the Licensed Software and technical data. The English version of this Agreement shall control unless otherwise required by local law.

10. These terms together with any applicable terms provided to you by DI constitute the entire agreement (collectively, the "Agreement") between you and ISC relating to the subject matter hereof and supersede any prior understandings between us as well as any purchase orders or similar documents that may be submitted to ISC. ISC shall have the right to transfer or assign this Agreement without your consent. This Agreement may only be modified or amended by a writing signed by both Parties.

InterSystems Corporation: V. Aug07 1.0

MAINTENANCE AND SUPPORT SERVICES SCHEDULE

All Maintenance and Support Services are provided pursuant to the General Terms and Conditions, this Schedule, and any Exhibit or Appendix attached reference.

DI will provide the Maintenance and Support Services set forth in this Schedule and any related Exhibits for the current Major Release and the previous Major Release of a Supported Version of the Software for which the Customer has a valid license to Use and for which Customer is current on all Maintenance and Support Services Fees.

1) **MAINTENANCE AND SUPPORT SERVICES PRIORITY LEVELS.** Upon request for Maintenance and Support Services where the issues being experienced by the Customer are identified as a Software Error, Customer and DI will mutually agree on the severity level of the Software Error. DI will respond to issues with the Software according to the following schedule:

   a) **Critical Priority Software Error:**
      i) Critical Priority Software Errors must be reported via telephone.
      ii) DI will acknowledge Critical Priority Software Errors within one (1) hour of the initial contact via telephone and commence working towards a resolution at that time.

   b) **High Priority** Software Errors**:**
      i) High Priority Software Errors must be reported via telephone.
      ii) DI will acknowledge High Priority Software Errors within four (4) hours of the initial contact via telephone and commence working towards a resolution at that time.

   c) **Medium Priority** Software Errors**:**
      i) Medium Priority Software Errors may be reported via telephone, email, or through the MY DI Community, and/or the Customer Web Portal (as specified in the table in in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).
      ii) DI will acknowledge Medium Priority Software Errors within twenty-four (24) hours of the initial contact.

   d) **Low Priority** Software Errors**:**
      i) Low Priority Software Errors may be reported via telephone, email, or through the MY DI Community, and/or the Customer Web Portal (as specified in the table in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).
      ii) DI will acknowledge Low Priority Software Errors within forty-eight (48) hours of the initial contact.

2) **OBTAINING SUPPORT.** A Customer requesting that DI provide Maintenance and Support Services for the Software shall contact DI during the times and in the manner set forth in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution). Customer shall provide DI with (a) an accurate description of the Software Error; (b) the steps necessary to reproduce the Software Error; (c) if required, the data being processed at the time of the Software Error and associated log files; and (d) the severity of the Software Error, including the circumstances that lead to the Software Error.

   a) **During Support Hours.** Customer may log requests for Maintenance and Support Services in the following manner:

i) <u>Telephone:</u> Customer may log Maintenance and Support Services requests by calling the telephone number provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution). All Critical Priority and High Priority Software Errors must be logged via telephone.

ii) <u>E-mail:</u> Customer may log Maintenance and Support Services requests by sending e-mails to the appropriate DI regional support center via the email address provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution). All Critical and High Priority Software Errors must be logged via telephone. E-mail is reserved for Medium and Low Priority Software Errors.

iii) <u>MY DI Community, and/or Customer Web Portal:</u> Using the MY DI Community, and/or Customer Web Portal, as indicated in the Exhibit attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution), Customers can log Medium and Low Priority Issues, view the status of outstanding issues, download Drivers, (for Instrument Manager™ only) Documentation, and access a Knowledgebase of known issues and resolutions, for troubleshooting assistance and update contact information. DI does not warrant MY DI Community, and/or Customer Web Portal will operate without interruption or without errors.

b) **Emergency Support.** Emergency Maintenance and Support Services are available 24x7x365. An Emergency Maintenance and Support Services request may be submitted for a live Software system where all or a portion of the system has become non-operative and is affecting a critical laboratory function.

c) **Non-Emergency Support After Hours.** Customers requesting that DI provide non-Emergency Maintenance and Support Services outside of Support Hours may purchase Professional Services for "Custom Support Services". Custom Support Services must be scheduled and are subject to DI's resource availability and shall be provided subject to a separate, PS Agreement entered into between the Parties.

3) **CUSTOMER RESPONSIBILITIES.**

a) **Remote Access.** In order to assist DI in meeting the commitments above, Customer agrees to provide an approved remote method to the devices running the Software with connectivity to the Software and access that permits connectivity and administration using Software's administration tools accessing the database engine. DI's method of remote access is WebEx.

b) **Diagnostics Data.** In the event DI requests any data dumps, logs, or any other documentation from Customer to resolve a reported Software Error, such information shall be forwarded by overnight courier at Customer's expense or through electronic means such as e-mail, remote access, or FTP.

c) **Primary Technical Contact(s).** DI reserves the right to only provide Maintenance and Support Services for up to three (3) individuals employed or subcontracted by the Customer which have been identified and trained as the Primary Technical Contacts of the Software. Customer shall identify its designated Primary Technical Contacts in the Exhibit attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).

4) **HARDWARE PLATFORM / INFRASTRUCTURE.** Customer is responsible for the maintenance of its hardware platform and technical infrastructure. This infrastructure includes but is not limited to a reliable backup solution, networking components, Malware protection, and security software applications (i.e. firewalls).

5) **UPDATES.** Customer shall have the right to receive Updates at no additional charge by requesting the same from the Customer's respective DI's regional support center or

accessing the Updates from the DI's customer web site. If Customer requests that Updates be provided to Customer via electronic media (e.g. CD/DVD), DI may charge reasonable processing and shipping fees.

6) **REQUESTED ENHANCEMENTS.** Customer may submit a request to DI for a Requested Enhancement. DI may, at its discretion, develop the Requested Enhancements in full, in part, and/or with variations to the request.

7) **DRIVER UPDATES.** Customer shall have the right to receive Driver Updates at no additional charge by requesting the same from the Customer's respective regional DI's support center or accessing the Driver Updates from the DI customer web site. If Customer requests that the Driver Updates be provided to Customer via electronic media (e.g. CD/DVD), DI may charge reasonable processing and shipping fees.

8) **NEW DRIVERS.** Customer may submit a request to DI for the development of a new Driver. DI may, at its discretion, develop the requested new Driver in full, in part, and/or with variations to the request.

9) **NO LIABILITY FOR INACCURATE DIAGNOSTICS.** DI will attempt to provide accurate advice and information to Customer's employees requesting telephone or web-based, e-mail support with respect to the Software; however, the Parties acknowledge that DI cannot guarantee that such advice and information will be error free and accurate in all instances as such advice and information is dependent upon Customer's presentation and interpretation of the support needed as well as complete disclosure of the circumstances leading up to the request and, as such, DI will not be liable to Customer for any damages sustained by Customer as a result of incorrect or inaccurate advice by DI unless such damages were directly caused by the gross negligence or willful misconduct of DI.

10) **INSTALLATION OF ADDITIONAL SOFTWARE AND UPDATES.** Customer should not install any version, update, or upgrade of any Additional Software, on a shared platform with the Software, unless Customer understands the impact and necessity of the Additional Software version, update, or upgrade with the Software. Customer must understand and assume the risk to the Software for the application of Additional Software versions, updates, or upgrade.

11) **MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS.** DI will not be obligated to provide Maintenance and Support Services if: (a) Customer fails to provide DI all information, technical assistance, and access to the computing device on which the Software is installed and any other equipment and personnel necessary to assist DI; (b) the Software is not Used in accordance with the applicable Documentation; (c) any Software Error malfunction or defect reported by Customer is found by DI to be due to a cause other than the Software or Updates as delivered by DI; (d) Customer has not installed the Updates in a timely manner (see the Updates and Driver Updates sections above); or (e) the Software Error, malfunction, or defect cannot be reproduced. If any such non-Software error, malfunction, or defect may reasonably be corrected by DI, DI may correct it at Customer's request, subject to resource availability, for reasonable service charges, agreed to by Customer and DI. Examples of non-Software Errors, malfunctions, defects, associated materials, or services outside the scope of Maintenance and Support Services include but are not limited to the following:

a) Troubleshooting of Customer's computer hardware, operating system, system monitoring software, Malware software, or network;

b) Database management including but not limited to database backups, database archiving, database disk utilization monitoring, database patching, database upgrades;

c) Set up of Customer-provided equipment;

d) Troubleshooting Additional Software;

e) Troubleshooting Additional Software issues;

f) Data modification caused by Customer error or host computer system error;

g) Customer-requested modifications to the Documentation;

h)   Customer account management (e.g. password resets).

12) **MAINTENANCE AND SUPPORT SERVICES WARRANTY AND DISCLAIMER**: DI warrants that Maintenance and Support Services will be performed with reasonable skill and care by competent and trained personnel, and in accordance with applicable and reasonable industry standards and practices. As Customer's exclusive remedy and DI's sole obligation for breach of this warranty, DI shall use commercially reasonable efforts to correct defective Maintenance and Support Services at no additional charge to Customer, provided that Customer gives DI specific written notice of the defective Maintenance and Support Services within thirty (30) days after the Maintenance and Support Services are performed.

13) **NOTIFICATIONS REGARDING EOS, EOM AND EOL:**

a)   Communications related to Software may be frequent. DI suggests that Customer subscribe to the appropriate email notifications at E-mail Updates/Data Innovations.

b)   EoS – DI policy is to provide a *minimum 12-month* notification for an End of Sale event, whenever possible.

c)   EoM – DI policy is to provide a *minimum 12-month* notification, whenever possible, when Customer is required to act in response to an End of Maintenance event to avoid degradation of the normal Use of the Software or a specific Software version.

d)   EoL – DI policy is to provide a minimum of 24 months notification prior to an End of Life event for Software.   It is DI's policy to provide a minimum of 12 months' notification prior to an End of Life event for a specific Software version whenever possible. Maintenance and Support Services for Software and specific Software versions will be provided based on the published End of Life dates.

EXHIBIT B-1

TO MAINTENANCE AND SUPPORT SERVICES SCHEDULE

ON-PREMISES SOFTWARE – PERPETUAL LICENSE

This Exhibit is attached to the Maintenance and Support Services Schedule by reference and sets forth the additional terms, conditions, and restrictions that are specific to the provision of Maintenance and Support Services for On-Premises Software licensed to Customer on a perpetual license basis.

1) **GENERAL.** Provided Customer is current on all applicable Fees, Customer shall receive Maintenance and Support Services for the Software in accordance with the terms and conditions set forth herein.

2) **TERM.** The term of Maintenance and Support Services shall be the same as the Term set forth in Section 4 of the main part of the Master Agreement and the Maintenance and Support Services Fees for such Term shall be as set forth in the attached Quote .

3) **REINSTATEMENT.** In the event Customer allows Maintenance and Support Services to lapse, DI may allow Customer to reinstate Maintenance and Support Services upon Customer's performance of both of the following conditions (a) Customer agrees to install the latest version of the Software immediately upon Maintenance and Support Services reinstatement and (b) payment of up to two (2) times all Maintenance and Support Services Fees accruing between the date in which the prior Maintenance and Support Services term expired and the effective date of reinstatement.

4) **NON-EMERGENCY MAINTENANCE AND SUPPORT SERVICES.** The following table sets forth the times and manner in which Customer may request non-Emergency Support Maintenance and Support Services:

Non-Emergency Support is available Monday through Friday, excluding holidays published on www.datainnovations.com during the hours for the region listed below.		
Region	**Support Hours**	**Technical Support Contact**
North America	9:00 am – 8:00 pm EST/EDT Monday – Friday	MY DI Community * northamerica-support@datainnovations.com +1 802 658 1955
Note(s): * Based on Customer's regional location, the MY DI Community or Customer Web Portal may be accessed via support.datainnovations.com.		

5) **PRIMARY TECHNICAL CONTACT(S).** As of the Effective Date, DI acknowledges the following individuals designated as the Primary Technical Contacts:

Primary Technical Contact #1	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	
Primary Technical Contact #2	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	

Primary Technical Contact #3	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	

6)   MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS. The following items are added as additional sub-items to Section 11 ("**Maintenance and Support Service Exclusions**") of the Maintenance and Support Services Schedule:

a)   Issues regarding installation in the event Customer chooses to install or implement the Software on its own;

b)   Software recovery or data manipulation and recovery due to hardware (regardless of whether or not the hardware was purchased by Customer directly from DI or from another third-party vendor) failure caused by circumstances such as lightning strikes, floods or other Acts of God, neglect, power surges, power failures, or air conditioning or humidity control issues;

c)   Database modifications or alterations made by non-DI personnel; and

d)   Server maintenance including disk management, hardware operation, operation system updates, Malware software management, removal of Customer-introduced Malware.

7)   OPERATING SYSTEMS: On-Premises Software has been validated for operation on a variety of operating systems and hardware platforms. Minimum system specifications and supported operating systems can be provided per version of Software.

Exhibit C

PROFESSIONAL SERVICES SCHEDULE

All Professional Services are provided pursuant to the General Terms and Conditions, this Schedule, and any Exhibit or Appendix attached by reference.

1) **PROFESSIONAL SERVICES FEES.** DI will invoice Customer for the Professional Services Fees as set forth in the applicable PS Agreement.

2) **CHANGE ORDER.** Customer acknowledges and agrees that the Professional Services Fees set forth in each PS Agreement are only for the Professional Services scoped in such PS Agreement. The Parties shall enter into a Change Order to document any changes. DI shall have no obligation to begin work on any additional Professional Services prior to the Change Order being in place**.**

3) **LICENSE GRANT AND OWNERSHIP.**

   a) Subject to the terms and conditions of this Master Agreement, and the applicable terms set forth in a PS Agreement, and upon payment of all Professional Services Fees owed under the PS Agreement, DI hereby grants Customer a perpetual (subject to the termination provisions below and as set forth in Section 5 ("**Termination**") of the General Terms and Conditions), non-exclusive, non-transferable, license to use the Work Products solely for Customer's internal business purposes. Nothing contained herein shall grant any rights of ownership to Customer in the DI Tools. If any Software (whether pre-existing or new) is delivered as part of the Professional Services provided herein, Customer acknowledges and agrees that i) nothing contained herein shall grant any rights of use or ownership to Customer in such Software, and ii) all such Software shall be licensed to Customer pursuant to separately executed license agreements.

   b) Customer acknowledges that DI shall have sole and exclusive ownership of all right, title, and interest in and to the Work Products, including any and all DI copyright material, including algorithms, predefined rules and validation templates, provided to Customer under the scope of this Master Agreement and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to Customer herein. This Master Agreement does not provide Customer with title to or ownership of the Work Products, but only a right of limited use as set forth herein.

   c) The license to use the Work Products granted to Customer by DI herein, shall be limited by the following: Customer shall not distribute, copy, or use the Work Products for any purpose beyond the scope of this Master Agreement, except for archival or backup purposes or disclosure required by law, regulatory compliance, and/or laboratory accreditation purposes.

4) **RULES-BASED SERVICES.** As part of the Professional Services provided under this Master Agreement, DI may provide Customer with Instrument Manager™ Rules-Based Decision Processing services ("Rules-Based Services") which can include:

   a) Consulting and/or training Customer on designing and developing rules and algorithms of their own creation to direct Instrument Manager in the processing of patient test results.

   b) Predefined rules and algorithms that have been modified with Customer's input and approval to direct Instrument Manager in the processing of patient test results.

   c) Templates and consulting to Customer for use and approval to validate the Professional Services provided under this Master Agreement for the Instrument Manager system prior to processing patient test results.

   d) Customer agrees and acknowledges that the content of any algorithms, and any corresponding results and actions, shall be solely Customer's responsibility. While DI

may offer Customer consulting, training, and/or predefined algorithms and rules to implement certain parameters for processing patient test results, Customer agrees that the final identified parameters shall at all times be determined by, and be the sole responsibility of, Customer. Customer shall not, under any circumstances, rely upon DI to make final determinations regarding the content or direction of any Customer rules or processing decisions.

e) Because the responsibility for any and all parameters, content, and direction of any rules implemented via Instrument Manager through Rules-Based Services rests solely with Customer, DI makes no representations or warranties with respect to any algorithms, or their content, implemented via its Rules-Based Services.

5) **WARRANTY.** DI warrants that the Professional Services will be performed with reasonable skill and care by competent and trained personnel and in accordance with applicable and reasonable industry standards and practices, and that the Work Products will substantially perform in accordance with the specifications set forth in a PS Agreement. As Customer's exclusive remedy and DI's sole obligation for breach of this warranty, DI shall use commercially reasonable efforts to correct defective Professional Services and/or Work Products at no additional charge to Customer, provided that Customer gives DI specific written notice of the defective Professional Services or Work Products within thirty (30) days after the Professional Services are performed.

6) **RESCHEDULING**

a) **Rescheduling.** If, after the Scheduled Date has been agreed upon by the Parties, Customer requests to reschedule the Professional Services, such rescheduling request shall be provided to DI as follows:

i) Professional Services, excluding training: If, after the Scheduled Date has been agreed upon by the Parties, Customer requests to reschedule the Professional Services (excluding training), such written rescheduling request shall be provided to DI at least twenty (20) business days prior to the Scheduled Date.

ii) Professional Services specifically for training: Requests by Customer to cancel or reschedule training must be made at least thirty (30) business days prior to training Scheduled Date.

b) **Effect of Rescheduling.**

i) Professional Services, excluding training: If the Professional Services are rescheduled Customer is responsible for any fees and expenses, already incurred by DI prior to the rescheduling, associated with the Professional Services, including transportation change fees and any reasonable and appropriate corresponding increase in Professional Services Fees due to the Rescheduling.

ii) Professional Services specifically for training:

(1) If training reschedule requests are received at least thirty (30) business days prior to Scheduled Date, Customer's trainees can be rescheduled for an available seat in a comparable program either in person or virtually. DI cannot guarantee seat availability for training in the original site for which Customer's trainee had been scheduled.

(2) Reschedule requests or cancellations by Customer made less than thirty (30) business days prior to the Schedule Date, or no shows, are subject to a rescheduling fee up to the full price of the training seat.

EXHIBIT D

DEFINITIONS

a) **"Additional Software"** means third-party vendor software, licensed directly by Customer through its own suppliers and not sold or distributed by DI, whether or not it was recommended for use in connection with installation and Use of the Software.

b) **"Affiliate(s)"** means any company controlling, controlled by or under common control with Customer**.**

c) **"Applicable Taxes"** means all value-added, sales, use, import, duties, customs or other taxes applicable to the Software licensed to Customer and/or Services performed, under this Master Agreement, except for any taxes based upon DI's net income.

d) **"Bank Fees"** means any form of payment fees (including wire transfer fees, bank fees, and credit card fees) assessed by Customer's A/P processor or bank, or DI's processor or bank, to DI related to payments made by Customer to DI hereunder.

e) **"Billable Expenses"** means all actual, out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Services under this Master Agreement, as further described in the Professional Services Schedule.

f) **"Bundled Software"** means software licensed by DI from a third party to be distributed to Customer with the Software that has its own separate install process.

g) **"Change Order"** means a written, mutually agreed upon change to the Customer's requirements and/or the scope of the Professional Services, delivery schedule, and/or Professional Services Fees.

h) **"Claims and Losses"** means any and all third-party, claims, demands, liabilities, actions, suits, judgments, decrees, proceedings, (including reasonable attorneys' fees incurred in connection therewith), losses, damages, and expenses.

i) **"Computer"** means an electronic device, owned by Customer that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

j) **"Confidential Information"** means all non-public data or information regarding the Parties' business or technical operations including, but not limited to, (i) all designs, models, documentation, reports, data, specifications, technical process, any device, technique, or compilation of information, formula, source code, object code, flow charts, file record layouts, databases, inventions, technical data or information know-how, patents, and Trade Secrets (as defined by the Uniform Trade Secret Act, the California Public Records Act (Cal. Gov. Code §§ 7920.000 et seq., and judicial interpretation of those laws), improvements, concepts and discoveries, whether or not patentable or copyrightable, relating to the Software, Work Product, and Services, (ii) information with respect to either Party's existing or contemplated products, product development, services, marketing plans, suppliers, business data or information, partner relationships, business opportunities, finances (including, without limitation, revenues, expenses, taxes, and contracts), operations, pricing and, customers or personnel, processes, techniques or know-how, sales data, internal performance results, validation reports, or any information or data developed pursuant to the performance of the Services contemplated hereunder, (iii) any other information that is specifically designated by a Party as confidential or proprietary, (iv) information that, due to its character or nature, a reasonable person would treat as confidential, and (v) the terms and conditions of this Master Agreement. DI hereby designates the DI Property, including any permitted copies, as DI's Confidential Information. Customer Data, including permitted copies, shall be deemed "Customer Confidential Information". Confidential Information shall not include information that (A) is in or enters the public domain without breach of this Master Agreement by the Receiving Party, (B) was demonstrably in the possession of the Receiving Party prior to first receiving it from the Disclosing Party without restrictions on disclosure, (C) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or

reference to the Disclosing Party's Confidential Information, or (D) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. 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.

k) **"Critical Priority Software Error"** means a Software Error that renders the Software inoperable and causes a significant, time-dependent stoppage of Customer's business operations.

l) **"Customer Data"** means all Customer data entered into, or coming in from an outside source, and captured by, the Software, including any Protected Health Information and Personal Data, if either are applicable, forming part of such data. Customer Data shall include Affiliate data.

m) **"Customer Web Portal"** means the DI web portal used by Customers outside of North America for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a Knowledgebase of known issues and resolutions, for troubleshooting assistance and to update contact information.

n) **"DI Property"** means the Software, Work Product, Feedback, DI Tools, and DI's Confidential Information, including any future derivative works, enhancements or modifications thereto.

o) **"Delivery"** means the date upon which DI has delivered the Software to a third-party shipper addressed to Customer or when DI has made the Software electronically available to Customer.

p) **"DI Tools"** means any tools, databases, ideas, and methodologies used by DI in providing the Professional Services and the Work Products.

q) **"Disclosing Party"** means the Party providing Confidential Information to the Receiving Party.

r) **"Disputed Fee(s)"** means an invoiced Fee that is the subject of a good faith dispute between the Parties.

s) **"Dispute(s)"** mean any and all disputes, controversies, differences or claims arising from or related to this Master Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Master Agreement.

t) **"Dispute Notice"** means written notice given by one Party to the other Party setting forth the details of a Dispute.

u) **"Documentation"** means all guides, related explanatory written materials, manuals, files or on-line help, provided to Customer, for the Software, and any modifications thereto.

v) **"Driver"** means the software developed by DI to connect laboratory devices and information systems or Additional Software to the Software. Drivers communicate via TCP/IP, Serial, File I/O, ODBC and more.

w) **"Driver Update"** means updates to Drivers to correct defects, improve Software operation, add features, or provide functional corrections to the Driver that DI chooses to develop solely at its own discretion.

x) **"Due Date"** means sixty (60) days from the date of invoice on which all amounts billed by DI will be due and payable.

y) **"Embedded Software"** means software licensed by DI from a third party to be distributed to Customer with the Software that is automatically installed with the Software.

z) **"Emergency Maintenance and Support Services"** is defined as Critical and/or High Priority Software Errors.

aa) **"End of Life or EoL"** means Software that has reached EoM and EoS and for which

there is no successor Software. End of Life for a Software version is when DI will no longer provide Maintenance and Support Services for that Software version.

bb) **"End of Maintenance or EoM"** means Software or a specific Software version for which DI will no longer provide Updates.

cc) **"End of Sale or EoS"** means Software and Software specific versions that DI will no longer license or distribute.

dd) **"Export Laws"** means the collective reference to the United States Export Administration Act or any other export laws, restrictions or regulations that apply to the access and Use of the Software and Services.

ee) **"Feedback"** means all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Software, and Services.

ff) **"Fees"** means a reference to any or all of the fees due under this Master Agreement including the fees for the Software, Professional Services, Maintenance and Support Services, Renewals, Bank Fees, and any Applicable Taxes.

gg) **"Force Majeure"** means any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected Party, including, without limitation, acts of God, acts of terrorism, acts of nature or of a public enemy, acts of a federal government or any state or political subdivision thereof, internet brownouts, fires, floods, explosions, wars, pandemics, or other catastrophes; freight embargoes; or delays of a supplier or subcontractor due to such causes**.**

hh) **"Hardware"** means any third-party hardware purchased from DI by Customer.

ii) **"High Priority Software Error"** means a Software Error that causes the Software to fail resulting in significant revenue or operational impact on Customer's business, although certain functions of Customer's business remain in operation.

jj) **"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, DI Tools, Work Product, and Services whether registered or not, including any future release, update, modifications, new version, release, compilation, and translation of the DI Property and Services.

kk) **"Internal Resolution"** means the resolution of a Dispute by the assigned representatives of each Party.**"**

ll) **"ISC"** means InterSystems Corporation.

mm) **"ISC EULA"** means the ISC End User License & Services Agreement attached to and incorporated into this Master Agreement.

nn) **"ISC Product"** means ISC's proprietary applications delivered and used with DI's Instrument Manager™ software and licensed to Customer subject to the terms and conditions of the ISC EULA.

oo) **"Low Priority Software Error"** means a Software Error incident opened when Customer has general Software questions or needs that do not impact day-to-day functionality.

pp) **"Maintenance and Support Services"** means DI's standard technical support and maintenance services to diagnose and address a Software Error when the Software has been properly installed, if applicable, and is being Used to perform in accordance with the specifications set forth in the applicable Documentation. Maintenance and Support Services do not include training of Customer's personnel, consulting, or other available Professional Services.

qq) **"Maintenance and Support Services Fees"** means all fees for the performance of Maintenance and Support Services, including all actual Billable Expenses.

rr) "**Major Release**" means a release with significant new or improved functionality within the same Software bearing the same name that DI in its sole discretion determines to release as a new Major Release.

ss) "**Malware**" means unauthorized programming (code, scripts, active content, and other software) that is designed to, disable, erase, or otherwise harm, impede disrupt or deny Customer's Use of the Software or Services, gather information that leads to loss of privacy or exploitation, or gain unauthorized access to system resources or the Software, or that otherwise exhibits abusive behavior, including computer viruses, worms, trojan horses, spyware, dishonest adware, scareware, crimeware, most rootkits, or other malicious or unwanted software or programs. Malware does not include the Temporary SSK delivered with On-Premises Software.

tt) "**Mediation**" means the attempt to settle a Dispute that cannot be settled by Internal Resolution through the use of third-party mediation.

uu) "**Mediator**" means an independent third party trained as a mediator to act fairly and impartially, who has been nominated by the Parties to oversee Mediation.

vv) "**Medium Priority Software Error**" means a Software Error that causes a feature of the Software to fail resulting in a non-critical situation which allows the Customer's business to remain in operation. A Medium Priority incident may include issues only impacting a single user or issues where the business impact under a Critical Priority or High Priority is resolved, but there is ongoing research needed to determine the root cause of the failure.

ww) "**My DI Community**" means the DI web portal used by Customers located within North America, for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a Knowledgebase of known issues and resolutions, for troubleshooting assistance, and to update contact information.

xx) "**Open-Source Software**" means software distributed to Customer with the Software that is automatically installed with the Software that meets the definition of "Open-Source" as set forth at https://opensource.org/osd.

yy) "**Personal Data**" means any information relating to an identified or identifiable natural person and could include Personal Data of Customer or the Personal Data that Customer processes on behalf of its clients. Personal Data includes restricted categories of information, such as: government-issued identification numbers (e.g. social security number); financial account information or credit and debit card numbers; unique biometric identifiers; health information; and any other information deemed "personal," "sensitive" or "special categories of Personal Data" by applicable privacy, data protection or security laws or regulations.

zz) "**Professional Services**" means training, implementation, installation, and/or consulting services provided by DI to Customer pursuant to this Master Agreement, and as more specifically described in a PS Agreement.

aaa) "**Professional Services Fees**" means all fees for the performance of Professional Services, including all actual Billable Expenses.

bbb) "**Protected Health Information**" means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium that is protected under the Health Insurance Portability and Accountability Act of 1996 and Title XIII of the American Recovery and Reinvestment Act of 2009 also known as the Health Information Technology for Economic Clinical Health Act.

ccc) "**PS Agreement**" means the applicable Quote or SOW executed by both Parties, setting forth the Professional Services that DI shall perform for the Customer.

ddd) "**PS Appendix**" means an appendix to a Quote setting forth the specific details and additional terms and conditions regarding the Professional Services that DI shall perform for the Customer.

eee) "**Quote**" means the specific proposal prepared by DI and provided to Customer, which may include a PS Appendix, if applicable, setting forth the details of the Software and

Services the Customer is purchasing.

fff) **"Receiving Party"** means the Party receiving the Confidential Information of the Disclosing Party.

ggg) **"Renewal Notice"** means the written notice provided by DI to Customer with the terms and conditions, including the applicable Fees, for renewing of Maintenance and Support Services and/or for renewing Subscription Services.

hhh) "**Renewal Term**" means any renewal term of a Maintenance and Support Services Term.

iii) **"Requested Enhancement"** means new functionality or enhancements to existing functionality of the Software.

jjj) **"Scheduled Date"** means the specific date set by the Parties to commence the Professional Services.

kkk) **"Services"** means a reference to any of the Maintenance and Support Services, Professional Services, and/or Subscription Services provided under this Master Agreement.

lll) **"Software"** means (i) all application(s), (ii) Documentation, (iii) Drivers (iv) Driver Updates, (v) Requested Enhancements, and all (vi) Updates, licensed by DI to Customer pursuant to this Master Agreement. For purposes of clarity, "Software" does not include the ISC Product.

mmm) **"Software Error"** means a failure of the Software, licensed hereunder to Customer, when properly, installed, if applicable, and being Used to perform in accordance with the specifications set forth in the applicable Documentation.

nnn) **"Software Fees"** means all fees for the Software licensed by Customer under this Master Agreement.

ooo) **"SSK"** means the Software security activation key (a unique code, specific to the Computer the On-Premises Software is installed on), with either a perpetual term or a set term that expires at the end of each Subscription Term, that allows Customer to activate the Software license.

ppp) **"Statement of Work" or "SOW"** means the written form executed by both Parties, setting forth the specific details and additional terms and conditions regarding the Professional Services that DI shall perform for the Customer.

qqq) **"Support Hours"** mean the hours Maintenance and Support Services are available, as set forth in Maintenance and Support Services Schedule.

rrr) **"Supported Version"** is a version of Software that has not reached the state of EoS or EoM.

sss) **"Temporary SSK**" means a temporary ninety (90) day SSK provided as part of the initial Delivery of On-Premises Software.

ttt) **"Third-Party Software"** means a collective reference to Bundled Software, Distributed Software, Embedded Software, or Open-Source Software.

uuu) **"Third-Party Software List"** means a list of current Third-Party Software.

vvv) **"Update(s)"** means a Software Error correction, bug fix, modification, enhancement, improvement, new feature, functional corrections, upgrade, modified version, addition, Driver Updates, Requested Enhancements or other new releases, generally made available to purchasers of Maintenance and Support Services at no additional charge. Updates shall not include any major modifications, options or future products, Driver Updates or Requested Enhancements, that DI, in its sole discretion, determines to license separately and charge a separate license fee.

www) **"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.

xxx) **"Work Product"** means any implementation artifacts, interfaces, or other items

delivered to Customer under a SOW.

Exhibit E
Statement of Work - Direct Customer (Beaker Implementation)

Statement of Work - Direct Customer (Beaker Implementation)

1. **DEFINITIONS.**

    1.1. **"AV"** means Auto-verification.

    1.2. **"Customer Key Project Stakeholders"** may include but are not limited to Project Manager(s), IM Analyst(s), LIS Analyst(s), Interface Engine Analyst(s), Laboratory staff, Network/IT resource(s) and Laboratory leadership.

    1.3. **"Customer Workflow Validation Testing"** means testing all workflows for all instruments in scope according to the validation plan written and approved by the Customer. Workflows may include but are not limited to add on orders, partially released results, instrument errors, shared sample workflows, workflows with automation lines, reflexing workflows etc.

    1.4. **"Functional Testing"** means testing a successful roundtrip of one (1) test component order out of the LIS to the instrument, and one (1) test component result filing back into the LIS from the instrument on each instrument in scope.

    1.5. **"Go-Live"** means the date the Instrument Manager software, and any associated Work Product delivered under this SOW if applicable, become operational in a live production environment.

    1.6. **"IM"** means DI's proprietary software application, Instrument Manager™.

    1.7. **"Instrument Connectivity Testing"** means establishing connectivity of each instrument in scope with IM.

    1.8. **"LIS"** means Laboratory Information System.

    1.9. **"LIS Connectivity Testing"** means establishing connectivity between the LIS and IM.

    1.10. **"Mapped Record Testing"** means testing every test component and every test panel from the LIS on orders and results for all instruments in scope.

    1.11. **"QC"** means Quality Control.

    1.12. **"Shell Configuration"** means building configurations and connection assignments in IM for all instruments in scope.

2. **PROFESSIONAL SERVICES.**

    2.1. **Description of Professional Services.** DI will perform the following Professional Services under this SOW:

    2.1.1. **Project Coordination Meeting**

    - Discussion of DI implementation project plan for integration of instrument and application testing within the Epic Beaker overall project plan and timeline

    - Review instrument list and identify any future instrument changes to occur during the implementation

    - Prepare DI implementation project plan

    2.1.2. **Project Kick-Off Meeting**

    - Review DI implementation project plan and dashboard

    - Update list of Customer Key Project Stakeholders and provide documentation of list with contact information to include phone number and

email address for each Customer Key Project Stakeholder to the DI Sales Representative and Project Manager

- Identify one (1) individual to act as the Customer's primary point of contact with respect to the delivery of Professional Services as described in this SOW

- Identify one (1) individual to act as the Customer's primary point of escalation for issues, risks, and other project related escalations, and provide sufficient contact information for the individual to be reached during business hours

- Confirm date Epic Beaker interfaces will be ready for LIS Connectivity Testing between Epic Beaker LIS (including an interface engine if applicable) and IM

- Review DI recommendations for best-practice testing strategies

- Finalize implementation plan, including training class if purchased

- Determine action items, next steps, and schedule follow up meetings as needed

2.1.3. Pre-Implementation Tasks

- Confirm IM production and test licenses were received

- Server procurement meeting with Customer IT resource(s) if needed

- Finalize instrument list for all instruments in scope for the Epic Beaker implementation, including planning for instrumentation changes within the laboratory

- Customer collects list of IP addresses and ports or other connectivity information for all instruments in scope and Epic Beaker orders and results interfaces

- Discussion and planning for any net-new instrument connectivity, such as wiring new data drops and/or procuring new device servers in the laboratory

- Customer provides network ready servers (production, failover, and test) for IM installation

- Customer provides instrument test codes for each instrument where possible

- Schedule IM Basic and Introduction to Rules Writing for IM training classes for Customer IM analyst(s) if training seats were purchased

- Schedule Shell Configuration setup

- Schedule Instrument Functional Testing

2.1.4. Phase 1 – Installation and LIS Connectivity Testing

- Install IM Software on Customer provided production, failover and test servers
  - Customer is assumed to have purchased net new IM licenses for both production and test to be used with new Customer-provided servers (production, failover, and test)
  - Production and failover servers use the same IM license number

- At least one (1) server meeting the server specifications provided by DI must be available for IM install to begin the project. Delays in server procurement may delay the start of the project.

- Set up the IM Shell Configuration
    - Customer IM analyst(s) will work with the assigned DI Professional Services Representative(s) to load Drivers in IM and begin the Shell Configuration build

- **LIS Connectivity Testing:** Establish connectivity between IM and Epic Beaker
    - Ensure that an order is successfully received and processed in IM from Epic Beaker for one test component
    - Ensure that a result is successfully sent to Epic Beaker for the test component that was ordered
    - An interface engine may be used between Epic Beaker and IM at the Customer's discretion. Customer is responsible setup, maintenance, and troubleshooting of any interface engine in use

2.1.5. Phase 2 – Instrument Functional Testing

- Functional Testing may be completed with DI Professional Services Representative(s) on-site or remotely. Travel expenses will apply if on-site

- Finish shell configuration if not completed in Phase 1 to create configurations and connections for up to **twenty-two (22)** instruments as defined below.
    - One (1) Roche IM with two (2) Roche Cobas 6000 connected
    - One (1) Sysmex XN 2000
    - One (1) Stago Compact Max Expert
    - One (1) Sysmex UN2000 connected through Sysmex UDM
    - One (1) BD Epicenter with Bactec FX connected
    - One (1) Genmark ePlex
    - Four (4) Roche LIAT
    - Two (2) MedTox
    - One (1) Alcor iSED
    - One (1) Stago Satellite
    - One (1) Sysmex Cellavision DC-1
    - One (1) Werfen Avoximeter 4000
    - One (1) Meridian Bioscience Curian
    - One (1) Meridian Bioscience Revogene
    - One (1) Cepheid Genexpert

- Instruments are included in scope based on information provided during scoping. Changes to instrumentation during the course of the project must be submitted to DI in writing and evaluated for changes to the scope of Professional Services and/or number of standard or DMS connections prior

to beginning work on the project. Any changes to instrumentation resulting in the need for DI Driver development may delay the implementation for that instrument.

- Project was scoped assuming Roche Cobas 6000 instruments will remain connected via InterIM connection from the existing Roche IM system to the future Beaker/Enterprise IM system and all existing AV rules will remain in the Roche IM. Customer will evaluate implementing Roche Infinity with downstream/updated Roche instruments after the Beaker Go-Live event is completed as a separate project. Services to implement Roche Infinity with IM were not included in the scope of this project.

- All additional instruments (non-Roche 6000 instruments) connected to the Roche IM in current state will be connected directly to the Beaker/Enterprise IM system as a part of this project as pass-through interfaces without AV rules.

- Assist with mapping at least one (1) test component for all instruments in scope for the project

- **Instrument Connectivity Testing:** Establish connectivity between IM and each of the instruments included in scope

- **Functional Testing**: The DI Professional Services Representative(s) will work with the Customer's IM analyst(s) and Customer's Epic Beaker resource(s) to troubleshoot and modify the appropriate Beaker environment and IM configuration, as necessary, in order to:
    - Ensure that an order is successfully received and processed from Epic Beaker for each of the instruments included in scope
    - Ensure that a result is successfully sent to Epic Beaker for each of the instruments included in scope

- Provide IM Basic Training to Customer resource(s) for the number of seats purchased. Refer to http://datainnovations.com/training for syllabus

- **Provide IM application guidance, mentoring and troubleshooting assistance during on-site and remote testing sessions. Although the Customer has attended Basic training, DI will reinforce concepts taught through the course in order to prepare Customer resources for independent remote testing of duplicate instrument types in subsequent phases of the project.**

2.1.6. **Phase 3 – Mapped Record Testing**

- Assist Customer with mapping all remaining test components for all instruments as needed to remain within the project timelines

- Provide support to Customer resources to ensure that a full roundtrip test (order from Epic Beaker to instrument, result from instrument to Epic Beaker) is completed for all test components and test panels on all instruments in scope

- Assist Customer IM analyst(s) with troubleshooting all aspects of the dataflow between IM and the laboratory instrumentation, to ensure roundtrip testing is successful

- Assist Customer with writing necessary rules in IM to format orders and results correctly for instruments and the LIS for pass-through connectivity. The scope of this project does not include Professional Services to write rules for AV workflows in IM, Professional Services to write rules or provide Specimen Management Workspace setup to manage any other non-AV workflows in IM, or complex rules or setup to replace any current middleware solutions

- Provide Introduction to Rules Writing for IM training to Customer resource(s) for the number of seats purchased. Refer to http://datainnovations.com/training for syllabus

2.1.7. Phase 4 – Customer Workflow Validation Testing

- Provide remote support and guidance to Customer resource(s) while Customer validation plans are executed

2.1.8. Phase 5 – Go-Live

- Prepare IM production servers for Go-Live
    - A customized cutover plan will be discussed and created with Customer resource(s) at least sixty (60) to ninety (90) days prior to confirmed Go-Live date
    - Production primary and failover servers must be available for IM install at least thirty (30) days prior to confirmed Go-Live date to allow for server set up if primary build was done on the test server
    - The final IM configuration will be copied to and restored on the appropriate servers during the server setup and in preparation for Go-Live

- Enable archiving on IM production server based on Customer information provided during server sizing

- If not completed earlier in the project timeline, sync IM failover server with IM primary server for Disaster Recovery ("DR") and/or High Availability ("HA") as licensed and applicable to the Customer's desired end-state redundancy configuration

- Connect all instruments to IM production server

- Provide Go-Live support for one (1) Go-Live event as follows:
    - Go-Live Event 1 | Target Go-Live Date: 11/02/2024: One (1) resource for eight (8) hours per day for three (3) days, for a total of twenty-four (24) hours of Go-Live support.
    - Go-Live support can be provided on-site or remotely. Travel expenses will apply if on-site

2.1.9. SafeTrace Blood Bank

- Create the Shell Configuration - Assist Customer to download and install Drivers, and create configurations and connections for SafeTrace and the instrument(s) defined below:
    - One (1) Immucor Echo Lumena
- Assist Customer with modifying the instrument and LIS configurations,

including all necessary test code, fluid code, error code and instrument ID mapping if applicable

- Assist Customer with writing necessary rules in IM to format orders and results correctly for instruments and SafeTrace for pass-through connectivity. The scope of this project does not include Services to write rules for AV workflows in IM, Services to write rules to manage any other non-AV workflows in IM, or complex rules or setup to replace any current middleware solutions.

- Assist Customer as needed with all phases of testing to include LIS Connectivity Testing for SafeTrace, Instrument Connectivity Testing, Functional Testing, Mapped Record Testing, and Customer Workflow Validation Testing for all instruments in scope

- Provide application guidance and mentoring to the Customer while the Customer executes their validation test plan. Execution and sign-off of validation test plans are the responsibility of the Customer
  - o Testing for SafeTrace and the Immucor Echo Lumena will be part of the overall project plan for the Epic Beaker LIS implementation, and is intended to Go-Live at the same time as Epic Beaker. Services for Go-Live support are outlined in Section 2.1.8. of this SOW.

2.2. Term of SOW. The term of this SOW shall be as set forth below and shall continue unless earlier terminated pursuant to the termination terms and conditions set forth in the Agreement.

☒ Fixed Term: The term of this SOW shall begin upon the Effective Date and shall continue until the Professional Services are completed or up to thirty-six (36) months from the Effective Date, whichever occurs first.

2.3. Professional Service Considerations.

- Changes or additions to the scope of Professional Services outlined in this SOW are subject to review for the need to purchase additional Professional Services

- As applicable to the project scope, delays in LIS build, instrument delivery, instrument readiness to connect to IM, data collection necessary for IM configuration, completion of any pre-requisite tasks, network issues, or server procurement will delay the start of this project

- Incomplete build in the LIS or other delays in testing will delay the completion of this project

- Customer must collect and document the following information necessary to build the shell configuration prior to scheduling any on-site visits or remote Functional Testing sessions
  - o IP address and port information for individual Epic Beaker orders and results interfaces
  - o IP address and port information or other connectivity information as needed for all instruments and middleware included in scope to be connected to IM
  - o Epic Beaker messaging identifiers for instrument methods built in Epic Beaker for all instruments included in scope

- In order to have the most productive Functional Test for microbiology

instrumentation, at least one (1) correctly formatted microbiology culture order message for organism identification and susceptibility panel testing must be received in IM prior to scheduling any microbiology instrument Functional Testing

- It is required to have functional Epic Beaker barcode printers available prior to starting Mapped Record Testing. Delays in procuring or implementing barcode printers will delay the start of Mapped Record Testing, and may delay the overall Epic Beaker timeline

- It is a system requirement to have an order arrive in IM prior to sending patient results from an instrument back to Epic Beaker. All workflows for all instruments interfaced through IM to Epic Beaker must use a solicited orders workflow with an LIS-generated specimen ID. Unsolicited results and point of care workflows for patient samples without an LIS-assigned specimen ID cannot be interfaced through IM to Epic Beaker.

- All instruments must be able to be taken out of the legacy LIS interface environment and available to be connected to IM during all wet testing phases. Pre-scheduling in advance with lab operations around peak production times can help mitigate delays

- All instruments must be able to be connected to the Customer-provided servers where IM is installed. Any issues with network compatibility must be resolved by Customer IT/Network resources

- Laboratory technologist(s) are required to be available as needed during testing sessions to maintain, operate, configure, and troubleshoot instruments, set up assays, and otherwise assist with testing

- Validation of all IM rules is the responsibility of Customer. This includes creating and executing a validation plan. DI will resolve any issues identified during the validation that are related to the scope of this project

- Customer IM Analyst(s) are required to have appropriate access and permissions to the server for the duration of the project. Delays in obtaining appropriate access will delay the start of this project, and may cause significant delays in the overall project timeline

- Customer is required to have at least one (1) resource that is trained and proficient in IM identified to be an IM Analyst for the duration of this project

- For Customer IM Analyst(s) without IM experience or training, DI recommend IM Basic Training to be completed prior to the first functional testing on-site visit or prior to the start of remote testing

- It is strongly recommended that at least one (1) of Customer's IM Analyst(s) are also Epic Beaker certified to ensure better continuity between the two systems during all testing phases

- **Upon completion of Go-Live support for each Go-Live event in scope for the project, emergency technical support will be provided by DI's Customer Support, according to DI's Maintenance and Support Services agreement**

- **Transition to Support: Upon project closure or thirty (30) days after Customer's final Go-Live event (whichever is earlier), all application support will then be provided according to DI's Maintenance and Support Services agreement**

- **Performance of the Professional Services requires that Customer is current on all Maintenance and Support Services fees for all existing and new DI Software licenses. DI will not be able to schedule the start**

of the Professional Services until the current/active status of Customer's Maintenance and Support Services has been confirmed.

Additional tasks may be required based on Customer's specific installation. DI and Customer will discuss and mutually agree in writing, pursuant to the Change in the Scope of Professional Services section below, to any additional tasks prior to performance by DI.

2.4. **Work Product**.

- IM installed on production, failover, and test servers

- All instruments in scope are integrated with IM and LIS

- Support provided to Customer resources during all testing phases

- IM production server(s) configured prior to Go-Live

- All instruments are connected to IM production servers at Go-Live

- Go-Live support provided as described in Section 2.1.8. of this SOW

2.5. **Estimated Chronology**.

Note: The IM timeline and phases will be integrated with the overall Epic timeline and tasks prior to the project kick off as part of the Pre-implementation tasks. Exact dates will be coordinated as mutually agreeable to Customer, Epic, and DI prior to project initiation.

IM PHASE	DEPENDENCIES
Kick-Off **Pre-Implementation**	✓ Customer Key Project Stakeholders identified ✓ Instrument list finalized ✓ Customer registered/scheduled for Basic Training class if purchased
Phase 1 **Connectivity**	✓ Servers ready for IM installation ✓ Shell Configuration setup scheduled ✓ Minimum of one (1) test panel ("Beaker OVT") and test component ("Beaker LRR") built in Epic Beaker for LIS Connectivity Test ✓ Epic Bridges setup complete ✓ Connectivity between Epic Beaker and IM established on orders and results ✓ Messaging identifier setup in Epic Beaker (ensure order is triggering to transmit)
Phase 2 **Functional Testing**	✓ Complete Basic Training if purchased ✓ Minimum of one (1) Beaker OVT and Beaker LRR built for all instruments ✓ Interface and Method (MAC) records and event triggers setup in Beaker for each instrument ✓ Beaker container ID changed to minimum of six (6) characters ✓ Lantronix devices configured and attached to network or confirmation of use of existing connectivity
Phase 3 **Mapped Record Testing**	✓ Beaker build compete ✓ Beaker accessioning logic complete such that order route to instruments at appropriate locations ✓ Functional label printers available in all necessary locations to print Epic Beaker barcodes for testing
Phase 4	✓ Super users trained in Beaker ✓ Customer validation plan complete

Customer Workflow Validation Testing	
Phase 5 **Go-Live**	✓ Testing complete ✓ Go-Live Support provided according to Section 2.1.8 of this SOW

2.6. Site Readiness Checklist.

    2.6.1. **Prior to Install and LIS Connectivity Testing:**

- All Customer-provided servers are ready to install IM
- Epic Beaker is ready to send an order to IM for at least one (1) test component on at least one (1) instrument to establish connectivity between Epic Beaker and IM (LIS Connectivity Testing)
- Connectivity information and Epic Beaker messaging identifiers are documented and available to complete the Shell Configuration build in IM

    2.6.2. **Prior to Functional Testing**

- All instruments in scope are ready to connect to IM
- Instruments are available during scheduled Functional Testing sessions
- Customer IT/Network resources have confirmed network compatibility between the network where IM servers are installed and all networks with instruments expected to connect to IM
- Instrument connectivity information (IP addresses and ports or other connectivity information) is documented and available for Customer IM Analyst(s) to reference when building connection assignments in IM
- Correctly formatted microbiology order message received in IM

    2.6.3. **Prior to Mapped Record Testing**

- Epic Beaker build completed for all tests on all instruments in scope
- Instruments available during scheduled Mapped Record Testing sessions
- Functional label printers available in all necessary locations to print Epic Beaker barcodes for testing

    2.6.4. **Prior to Customer Workflow Validation Testing**

- Customer Workflow Validation Testing plans are created by Customer and approved by all applicable Customer leadership
- Instruments are available during scheduled Customer Workflow Validation Testing sessions

    2.6.5. **Prior to Go-Live**

- All instruments ready to permanently connect to IM production server
- System validation (Customer Workflow Validation Testing) completed by Customer

2.7. Change in the Scope of Professional Services.

- DI has scoped the Professional Services in this SOW based on Customer provided information and projected Customer technical skills and time commitment required for the performance of such Professional Services. If after the Effective Date of the SOW i) DI determines that the information provided was not accurate, ii) the information changes, and/or iii) Customer is not able to provide personnel at the technical level, or time-commitment level originally contemplated in the scope of Professional Services, an adjustment to the scope of Professional Services may have to be made by DI, and such adjustment may require an increase in the Professional Services Fees.
- DI and Customer shall enter into a written change order, executed by both parties, to document any such changes to this SOW ("Change Order"). DI shall have no obligation to begin work on any additional Professional Services prior to the Change Order being in place.

3. **CUSTOMER RESPONSIBILITIES.** Customer will be responsible for the following:

3.1. Customer will be responsible for providing the following personnel:
- Project Manager – develops and coordinates timelines, set milestones and adjusts resources as necessary
- LIS Analyst(s) – Responsible for the LIS build, maintenance, and troubleshooting as applicable to the project
- IM Analyst(s) – Responsible for IM system configuration and maintenance of the IM system
- Interface Analyst(s) – Responsible for any Interface Engine(s) used, including Epic Bridges
- Laboratory Technologist(s) – Responsible for instrument configuration and running test specimens
- Network/IT Resource(s) – Responsible for Customer server and network troubleshooting and maintenance
- Leadership Resource – Designated point of contact for project related escalations

NOTE: Some personnel may fulfill more than one role (example: A Laboratory Technologist can also fulfill the IM Analyst role if qualified)

3.2. If Driver development is required, Customer is responsible for testing any new Driver or Enhancements to existing Driver developed by DI and shall provide DI with the required evidence of testing prior to Go-Live. Once proper evidence is received, a production version of the Driver will be released to the Customer.

3.3. Customer is responsible for all testing and validation of the IM system.

3.4. Customer will develop validation plans for testing the system to include all mapping and applicable workflows.

3.5. Customer is responsible for maintaining adequate and complete documentation for any changes to be applied to instrument settings for all instruments in scope at Go-Live if changes are applicable.

3.6. Customer is responsible for IT support on all IM servers.

3.7. Customer is responsible for network support and troubleshooting for all networks with IM servers and/or networks with instruments included in scope to be connected to the IM servers.

3.8. Customer will designate one (1) individual to act as the Customer's primary point of escalation for issues, risks, and other project related escalations, and provide sufficient contact information for the individual to be reached during Customer's

business hours.

3.9. Customer will assign one (1) individual to act as the Customer's primary point of contact with respect to the Professional Services.

3.10. If on-site Professional Services are needed, a purchase order for estimated Billable Expenses must be issued to DI from Customer, or a third-party on their behalf, in advance of any agreed upon travel or expenditure.

3.11. Customer shall provide DI with reasonable workspace, administrative support, computer facilities, computer time on Customer's computers, if necessary, and other support as necessary for DI to perform the Professional Services.

3.12. Customer shall perform and/or provide in a timely fashion the tasks and personnel set forth in this section**.**

3.13. Customer personnel assigned to work on the matters related to the Professional Services will be qualified for the tasks for which they are assigned.

3.14. Customer shall cooperate with DI in providing prompt and timely information, notices, and feedback as is necessary or desirable hereunder.

4. **DI RESPONSIBILITIES.** DI will be responsible for the following:

4.1. Provide a resource to perform the Professional Services and tasks outlined in **Section 2** of this SOW.

5. **FEES, INVOICING AND PAYMENT TERMS.** As consideration for the Professional Services provided by DI to Customer under this SOW, DI shall invoice Customer for the Professional Service Fees set forth in quote #O-010682 (the "Quote") and Customer, or a third-party on their behalf, will compensate DI, on the following basis:

5.1. **Fixed Fee Basis**:   DI will provide the Professional Services on a milestone basis. DI will invoice Customer upon completion of each of the following milestone:

Milestones:

- *Milestone 1*:   20% as of the Effective Date of this SOW
- *Milestone 2***:**   25% due at 6 months from the Effective Date of this SOW
- *Milestone 3:*   25% due at 12 months from the Effective Date of this SOW
- *Milestone 4*:   30% upon the earlier of i) Go-Live or ii) 18 months from the Effective Date of this SOW.

5.2. **Change in Professional Services Fees:** Each applicable Change Order to this SOW shall document any changes to the Professional Services Fees.

EXHIBIT F

QUOTE # O-010682-49143

Product Summary	Total
Production Software	$90,220.00
Test Software	$10,270.00
Maintenance and Support (Year 1)	$18,088.20
Maintenance and Support (Year 2-5)	$77,944.53
Professional Services	$69,750.00
Training	$4,320.00
Contingency Funds	$54,118.27
Total:	**$324,711.00**

Production Software

Product Code	Product Name	Qty	Unit Price	Total
IM-B07	Instrument Manager Base Software with High Availability	1	$3,570.00	$3,570.00
Instrument Manager Base software with High Availability provides licensing for primary and redundancy system(s) to operate in parallel in the event of a primary system failure.				
IM-CX-07	Instrument Manager Interface Connection with High Availability	25	$2,860.00	$71,500.00
Adds one connection license to the Instrument Manager primary and redundancy system(s).				
IM-EU-07	End User Software Connection with HA/DR	3	$2,705.00	$8,115.00
Adds one End User connection to concurrently access the Instrument Manager primary and redundancy system(s) from any remote network location.				
IM-SM-01	Specimen Management	1	$7,035.00	$7,035.00
Adds specimen and data management functionality, and SM Workspace to the Instrument Manager.				
			Production Software Total:	**$90,220.00**

Test Software

Product Code	Product Name	Qty	Unit Price	Total
IM-B02-TEST	Instrument Manager Base Software for Test	1	$275.00	$275.00
IM-CX-01-TEST	Instrument Manager Interface Connection for Test	5	$920.00	$4,600.00
Adds one connection license to the Instrument Manager for test system.				
IM-EU-01-TEST	End User Software Connection for Test	3	$860.00	$2,580.00
Adds one End User connection to concurrently access the Instrument Manager system from any remote network location for test system.				
IM-SM-01-TEST	Specimen Management for Test	1	$2,815.00	$2,815.00
Adds specimen and data management functionality, and SM Workspace to the Instrument Manager for test system.				
			Test Software Total:	**$10,270.00**

Maintenance and Support (Year 1)

Product Code	Product Name	Qty	Unit Price	Total
CS-MAS-01	Instrument Manager Maintenance and Support	1	$16,239.60	$16,239.60
Product Code	**Product Name**	**Qty**	**Unit Price**	**Total**
CS-MAS-01-TEST	Instrument Manager Maintenance and Support for Test	1	$1,848.60	$1,848.60
			Maintenance and Support Total:	**$18,088.20**

Maintenance and Support (Year 2-5)

Product Code	Product Name	Qty	Unit Price	Total
n/a	Instrument Manager Maintenance and Support – Year 2	1	$18,630.85	$18,630.85
n/a	Instrument Manager Maintenance and Support – Year 3	1	$19,189.78	$19,189.78
n/a	Instrument Manager Maintenance and Support – Year 4	1	$19,765.47	$19,765.47
n/a	Instrument Manager Maintenance and Support – Year 5	1	$20,358.43	$20,358.43
			Maintenance and Support Total:	**$77,944.53**

Professional Services

Professional	Product Name	Qty	Unit Price	Total
IM-SVC-01	IM Professional Services	1	$69,750.00	$69,750.00
	Services to be defined by a mutually agreed to and signed Statement of Work.			
			Professional Services Total:	**$69,750.00**

Training

Product Code	Product Name	Qty	Unit Price	Total
TR-IMB-11	Instrument Manager Fundamentals Self-Paced Program	1	$2,160.00	$2,160.00
	This self-paced eLearning program provides instruction on the setup and operation of an Instrument Manager™ system. Learn how to edit or add configurations and connections in Instrument Manager (IM), as well as troubleshoot and resolve communication issues between IM and connected devices. Access to recorded content will be provided to each registered participant for a period of forty-five (45) days. Participants will have access to Data Innovations staff for questions about the course content by emailing from within the learning management system and/or joining office hours for live Question & Answers sessions.			
TR-RULE-11	Instrument Manager Rules Overview	1	$2,160.00	$2,160.00
	Rules Training is an intensive, hands-on course that teaches the use of Instrument Manager Rules Engine functionality and how to write and test rules which can be used for various purposes including flagging results to be reviewed, adding to test orders and evaluating results against critical ranges. The class covers instrument request and result rules, testing rules and managing rules within the rules engine. All AV workflow service packages require the purchase of this instructor-led program. The classes include attendees from other customer sites, providing an excellent forum for networking.			
			Training Total:	**$4,320.00**

Contingency Funds

Product Code	Product Name	Qty	Unit Price	Total
SMC	Contingency Funds	1	$54,118.27	$54,118.27

Contract contingency funds estimated around 20% of the scoped Software and Services that can be used for unforeseen events, or Professional Services, related to the scope of such services provided in this Master Agreement.

To use the Contract Contingency Funds, an contract amendment to this Master Agreement must be executed between the parties.

Contingency Total:	**$54,118.27**

Attachment G
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

a. ***Business Associate.*** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.

b. ***Covered Entity.*** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.

c. **HIPAA Rules**. "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.

d. ***Designated Record Set***. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

e. ***Electronic Protected Health Information***. "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

f. ***Individual***. "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

g. ***Privacy Rule***. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

h. ***Protected Health Information***. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.

i. ***Required By Law***. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

j. ***Secretary***. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

k. ***Breach***. The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
2. Identity of the unauthorized person or to whom impermissible disclosure was made;
3. Whether PHI was actually viewed or only the opportunity to do so existed;
4. The extent to which the risk has been mitigated.

l. *Security Rule*. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

m. *Unsecured PHI.* "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

n. *Security Incident*. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.

d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.

e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.

g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to

Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County no more than once annually at a time mutually agreed to by the Parties upon County's reasonable written request, or to the Secretary at the request of County or the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.

k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.

n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.

o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.

p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.

q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.

b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

a. **Regulatory References**. A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.

b. **Amendment**. The Parties agree to negotiate in good faith to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

c. **Survival**. The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.

d. **Interpretation**. Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.

e. **Reservation of Right to Monitor Activities**. Reserved.

ATTACHMENT H

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐ a. Employs fewer than 15 persons.

☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: | Jennifer Dill

Name of Contractor(s): | Data Innovations LLC

Street Address or P.O. Box: | 463 Mountain View Drive

City, State, Zip Code: | Colchester, VT 05446

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Title of Authorized Official: | President and CEO

Date: | November 7, 2023

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."