Access®

Arrowhead Regional Medical Center

Date:	**April 20, 2017**
Expiration Date	**November 30, 2017**
Access Account Exec:	**Kiffer Davis**
PLA Number:	**20170420KD0913**

Proposal and License Agreement

Access®

Kiffer Davis
Account Executive
(214) 272-0375
Kiffer.davis@accessefm.com
www.accessefm.com

ORDER INSTRUCTIONS

If you would like to propose any changes, any requested revisions can be submitted using the Microsoft Track Changes Tool or in a separate Word document. Once negotiated, the revisions are then added to the PLA.

Please sign agreement in the specified area in section 5.

Please scan/email purchase order for the total cost to orderprocessing@accessefm.com.

Please mail signed proposal and license agreement and initial payment via UPS or FedEx to:

> Access e-Forms
> PO Box 733
> Sulphur Springs, TX 75483
> Attn: Order Processing Dept.

We will return a copy to you. If your facility requires an original copy, please print two hardcopies and send both signed to address above. We will sign and return one original.

Thank you for your commitment to Access. We appreciate the opportunity to work with your organization, and to provide a quality forms management solution.

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I. QUOTE

A. Software License

Access will provide you with the following software applications (the "Software") which provide the functionality described below:

1. Passport License: Registration

The Passport solution for Registration provides the capacity to convert the traditional paper-laden processes associated with patient engagement and signature capture to fully electronic processes. In turn a paperless Registration process is created that is both faster, and affords a better patient experience, which enhances the patient's expectation of quality care.

This license is unlimited with respect to forms and users within the Registration area. Additionally, the ECM Connector Module is included, allowing completed forms can be ported into the Customer's ECM system, and automatically indexed into the patient's record. Additional eSignature workstation licenses may be acquired at $500 per workstation. Discrete data captured from the form can be exported to a Customer supplied SQL database. Any use of this technology outside of the Registration area is prohibited.
*Hardware provided by Customer

2. Passport License: Bedside and Clinical Care

Description: In the clinical care areas many paper-based processes have been consumed by the primary information management system of the healthcare facility. However, "paper-gaps" still remain, and the Passport solution for Bed-Side & Clinical Care Areas helps convert these paper-based processes into fully electronic processes that can be completed on an array of devices.

This license is unlimited with respect to forms, users, and devices* within the clinical care areas. This license includes the "My Forms" tab and the "eForms Repository" tab which provides end users the ability to electronically view an appropriate list of patients in accordance with the user's role/security privileges. The end user may select a patient, select an electronic form, and then generate the electronic form with patient data for completion. Electronic forms can also be launched via URL/hyperlink. Complete forms can be sent to the Customer's ECM system via the ECM Connector**. Discrete data captured from the form can be exported to a Customer supplied SQL database. Any use of this technology outside of the clinical care areas is prohibited.
* Hardware such as iPads, Surface Pros, etc are provided by Customer
** Requires the purchase of the ECM Connector (see "Optional Solutions" below)

3. Form Design Tool

Description: The Form Design Tool provides users the ability to create new forms, and edit existing forms.

B.   Covered Facilities

You may use the Software at the following facilities (the "Covered Facilities"):

Facility	Address
Arrowhead Regional Medical Center	400 N Pepper Ave, Colton, CA 92324

C.   Services

In addition to the Software Licenses, Access will provide the following services (the "Services"):

SCOPE OF WORK

1. Passport Registration Implementation

Access will provide an implementation plan to the customer for the implementation of the Passport Registration Solution. Access will provide guidance and assistance to the customer within the guidelines of the plan. Access will install all software on the customer server. Access will provide remote installation and usage training. Access will perform Professional Services Design for up to ten (10) Passport form document units. All such services will be performed through remote connectivity. No onsite services are provided in this scope of work, however onsite implementation services can be requested and purchased through a PSR.

2. Passport Bedside and Clinical Care Implementation

Access will provide an implementation plan to the customer for the implementation of the Passport Bedside and Clinical Care Solution. Access will provide guidance and assistance to the customer within the guidelines of the plan. Access will install all software on the customer server. Access will provide remote installation and usage training. Access will perform Professional Services Design for up to ten (10) Passport form units for use within the system. All such services will be performed through remote connectivity. No onsite services are provided in this scope of work, however onsite implementation services can be requested and purchased through a PSR.

3. Form Conversion Bundle

Access professional services will assist in the conversion and creation of Electronic Duplicates from existing forms that either:

- Exist in Microsoft Office format (Word and/or Excel); or
- Exist in PDF format; or
- Exist within the Access IFS Forms Library (availability of over 10,000 forms)

Up to 10 Web Based Fillable Forms Converted from the Access Forms Library or Microsoft Word:

- Form equals one side of one 8.5 x 11 page
- Single connector to a Document Imaging System (Requires the ECM Connector)
- Up to 50 data entry fields per form
- Patient demographics auto-filled into a consistent place across all forms

SUPPORT

a. Definitions

1. "Authorized Contact Person" means a customer representative who has been trained and certified by Access, on the Access products implemented.
2. "Emergency" means a situation in which an Error has occurred, at the Server-Level, that renders the Software inoperative and Authorized Contact Person's efforts to correct the Error have been unsuccessful.
3. "Error" means a fault or defect in the Software.
4. "Qualified Issue" means an issue that meets all of the following criteria: (1.) The issue can be classified as an Emergency; and (2.) the issue occurs at the Server-Level.
5. "Server-Level" means at the server (the specific equipment on which the server–based products of the Software have been loaded/configured on the hard drive to perform their specific function).

b. Standard Support during Normal Business Hours

During the initial Term of the Agreement and as long as you continue to pay the Annual Support Fee, online web support will be provided in the form of an electronic issue management system by which the customer may enter issues and product enhancement requests. Resources on this website will be available, except when the website is down for maintenance or for any reason beyond Licensor's control. In addition, Access will provide non-Emergency support via telephone/email during normal business hours as part of our annual maintenance program. Support staff members are available to address issues Monday thru Friday from 7 AM until 7 PM CDT.

Access does not provide support of any software, hardware, peripheral devices, operating systems, utility programs, licensing, licensed connections and/or services that are necessary to use the Software, such as those listed in the requirements set forth in Section IV, unless expressly agreed between the parties in writing.

c. After Hours Support

Access will provide the following service, outside the realm of Licensor's normal business hours:

EMERGENCY SUPPORT
Telephone support will be available for Qualified Issues.

1. <u>Maintaining Authorized Contacts</u>. Customer is responsible for maintaining staff who can be deemed an Authorized Contact Person.

2. <u>Obtaining Emergency Support</u>. In order for an Authorized Contact Person to initiate a support request for Emergency Support, they must:
   a. Call the "After-hours" support line at (903) 877-3797 (subject to change); and
   b. Give the following information:
      i. Name; and
      ii. Customer number; and
      iii. Phone number(s) Authorized Contact Person can be reached at; and
      iv. Product issue is related to; and
      v. Give a description of the problem; and
   c. Answer any questions asked by Access' call center operator.

3.   <u>Limitations</u>. Access' sole responsibility in providing Support is to return the functionality of the Software to a normal status. Access' ability to research problems and perform tests outside of normal business hours is limited. Resolution of your problem may involve reverting to an earlier configuration, bypassing certain processes or other work-arounds deemed suitable to Access' support representative. In certain instances the final problem resolution may be deferred until standard support services are available during normal business hours. Access does not warrant, guarantee or imply that any other services or support of any kind will be provided, made available to, or performed for you other than as set forth herein.

d. Ongoing Support

Access will continue to provide the same level of support, provided the Annual Support Fee for the following year is paid prior to the expiration of the current term.

e. Remote Access

Access uses Securelink as a means of remote access to the servers at the customer site to provide release updates and on-going support through a secure encrypted connection. The Securelink gatekeeper will be installed when the Access software is installed and the customer Security Officer or Network Administrator will be trained in the configuration and administration of the gatekeeper client.

PRICING AND FEES

f. Product Pricing*

Quantity	Product Description	Part Code	Unit Price	Price
1	Passport License: Registration Area	8FE052	$54,000	$54,000
1	Passport License: Bedside and Clinical Care	8FE052	$54,000	$54,000
1	Passport Form Design Tool	8FE058	$12,000	$12,000
	Passport Registration Area Professional Services	8FL004	$20,750	$20,750
	Passport Bedside and Clinical Care Professional Services	8FL004	$20,000	$20,000
	Form Design Training		$3,600	$3,600
	Form Converion Bundle		$2,000	$2,000
			Product Total	$120,000
			Annual Support Total	$24,000
			Professional Services Total	$46,350
			Credit for Existing Solutions	($35,000)
			**First Year Support at NO CHARGE	($24,000)
			Project Total	$131,350

*Travel and lodging expenses are not included and will be billed separately.
**The first year of Support is provided free of charge. Ongoing Support is paid for on a reoccurring annual basis. Support is calculated at 20% of the Software License Fee.

g. Payment of Initial Fees

Payment for Amount set forth in Section A above will be as follows:

Project Total	$131,350
50% Payment due upon execution of this Agreement	$65,750
50% Payment due upon software delivery	$65,750

*The first year of Support is provided free of charge. Ongoing Support is paid for on a reoccurring annual basis. Support is calculated at 20% of the Software License Fee.

h. Annual Support Fees

To continue to receive support under the Agreement, the Annual Support Fee in the amount of $24,000 must be received by Access prior to the one year anniversary of the Agreement, and for each successive year period, the Annual Support Fee must be received by Access prior to the end of the preceding year term. The Annual Support Fee is based upon 20% of the purchase price of the products purchased and will begin upon software acceptance and continue until the one year anniversary thereof. The Annual Support Fee may increase at any time thereafter provided that notice of any such increase shall be provided by Access at least thirty (30) days prior to the expiration of the then-current term. Annual Support Fee may be subject to change on an annual basis by the lesser of CPI or five (5) percent.

The ongoing annual support for the existing solutions in place is $42,455 and the annual support for the additional solutions listed in this quote is $24,000. This addendum is under the same timeline as the existing contract from October 31, 2017 to April 6, 2020.

4. AGREEMENT

This Proposal and License Agreement supersedes all previous discussions and agreements between the parties with respect to its subject matter. The undersigned acknowledges that he/she is authorized to execute this Proposal and License Agreement. The signatures below are evidence of each party's agreement to be bound by the terms and conditions specified in the attached License Agreement, which shall be incorporated herein by reference as if set forth at length. If the terms or conditions contained above or in any document incorporated by reference are in conflict with the terms and conditions set forth in the body of the License Agreement, the terms and conditions in the License Agreement shall control.

IN WITNESS WHEREOF, the parties hereto, each acting with proper authority, have executed this Proposal and License Agreement as of the day, month and year first above written.

Arrowhead Regional Medical Center	Access eForms, LP
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

License Agreement

The terms and conditions contained in this License Agreement (this "Agreement") are effective as of the last date signed (the "Effective Date") and shall govern the transaction described on the preceding proposal (the "Proposal"), which is wholly incorporated herein by reference. Any additional or different terms or conditions proposed by the undersigned Customer (the "Customer") in a purchase order or otherwise shall be deemed rejected by Access eForms, LP ("Access") and shall not be binding upon Access unless agreed to in a writing signed by hand in ink by an authorized corporate officer of Access. Access reserves the right, in its sole discretion, to change this Agreement (including, without limitation, the Proposal) or to decline to enter into this Agreement at any time prior to signing this Agreement. If Customer fails to accept in writing the terms and conditions of this Agreement, the acceptance of any product or service covered by this Agreement shall constitute an acceptance of these terms and conditions.

1. Definitions

a. "Authorized Users" means: (i) Licensee and its collective employees, authorized agents, students (medical, nursing and other students), volunteers, nurses, physicians, medical staff members, and all technologists, clinicians and other personnel and agents on staff or otherwise associated with Licensee and Affiliates; (ii) nurses, technologists and other clinicians associated with such physicians and assistants of staff physicians; (iii) third party agents, consultants, auditors and other independent contractors performing services for Licensee and Affiliates; (iv) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to data; (v) a facility manager; and (vi) such other parties as the parties may mutually agree.

b. "Authorized Contact Person" means a customer representative who has been trained and certified by Access, on the Access products implemented.

c. "Confidential Information" means the Software and any other information or materials provided by one party to the other which are in tangible form and labeled "confidential" or, if disclosed orally, are identified as being confidential at the time of disclosure and are followed up within two weeks in a tangible form that is appropriately labeled. "Confidential Information" shall not include information or materials which: (i) were publicly available at the time it was disclosed or becomes publicly available through no fault of the receiver; (ii) were known to the receiver, without similar confidentiality restriction, at the time of disclosure; (iii) are disclosed with the prior written approval of the discloser; (iv) were independently developed by the receiver without any use of the Confidential Information; or (v) become known to the receiver, without similar confidentiality restriction, from a source other than the discloser without breach of this Agreement by the receiver.

d. "Covered Facility" means the Hospital, and the inpatient and/or outpatient facilities thereof, that are located in a different building and/or at a different address from Licensee address listed in the Proposal that are: covered under the same government issued hospital license as the Hospital; and operated by the same governing body with one administrator; and totally integrated with the main hospital facility computer network.

e. "Defect" means a material failure of the Software to operate in accordance with the applicable documentation (if any) or applicable regulatory requirements.

f. "Hospital" means an institution defined as such, by the applicable regulating body of the federal government, district, state or province in which the institution exists.

g. "Software" means the software described in the Proposal in machine-readable form, any Updates thereto, and any documentation in connection therewith.

h. "Update" shall mean a change made by Licensor to the release of the Software licensed to the Licensee under this Agreement that: (i) is an internal change designed to correct bugs; or (ii) otherwise provides minor improvements to performance without changing the Software's basic design, structure or functionality.

2. License Grant. Licensor grants to Licensee a perpetual, non-exclusive, non-sublicensable and non-transferable license to use the Software internally in accordance with the terms and conditions of this Agreement. This license remains in force until terminated by Licensor due to Licensee's breach of this Agreement. Except as expressly provided herein, no other license, express or implied, by estoppel or otherwise, to any other intellectual property rights is granted herein.

3. License Restrictions. Licensee acknowledges and agrees that the following restrictions are an ongoing condition to the license granted to Licensee under this Agreement and violation of these restrictions is a material breach of this Agreement: (i) Licensee shall not allow any person other than an Authorized User to access the Software, Licensee shall not use the Software for the benefit of a third party, and Licensee shall not allow remote access, time share or service bureau use of the Software; (ii) Licensee shall use the Software only as specifically permitted by this Agreement and in accordance with the requirements of applicable federal, state and local law; (iii) except as expressly provided in this Agreement, and except for a reasonable number of back-up copies of the Software, Licensee shall not sublicense or in any manner rent, loan, transfer, provide, disclose, copy, publish, display or make available all or any part of the Software to any third party; (iv) Licensee shall not permit Affiliates, Authorized Users, its employees or any third party to, modify, enhance or otherwise alter the Software without Licensor's express prior consent and under Licensor's direct supervision; (v) Licensee shall not take any steps to interfere with or defeat any permanent software keys that may enable the Software; (vi) Licensee shall store the Software and any other materials provided by Licensor, whether in written form, on magnetic media, or otherwise, in a secure location; and

(vii) Licensee shall not "unlock", decompile, reverse engineer, disassemble, or otherwise translate the binary or object code versions of the Software to human-perceivable form, nor permit any person or entity under its control to do so. Licensee shall not remove, modify or hide any proprietary legends and notices on the Software or on any other materials provided by Licensor.

4.   Intellectual Property Rights. Other than the rights granted herein, Licensor shall retain all right, title and interest in and to the Software. The parties agree that all inventions, product improvements, and modifications to the Software ("Improvements") conceived of or made by Licensor that are based, either in whole or in part, on Licensee's general feedback, suggestions, or recommended improvements, are the exclusive property of Licensor, and all rights, title and interest in and to any such invention, product improvement, or modification to the Software will vest solely in Licensor.

5.   Software Acceptance. Software Acceptance shall occur when: Software has been installed in Licensee's environment and proof of concept has been established by merging electronic data provided by Licensee with an electronic form and correct output is produced utilizing the Software without error or required correction.

6.   Fees. Subject to the terms and conditions of this Agreement, Licensee shall pay Licensor the license fees, service fees, training and installation fees and all other fees (other than the Annual Support Fees) identified on the Proposal concurrently with the execution of this Agreement.

(a)   Annual Support Fee In order to renew the support provided under this Agreement, Licensee shall pay Licensor the Annual Support Fee specified in the Proposal in accordance with terms set forth herein. The Annual Support Fee may increase at anytime due to an increase in the cost of Licensor's support in accordance with the terms of this Agreement. If Licensee fails to pay the Annual Support Fee, at Licensor's discretion, Licensor may require payment of the Annual Support Fees, any other fees for which Licensee was invoiced for but failed to pay and any Late Fees, in order to obtain support or any other Licensor services.

(b)   Other Service Fees. Licensee shall pay Licensor fees for other services at such time as such services are performed and the fees shall be based on rates stated in the Proposal or on any subsequent work order approved in writing by the Licensee. Any services not included in the Proposal shall be approved in writing and in advance by Licensee.

(c)   Time and Method of Payment. Licensor shall invoice Licensee as set forth in this Section, and Licensee shall pay all net undisputed amounts due to Licensor under this Agreement within sixty (60) calendar days of Licensee's receipt of Licensor's invoice. Unless otherwise agreed by the parties, all amounts payable under this Agreement shall be payable in U.S. Dollars.

 (e   Disputed Amounts. If an invoiced amount is disputed in good faith by Licensee then, Licensee may suspend disputed payments and toll the running of time for default by: (i) paying the undisputed amount, if any; and (ii) sending a written statement of exceptions to Licensor. All

of Licensors obligations shall continue unabated during the duration of the dispute resolution.

7.   Records and Audit Rights. Licensee shall keep full, complete, clear and accurate records with respect to Licensee's use of the Software. On Licensor's request, not more frequently than annually, an officer of Licensee shall certify to Licensor that the Software is being used in accordance with this Agreement. In lieu of such certification, at Licensor's request (no more than once each calendar year) and within thirty (30) days after receiving written notice, Licensee shall permit a Licensor representative or an independent auditor to have access during Licensee's regular business hours to all equipment, records, and documents of Licensee as reasonably required to confirm Licensee's compliance with the terms of this Agreement. Licensor's audit rights shall survive any termination or expiration of this Agreement. Licensee shall cooperate with Licensor in all reasonable respects in connection with such audits.

8.   Disclaimer of Warranties. Licensor does not warrant that the Software will meet Licensee's requirements, or the operation of the Software shall be uninterrupted or error-free. In the event of a Defect within thirty (30) days of software acceptance, Licensor's exclusive liability and Licensee's exclusive remedy shall be correction of such Defect. This warranty shall apply only if the alleged Defects actually exist and were not caused by misuse, unauthorized modifications, neglect, improper installation or testing, attempts to repair, or the like, or by accident, fire, power surge or failure, or other hazard. Other than the software and hardware specifically identified in the Proposal, Licensor does not warrant the operation of any software, hardware, peripheral devices, operating systems, utility programs, licensing, licensed connections and/or services that are necessary to use the Software. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDED, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.   Limitation of Liability. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, REGARDLESS OF HOW ARISING, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE, AND REGARDLESS OF WHETHER ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. THESE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, OR INTERRUPTION OF BUSINESS, OR OTHER ECONOMIC LOSS. LICENSOR'S AGGREGATE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY UNDER THIS AGREEMENT, FOR ANY CLAIM, WHETHER IN CONTRACT (INCLUDING BREACH OF WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE) SHALL BE

LIMITED TO 100% OF THE AMOUNT PAYABLE BY LICENSEE UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

10. Indemnification. Licensee acknowledges that it will be supplying data or information for use in connection with the Software and that some of the data or information may be protected under federal, state, or local laws. Licensee shall indemnify and hold Licensor and its respective affiliates, subcontractors, employees and/or agents harmless from any claim, actions or demands, or expenses (including payment of attorneys' fees) arising from a claim, demand or cause of action relating to data or information supplied by Licensee, including, without limitation, a claim that a third party's personally identifiable information has been released in violation of the Health Insurance Portability and Accountability Act ("HIPAA") unless such release was the result of Licensor's gross negligence or willful misconduct. In claiming any indemnification under this Section, Licensor will promptly provide Licensee with written notice of any claim which Licensor believes falls within the scope of this indemnity. Licensee may, at its own expense, assist in the defense of any such claim, provided that Licensor controls such defense and all negotiations relative to the settlement of any such claim and that any settlement intended to bind Licensee will not be final without Licensee's written consent, which shall not be unreasonably withheld. Licensor shall defend, indemnify and hold harmless Licensee, its authorized officers, employees, agents and volunteers from and against any damage, liabilities, costs and expense, (including reasonable attorneys' fees, expert's fees and court costs) arising out of any claim that the software infringes any patent, copyright, trademark or trade secret.

11. Term; Termination.

(a) Term. The term of this Agreement ("Term") shall begin on the Effective Date and shall continue for a period of one (1) year unless otherwise renewed or terminated in accordance with this Agreement.

(b) Events of Default. The occurrence of one (1) or more of the following (each an "Event of Default") shall constitute a material breach of this Agreement which shall allow the non-breaching party to terminate this Agreement by providing written notice to the breaching party: (i) a material breach of this Agreement, provided that such breach, if curable, is not cured within thirty (30) calendar days following receipt of written notice of such breach; (ii) Licensee's failure to timely pay any undisputed amount owed to Licensor, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure; (iii) the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by a party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of a part not involving the United

States Bankruptcy Code; or any corporate action taken by the Board of Directors of a party in furtherance of any of the above actions; and (iv) appointment of a receiver for all or substantially all of a party's assets or any corporate action taken by the Board of Directors of Licensor in furtherance of the above action.

(c) Survival. Sections 1, 3, 4, and 7 through 16 shall survive any expiration or termination of this Agreement.

12. Confidentiality. Each party shall treat as strictly confidential all Confidential Information of the other party, and shall not disclose such Confidential Information to any person or entity or use such Confidential Information except as contemplated herein or as otherwise authorized in writing. Each party shall implement procedures to prohibit the unauthorized disclosure or misuse of the other party's Confidential Information by its agents, employees and representatives, and shall not intentionally disclose such Confidential Information to any third party except for the purposes of this Agreement, and subject to confidentiality obligations similar to those set forth herein. Notwithstanding the foregoing, each party shall be entitled to disclose the other's Confidential Information to the extent required by any order or requirement of a court, administrative agency, or other governmental body, provided that the receiver shall provide prompt, advance written notice thereof to the discloser and cooperate with the discloser if the discloser elects to seek a protective order or otherwise prevent such disclosure.

13. Protected Health Information. In addition to the restrictions on the disclosure and use of protected information as set forth above, the parties may enter into a Business Associate Agreement (the "Business Associate Agreement") pursuant to which the parties agree, among other things, to protect protected health information as defined in 42 CFR § 164.501.

14. Dispute Resolution.

(a) Arbitration. Any dispute arising out of or related to this Agreement shall be referred to senior executive officers of Licensee and Licensor for resolution. If these representatives are unable to resolve the dispute within ten (10) calendar days after the representatives have commenced negotiations, or twenty (20) calendar days have passed since the written request for negotiations is made, then the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to binding arbitration. Arbitration must occur within ten (10) business days after the parties agree to submit the dispute to arbitration. The parties mutually shall select an independent arbitrator experienced in commercial contract healthcare technology disputes, and each shall designate a representative with full negotiation and settlement authority to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the arbitration shall be left to the discretion of the arbitrator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. All such arbitration shall take place in Dallas, Texas. Except where clearly prevented by the area in dispute, both parties shall continue performing their obligations under this Agreement while the dispute is being resolved under this Section

unless and until the dispute is resolved or until this Agreement is terminated as provided herein.

(b) <u>Venue and Jurisdiction</u>. Any judicial proceeding brought against any of the parties to this Agreement on any dispute arising out of this Agreement or any matter related hereto shall apply the laws of the state of California without regard for any conflict of law rules and shall be exclusively litigated in (i) the courts (state and federal) serving San Bernadino County
, California if Licensee initiates any dispute, and (ii) the courts (state and federal) serving San Bernadino, CA if Licensor initiates any dispute, and, by execution and delivery of this Agreement, each of the parties hereto accepts for itself service of process in any action or proceeding by the mailing of copies of such process to such party at its address as set forth below and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any judicial proceeding brought in such courts and any claim that any such judicial proceeding has been brought in an inconvenient forum.

(c) <u>Equitable Relief.</u> Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction. The parties agree and acknowledge that any breach of Section 3 (License Grant), Section 4 (Intellectual Property Rights) or Section 12 (Confidentiality) may cause immediate and irreparable injury to the non-breaching party, and monetary damages shall be inadequate to compensate for such breach.

15. Federal Reporting Requirements. Until the expiration of four (4) years after the furnishing of any Service under this Agreement, Licensor agrees that the Secretary of the Department of Health and Human Services (the "Secretary") and the Comptroller General of the United States, or the designee or duly authorized representative of either of them, shall have access to all books and records of Licensor pertaining to the subject matter of this Agreement and the provision of Services under it, in accordance with the criteria presently or hereafter developed by the Department of Health and Human Services as provided in Paragraph 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Paragraph 1395x(v)(1)(A), et seq. ("OBRA"). Upon request of the Secretary, the Comptroller General, the designee or the authorized representative of either of them, Licensor shall make available (at reasonable times and places during the normal business hours) this Agreement, and all books, documents and records of Licensor that are necessary to verify the nature and extent of the costs of the Services provided by Licensor and furnished in connection with this Agreement. Licensor further agrees that if Licensor carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars ($10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such

subcontract, the related organization shall make available, upon written request to the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract, and such books, documents and records of such organization that are necessary to verify the nature and extent of the costs of the services rendered thereunder to the full extent required by OBRA. Notwithstanding the foregoing provisions, access to the books, records, and documents of Licensor shall be discontinued and become null and void upon a finding by a court or quasi-judicial body of competent jurisdiction that this Agreement is outside the scope of the regulatory or statutory definition of those contract and agreements included within the purview of Paragraph 952 of OBRA or the rules and regulations promulgated thereunder.

16. Miscellaneous.

(a) <u>Assignment</u>. Licensor or Licensee may assign or pledge this Agreement, including Licensor's right to receive any payments hereunder, with the others written consent provided that such assignment will not change the obligations of Licensor to Licensee.

(b) <u>Notices.</u> All notices given under this Agreement shall be given to the address of the appropriate party set forth on the face of this Agreement and shall be given by certified or registered mail and deemed given upon actual delivery.

(c) <u>Attorneys' Fees.</u> If either party breaches this Agreement then that party shall pay all costs (including attorneys' fees and court costs) incurred by the other party in successfully enforcing this Agreement or seeking to recover damages for the breach.

(d) <u>Export Regulations.</u> The Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee acknowledges and agrees to comply strictly with all such regulations and acknowledge that you have the responsibility to obtain licenses to export, re-export, or import the Software.

(e) <u>Force Majeure.</u> Neither party shall be liable to the other for any failure, delay or interruption in the performance of this Agreement due to causes entirely beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of public enemy, acts of governmental authority, acts of terrorism, floods, riots or rebellion.

(f) <u>Severability.</u> If any of the above provisions are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived to the extent necessary for this Agreement to be otherwise enforceable in such jurisdiction. However, if in Licensors opinion deletion of any provisions of this Agreement by operation of this paragraph unreasonably compromises the rights or liabilities of Licensor or its licensors, Licensor reserves the right to terminate this Agreement.

(g) <u>No Hire.</u> Each Party agrees not to knowingly solicit for employment (either as an employee or an independent contractor) any employee of the other party during performance of this Agreement and for a period of one (1) year after termination of this Agreement without the other party's written consent.

(h) <u>Entire Agreement.</u> This Agreement (including the Proposal), any Business Associate Agreement, and any Exhibits, Addendums or Amendments attached hereto and thereto, are the entire agreement between Licensee and Licensor relating to the licensing of the Software and: (i) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any quote, order, acknowledgment, procurement document or similar communication between the parties during the term of this Agreement. No modification, amendment or addendum to this Agreement or the Exhibits attached hereto will be binding, unless submitted in writing and signed by a duly authorized representative of both parties.