

Medical Information Technology, Inc.

Health Care Information System Software Agreement

AGREEMENT made this _____ day of July, 2010 by and between MEDICAL INFORMATION TECHNOLOGY, INC., a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at MEDITECH Circle, Westwood, Massachusetts 02090 (hereinafter called MEDITECH) and Arrowhead Regional Medical Center, an acute care hospital owned and operated by the county of San Bernardino, California, having its principal place of business at 400 North Pepper Avenue, Colton, CA 92324 (hereinafter called Customer).

WHEREAS MEDITECH has developed and continues to enhance a version of computer software designed to operate in a "client-server" environment, which version, together with any physical embodiment thereof and related documentation (incorporated in this Agreement as Exhibit II and provided to Customer on electronic storage media), are together hereinafter called LICENSED SOFTWARE, and WHEREAS Customer desires to obtain from MEDITECH the right to use such LICENSED SOFTWARE in its operations at the facility(ies) listed in Article II,

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I - GENERAL TERMS & CONDITIONS

A. RESPONSIBILITIES AND WARRANTIES OF MEDITECH

1. MEDITECH agrees to deliver, implement and service the LICENSED SOFTWARE all as more fully described in this Agreement. Subject to the terms and conditions hereof and upon payment in full to MEDITECH of the license and implementation fees for each line item of LICENSED SOFTWARE listed in Article II, MEDITECH hereby grants to Customer a non-exclusive, perpetual license to use each such line item. MEDITECH warrants that the LICENSED SOFTWARE shall have capabilities equal to the capabilities described in Exhibit II and will operate in all material respects in conformity with such descriptions when delivered to Customer and installed on Customer's MEDITECH-approved computer network (the major components of which are recited on Exhibit I hereof).
2. MEDITECH warrants to Customer that it is the developer and sole owner of the LICENSED SOFTWARE. In the event of any suit or claim against Customer by any third party for damages and/or injunctive relief contesting ownership of the LICENSED SOFTWARE by MEDITECH and/or Customer's rights under this Agreement, MEDITECH agrees at its own expense to defend Customer against such suit or claim and to hold Customer harmless from the expenses of such defense and from any court-awarded judgments (including attorney fees if awarded as part of such judgments) resulting from such suit or claim, provided that Customer furnishes written notice to MEDITECH of the commencement of such suit or the presentation of such claim within fifteen (15) days of notice thereof to Customer. Further, if, because of such suit or claim, the LICENSED SOFTWARE is held to constitute an infringement of any United States copyright or patent and use of the LICENSED SOFTWARE by Customer is thereby enjoined, MEDITECH shall, at its own expense, either procure for Customer the right to continue using the LICENSED SOFTWARE or replace the same with a non-infringing product, conforming in all material respects to that described herein, or modify the same so that it shall be non-infringing, provided that the service described in Article IV has not been terminated.
3. MEDITECH acknowledges that certain material which will come into its possession or knowledge in connection with this Agreement includes confidential or proprietary information of Customer or Customer's patients (hereinafter called "Protected Information"). MEDITECH agrees to hold all Protected Information in confidence, to use it only in connection with performance under this Agreement and to disclose it only to those of its employees that require access thereto for such performance or as may otherwise be required by law. In addition, MEDITECH shall use appropriate safeguards to prevent other use or disclosure of Protected Information and shall promptly report to Customer any other use or disclosure of Protected Information of

which it becomes aware. MEDITECH shall ensure that any agents of MEDITECH, including but not limited to subcontractors, to whom it provides Protected Information agree to the same restrictions and conditions as apply to MEDITECH with respect to such Protected Information. Upon the written request of the United States Department of Health and Human Services, MEDITECH shall make its internal practices, books and records relating to the use and disclosure of Protected Information provided to MEDITECH by Customer available to the Secretary of Health and Human Services (or his or her designee or duly authorized representative), at MEDITECH's Massachusetts facility and at times convenient for MEDITECH, to the extent required for determining compliance with Federal privacy and security regulations. Upon Customer's written request MEDITECH shall return to Customer (when reasonably possible) or destroy any Protected Information.

B. RESPONSIBILITIES OF CUSTOMER

1. Customer shall pay to MEDITECH the line item fee (license fee plus implementation fee) for each line item of LICENSED SOFTWARE as follows:

- 10% due upon execution of this Agreement
- 40% due upon software delivery
- 40% due 90 days following software delivery
- 10% due 180 days following software delivery

Each payment for each line item will be separately due and payable without regard to other line items.

In the event a payment due MEDITECH under this Paragraph is delinquent for a period of sixty (60) days from its due date, and MEDITECH so notifies Customer in writing, and the delinquency is not cured within thirty (30) days thereafter, then, upon MEDITECH's written notice, Customer will cease to use the LICENSED SOFTWARE until such time as all payments then due are paid. Such cessation of use shall not relieve Customer of any obligations under this Agreement, including the obligation to make all payments specified herein. MEDITECH agrees that any amount due under this Paragraph but disputed and withheld in good faith by Customer shall not be subject to a cessation of use penalty.

2. During the period in which MEDITECH makes available the service described in Article IV, Customer will pay to MEDITECH the monthly service fees stated in Article II. These fees will commence sixty (60) days following the attainment of Live Status for each line item of LICENSED SOFTWARE. "Live Status" is defined for each line item as the date on which such line item is used in Customer's daily operations utilizing real patient/hospital data. Twenty-four (24) months after the date of this Agreement these fees may be increased by MEDITECH at any time by providing thirty (30) days written notice of such increase to Customer. Any increases shall be limited to six percent (6%) cumulative per year during the 60-month period following the initial 24-month period recited herein.

Service fee invoices are issued on the first of each month in which the service is to be made available, with payment terms of net thirty (30) days. If payment of any service fee invoice is delinquent for a period of forty-five (45) days from its due date and MEDITECH so notifies Customer in writing, then fifteen (15) days thereafter if such invoice remains unpaid MEDITECH's obligations stated in Article IV may be suspended until all delinquencies have been cured to the satisfaction of MEDITECH. MEDITECH agrees that any amount due under this Paragraph but disputed and withheld in good faith by Customer shall not be subject to a cessation of service penalty.

3. Customer agrees to limit access to the LICENSED SOFTWARE to those of its staff and employees who must have access thereto to properly use the same in Customer's operations. Further, Customer agrees to notify MEDITECH promptly and fully in writing of the circumstances concerning any possession, use or study of the LICENSED SOFTWARE by any person, corporation or other entity (other than Customer's staff and employees) including, but not limited to, the name(s) and address(es) of such person(s), corporation(s), or other entities. Customer agrees that it will not, at any time, without written permission of MEDITECH, copy, duplicate, or permit others to copy or duplicate the LICENSED SOFTWARE, except to the extent required for the creation of backup copies of the LICENSED SOFTWARE as described in Exhibit II

4. Customer acknowledges that certain material which will come into its possession or knowledge in connection with this Agreement includes confidential or proprietary information of MEDITECH (including, without limitation, the terms and conditions of this Agreement), disclosure of which to third parties may be damaging to MEDITECH. Customer agrees to hold all such material in confidence, to use it only in connection with performance under this Agreement and to release it only to those persons that require access thereto for such performance or as may otherwise be required by law. In addition, Customer shall use appropriate safeguards to prevent other use or disclosure of confidential or proprietary information of MEDITECH and shall promptly report to MEDITECH any other use or disclosure of such information of which it becomes aware.
5. If Customer is a tax-exempt entity, then, upon execution of this Agreement, Customer will provide to MEDITECH a copy of its current tax exemption certificate for each applicable taxing authority which has approved Customer's tax-exempt status. If Customer is not a tax-exempt entity, Customer acknowledges that it (and not MEDITECH) shall be responsible for the payment of any and all taxes (including, but not limited to, sales, use, and excise taxes) imposed by the applicable taxing authorities to which Customer is subject.
6. Not later than sixty (60) days prior to the earliest delivery date listed in Article II, Customer will install and maintain, at Customer's expense, the equipment and services necessary for a virtual private network connectivity solution (hereinafter called MEDITECH VPN) via the services of a MEDITECH authorized VPN partner. Customer will also install a separate telephone line equipped with a modem (for emergency use only) in accordance with MEDITECH's specifications. Customer shall maintain such VPN service (or other MEDITECH-approved connectivity solution) and modem connection and provide MEDITECH with access thereto for the resolution of system problems in accordance with the applicable sections of Articles III and IV until such time as the service described in Article IV is terminated for all line items of LICENSED SOFTWARE.

C. RESTRICTIONS ON TRANSFER

The LICENSED SOFTWARE shall at all times remain the property of MEDITECH and the license of use granted herein specifically excludes any right of reproduction, sale, lease, sublicense, or other transfer or disposition of the LICENSED SOFTWARE by Customer except as otherwise expressly stated herein. The rights granted hereunder are granted to Customer only and are not assignable to any other person, corporation or entity, except that, upon the transfer by sale, merger, or corporate re-organization, of substantially all of the assets of Customer to a successor organization, this Agreement and the rights and obligations of Customer hereunder may be assigned to such successor. Customer agrees to notify MEDITECH promptly in writing of the transfer to such successor and of the assumption by such successor of Customer's obligations and responsibilities as described in this Agreement.

D. LIMITATION OF LIABILITY

Customer acknowledges that the LICENSED SOFTWARE provided by MEDITECH constitutes part of a hospital information system to be used by Customer, its staff and employees in the performance of their professional responsibilities and is in no way intended to replace their professional skill and judgment. Customer agrees that it is solely responsible for the care of its patients and that the use of the LICENSED SOFTWARE for any purpose related to such care cannot in any way be controlled by MEDITECH. Customer is responsible for verifying the accuracy and completeness of any medical or other similar information contained in, entered into, or used in connection with the LICENSED SOFTWARE. Customer agrees to hold MEDITECH harmless from any liability arising from improper or flawed operation or use of the LICENSED SOFTWARE. In no event will MEDITECH be liable for any consequential damages, lost profits or lost revenues sustained by Customer, or for any suit or claim or demand against Customer by any other party, except as stated in Article I(A)(2), above.

E. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and permitted assigns of the parties hereto.

F. LEGAL CONSTRUCTION

The validity and effect of this Agreement shall be determined in accordance with the laws of the State of California.

ARTICLE II - DELIVERY

The LICENSED SOFTWARE listed below is being licensed to Customer to service the specific information-processing needs of the following inpatient facility(ies):

1) Arrowhead Regional Medical Center, operating at 400 North Pepper Avenue, Colton, CA 92324

Any use of the LICENSED SOFTWARE beyond the restrictions set forth in this Agreement will require payment of additional fees to MEDITECH which will be determined in accordance with MEDITECH's standard rates.

MEDITECH agrees to deliver the LICENSED SOFTWARE, including associated documentation, to Customer on or about the delivery dates specified below for use at the above facility(ies). Additional copies of documentation will be provided by MEDITECH at its then standard rates; in the alternative, Customer may reproduce copies of the documentation so long as access to any such copies is restricted in accordance with this Agreement. "Project Start" listed below is defined as the month Customer and MEDITECH jointly begin implementation of each line item of LICENSED SOFTWARE via one or more of the following: conference calls, training site visits, training visits to MEDITECH, or web demonstrations. "Delivery Date" listed below is defined for each line item of LICENSED SOFTWARE as the date on which MEDITECH provides Customer with the physical embodiment of the line item, enabling such line item to be installed on Customer's computer network.

LICENSED SOFTWARE LINE ITEMS	Project Start	Delivery Date	License Fee	Implementation Fee	Line Item Fee	Service Fee	Exhibits
e-Prescribing Interface Suite	08/31/2012	08/31/2012	30,000	12,000	42,000	300	II
Totals					42,000	300	

ARTICLE III - IMPLEMENTATION

A. IMPLEMENTATION PERIOD

"Implementation Period" is defined for each line item of LICENSED SOFTWARE as the period commencing on execution of this Agreement and ending upon the attainment of Live Status for such line item. During this period MEDITECH will provide support and assistance to Customer and Customer will make available sufficient resources so that the joint goal of a successful implementation of the LICENSED SOFTWARE at Customer's site is achieved. The Implementation Period for the LICENSED SOFTWARE is designed such that it should not extend for more than twelve (12) month beyond the delivery dates listed in Article II. Therefore, any extension beyond the twelve (12) month period will be evaluated and may result in additional fees being due to MEDITECH.

B. CORRECTION OF PROGRAM ERRORS

At no additional cost to Customer MEDITECH agrees to correct, during normal business hours, any program errors reported by Customer. Program errors are defined as failures of the LICENSED SOFTWARE to operate in all material respects in conformity with the descriptions of such operation in Exhibit IIO. Any modifications of the LICENSED SOFTWARE made by anyone other than MEDITECH shall relieve MEDITECH of all obligations under this Paragraph.

C. EXPENSES

In connection with the support and assistance described herein, Customer agrees to reimburse MEDITECH for MEDITECH's actual and reasonable travel and out-of-pocket expenses, including the costs of coach-class air transportation, motor vehicle transportation, food and lodging (and reasonable incidentals incurred in association therewith). These expenses will be billed to Customer separately, as incurred, with payment terms of net thirty (30) days. MEDITECH will itemize each invoice by category for each major type of expense.

Customer's personnel may also participate in web-based training sessions during the Implementation Period associated with various line items of LICENSED SOFTWARE. Connection fees incurred by Customer during such sessions shall be borne by Customer.

ARTICLE IV - SERVICE

The service described herein shall commence upon the attainment of Live Status for each line item listed in Article II and will continue indefinitely until either MEDITECH or Customer terminates same by providing sixty (60) days written notice to the other. Termination of service by either party eliminates the duties and obligations of both parties detailed in this Article, in Article I(A)(2) and in Article I(B)(2) of this Agreement.

A. ROUTINE/EMERGENCY SERVICE

MEDITECH will make available to Customer both routine and emergency service, via telephone contact with MEDITECH personnel and network access as described in Article I(B)(6), for the purpose of resolving system problems which will be addressed as follows:

1. If the problems result from program errors in the LICENSED SOFTWARE, MEDITECH shall correct such program errors and shall exercise its best efforts to assure that the same is accomplished as expeditiously as possible. Program errors are defined as failures of the LICENSED SOFTWARE to operate in all material respects in conformity with descriptions of such operation in Exhibit II
2. If the problems originate from incorrect use of the LICENSED SOFTWARE or from a computer equipment malfunction which results in data base errors which may require MEDITECH's assistance for correction, MEDITECH will generally provide such assistance, however, depending on the efforts to be expended, MEDITECH reserves the right to charge Customer for the associated consulting time. Incorrect use of the LICENSED SOFTWARE is defined as data processing procedures not in conformity with such procedures as described in Exhibit II
3. If the problems originate in Customer's computer network or in software not covered by this Article or result from modifications to the LICENSED SOFTWARE made by any one other than MEDITECH, MEDITECH's responsibility shall be limited to providing assistance and advice to enable Customer to determine appropriate remedial action to be taken by Customer or others (not by MEDITECH) to resolve such problems.

Routine service shall be available between 8:30 a.m. and 5:30 p.m., Monday through Friday, Eastern Time, excluding Federal holidays. For those line items of LICENSED SOFTWARE which have been transferred to the MEDITECH Client Services Division, the hours will be extended until 10:00 p.m. Emergency service will be available at any other time and at no additional cost for any line items that have attained Live Status.

B. ENHANCEMENT SERVICE

1. MEDITECH shall make available to Customer, at no additional license fee, all enhancements of the LICENSED SOFTWARE which MEDITECH makes generally available to its other customers. Enhancements include all amendments, corrections, and updates to the LICENSED SOFTWARE, including releases which migrate from one version of software to another.

2. MEDITECH acknowledges that Federal and State governments may mandate compliance by Customer with various regulatory requirements, some of which may necessitate modifications to the LICENSED SOFTWARE. Therefore, MEDITECH will, as far as technically feasible and within a reasonable period of time, modify the specific software capabilities of the LICENSED SOFTWARE documented within the attached Exhibit II so that Customer may comply with mandated Federal and State requirements to which it is subject. (NOTE: MEDITECH reserves the right to charge Customer for additional functional capabilities beyond that documented in Exhibit II, however, MEDITECH will exercise its best efforts to minimize any such charges.)

C. EXPENSES

In connection with the service described in this Article IV, if travel to Customer's site is necessary, Customer agrees to reimburse MEDITECH for any actual and reasonable travel and out-of-pocket expenses, however, no travel will be initiated without Customer's prior approval. These expenses will be billed to Customer separately, as incurred, with payment terms of net thirty (30) days. Customer's personnel may also participate in web-based sessions for additional training, workshops or seminars associated with various line items of LICENSED SOFTWARE. Connection fees incurred by Customer during such sessions shall be borne by Customer.

ARTICLE V - OTHER TERMS & CONDITIONS

- A. MEDITECH has provided to Customer a separate Business Associate Agreement and a separate Security Rule Agreement that comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as they pertain to Customer's relationship with MEDITECH and software licensed from MEDITECH.

B. SYSTEM COORDINATOR

Provided the service described in Article IV has not been terminated, MEDITECH will act as the first point of contact in order to assist Customer in the resolution of system problems and will coordinate and cooperate with other vendors in resolving problems which do not result from errors or defects in the LICENSED SOFTWARE (including system problems arising from computer equipment malfunctions).

C. NO PUBLICITY REFERRING TO PARTIES

Each party agrees that it shall not use the name of the other party for any public relations, promotional or sales purpose, without the prior written consent of such party.

D. IMPLEMENTATION TEAM

In the event that any member of the MEDITECH implementation team is not acceptable to Customer's Project Coordinator, Customer may notify MEDITECH and request consideration of replacement of that individual. MEDITECH agrees to evaluate in good faith any such request to arrive at a resolution which satisfies the best interests of the parties hereto. MEDITECH personnel assigned to Customer's implementation shall be appropriately qualified and remain assigned to Customer's installation for the first sixty (60) days of the service period recited in Article IV.

- E. MEDITECH shall maintain, throughout the performance of its obligations under this Agreement, a policy of worker's compensation insurance with such limits as may be required by the applicable statutory regulations to which it is subject, a policy of comprehensive general and automobile liability insurance for hired and non-owned vehicles with combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000), and a policy of errors and omissions liability insurance with combined single limits of not less than one million (\$1,000,000) and three million (\$3,000,000) in the aggregate limits.

ARTICLE VI - ENTIRE AGREEMENT

This Agreement, including Exhibits I through II, is the entire agreement between the parties hereto with reference to the subject matter hereof. Warranties, expressed or implied, regarding the LICENSED SOFTWARE are exclusively as stated herein; any and all prior or contemporaneous warranties, representations, understandings or agreements are specifically and intentionally excluded. This Agreement may not be modified or amended except by an Amendment in writing between the parties. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement shall not prevent a subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

IN WITNESS WHEREOF each party has executed this Agreement as a sealed instrument this _____ day of July, 2010.

Customer	Arrowhead Regional Medical Center
By	_____
Name	_____
Title	_____

MEDITECH	Medical Information Technology, Inc.
By	_____
Name	<u>Howard Messing</u>
Title	<u>President & Chief Operating Officer</u>

EXHIBIT I

COMPUTER NETWORK CONFIGURATION

Computer network configuration to be determined by Customer in conjunction with MEDITECH and subject to MEDITECH's approval. Prior to placing a firm order for the components of the computer network configuration, Customer will provide to MEDITECH for review and final approval a written description of the components it intends to order, including computers, network, non-MEDITECH software, etc.