SOFTWARE AGREEMENT

This CUSTOMER AGREEMENT (this "**Agreement**") is made and entered into effective as of January 9, 2018 (the "**Effective Date**") by and between McKesson Medical-Surgical Inc. ("**MMS**"), a Virginia corporation, having its principal place of business at 9954 Mayland Drive, Suite 4000, Richmond, Virginia 23233, and The County of Monterey on behalf of Natividad Medical Center ("**Customer**"), having its principal place of business at 1441 Constitution Blvd., Salinas, CA 93906 (**Address**).

1. **DEFINITIONS.**

   a. "**Applicable Taxes**" means all value-added, sales, use, import, duties, customs or other taxes applicable to the products under this Agreement, except for any taxes based upon MMS's net income.

   b. "**Billable Expenses**" means all actual, out-of-pocket expenses incurred by MMS while performing the Services, including, but not limited to; airfare, lodging, car rental, meals and incidentals.

   c. "**Change Request**" means a written, mutually agreed upon change to Customer's requirements and/or the scope of the Services, delivery schedule and/or Service Fees.

   d. "**Confidential Information**" means any data or information regarding (a) the business or technical operations of a party which is not generally known to the public and affords such party a competitive advantage, including but not limited to, information regarding product development, suppliers, marketing strategies, operations, business opportunities, customers, company sales, internal performance results and personnel; (b) proprietary software, including but not limited to; concepts, designs, documentation, reports, data, specifications, source code, object code, flow charts, file record layouts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable; (c) any other information of MMS or Data Innovations that is specifically designated by the disclosing party as confidential or proprietary; and

   e. "**Data Innovations**" or "**DI**" means Data Innovations LLC, a Delaware limited liability company, including any affiliates, successors or assigns.

   f. "**Deliverables**" means any tools, databases, software (including adaptive application libraries and templates), invention, development, methodology or innovation conceived, developed or supplied by MMS in providing the Services and the deliverables resulting from the Services.

   g. "**Hardware**" shall mean all equipment sold or provided to Customer by or through MMS pursuant to this Agreement.

   h. "**DI Marks**" means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with the DI Products or the business of Data Innovations.

   i. "**Products**" means, collectively, the Software and the Hardware.

   j. "**DI Property**" means (a) Data Innovations' business integration and business process management technologies, including formats, structure, design, tools, databases, and

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all related software (including the DI Software), documentation, ideas, methods, methodologies, (b) any tools, databases, software (including adaptive application libraries and templates), invention, development, methodology or innovation conceived, developed or supplied by Data Innovations, and (c) any and all derivative works, enhancements or other modifications to any of the above. Subject only to the licenses expressly granted in this Agreement, as between Data Innovations and Customer, Data Innovations shall be the sole owner of all Intellectual Property Rights in and to the DI Property. Data Innovations may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Customer provides to Data Innovations or otherwise makes with respect to the DI Products, Services or Documentation without any obligation to Customer. To the extent that Customer has or later obtains any Intellectual Property Rights in and to the DI Products or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Customer hereby disclaims such rights, assigns and transfers such rights exclusively to Data Innovations, and agrees to provide reasonable assistance to Data Innovations, to give effect to such assignment and to protect, enforce and maintain such rights.

k. **"Software"** means (i) all application(s) or computer software in machine-readable, object code form, licensed by MMS to Customer hereunder, and including the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided, (ii) the Documentation, (iii) all Drivers and (iv) and all Updates, but shall not include any open- source or other-vendor software that may be distributed with the Software or recommended in connection with installation and use of the Software.

l. **"Documentation"** means the user guides and manuals provided by MMS to Customer hereunder.

m. **"Driver"** means the software developed by MMS and/or Data Innovations to connect laboratory devices and information systems to the Software. Drivers communicate via TCP/IP, Serial, File I/O, ODBC and more.

n. **"Due Date"** means thirty (30) days from the date of a certified invoice at the Auditors Controllers' Office an invoice on which all amounts billed by MMS will be due and payable.

o. **"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, or other catastrophes; labor disturbances; freight embargoes; or delays of a supplier or subcontractor due to such causes.

p. **"IM"** means Data Innovation's proprietary software application, Instrument Manager™.

q. **"Intellectual Property Rights"** means all patents, improvements, concepts and discoveries (whether patentable or not), copyrights, models, designs, trademarks, service marks, trade names, brand names, trade dress, and other proprietary rights or applications thereof which pertain to the Products, whether registered or not.

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r. **"MMS Marks"** means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with MMS or the business of MMS.

s. **"Scheduled Date"** means the specific date set by the parties to commence the Services.

t. **"Service Fees"** means all fees for the performance of Services, including all actual Billable Expenses.

u. **"Services"** means the maintenance and support and consulting services provided by MMS hereunder, including training, implementation and installation, as set forth in one or more SOWs, and may include Rules-Based Services.

v. **"Update(s)"** means an error correction, patch, bug fix, minor modification or new release that is generally made available to licensees at no additional charge, other than media and handling charges. Updates shall not include any major modifications, options or future products that MMS, in its sole discretion, determines to license separately and charge a separate license fee.

2. **SERVICES.** The Services to be provided under this Agreement shall be described in a separate statement of work ("SOW"), attached hereto by reference. MMS may subcontract or delegate to Data Innovations the performance of all or any portion of the Services hereunder.

3. **FEES.**

1. **Software.** Customer shall pay to MMS the Software Fees set forth in each applicable SOW. Services are to be performed both on site at Customer's facility and off site (as indicated on the SOW). The number of Service hours stated on the SOW will be allocated to Customer to consult with MMS on the items requested. MMS will be responsible for tracking the number of Service hours performed, and additional Service hours may be purchased by Customer with an updated SOW to be processed only by written amendment to this Agreement and which is signed by both parties. MMS's performance is dependent on Customer carrying out its obligations as set forth in this Agreement and the applicable SOW, and Customer acknowledges that the fees hereunder take into account these obligations.

4. **CHANGE REQUEST.** Customer acknowledges and agrees that the Service Fees set forth in each SOW are only for the Services described in such SOW. If any of the following occur MMS's time of performance and the related Service Fees under a SOW may be increased or decreased as MMS may reasonably determine:

(i) Customer's requirements and/or the scope of the Services described in the SOW change;

(ii) Customer fails to carry out its obligations as set forth in the SOW; or

(iii) Customer or any governmental agency authorized to regulate or supervise Customer makes a special request that impacts MMS's normal Services schedule under the SOW;

However, any such change to the SOW shall be effective only when both parties execute a written Amendment to this Agreement to acknowledge the change and, if required, the Board of Supervisors may be required to provide final approval of the Amendment prior to execution.

5. INVOICING; PAYMENT TERMS.

a. MMS shall submit such invoice periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by MMS for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Customer shall certify the invoice, either in the requested amount or in such other amount as Customer approves in conformity with this Agreement, within thirty to forty-five (30-45) business days of receipt of the invoice and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

b. **Payment.** Customer shall pay MMS all Services Fees and other amounts due hereunder, plus Applicable Taxes, by the Due Date. An invoice for the Services Fees will be generated by MMS upon completion of the Services or individual milestones, as detailed in the SOW.

c. **Tax Exempt.** If Customer is not subject to any or all Applicable Taxes, then Customer is responsible for submitting the applicable documentation to MMS. If this document is not provided prior to completion of the Services, Applicable Taxes will be calculated and included on Customer's invoice.

6. ORDERING AND DELIVERY.

a. For licensing of the Products during the Term of this Agreement, Customer shall issue written purchase orders on a fiscal year basis. Such purchase orders shall be the sole manner in which Customer may place orders for the Products with MMS, unless otherwise mutually agreed to by the parties. Purchase orders shall be issued to MMS with the location information of where the Products will be installed and used.

b. Risk of loss or damage, including as a result of negligence of MMS, shall remain with MMS until the Products are received by Customer. License shall pass to Customer as of the date of receipt by Customer (or the date of shipment if the Products are drop-shipped).

c. MMS will ship via a carrier of MMS's choice, using shipping account information provided by Customer. Customer shall pay all shipping expenses (except as otherwise expressly set forth in an SOW). Purchased Software will be delivered in a tangible form.

d. MMS, in its sole discretion, will determine which MMS office each Customer order will be fulfilled from.

e. MMS shall deliver the Products to Customer, and Customer shall accept or reject delivery of the Products within thirty (30) days of the date of delivery of the Products. In the event of a shipping delay, MMS shall promptly notify Customer. Purchased Software will be delivered in a tangible form.

7. LICENSE GRANTS AND OWNERSHIP.

a. **License to Software and Documentation.** The parties agree the software is to be installed at Customer's facility. Subject to the terms and conditions of this Agreement, MMS grants Customer, for the Term of this Agreement (or for a shorter period if so

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indicated on the SOW), a non-exclusive, non-transferable, non-sublicensable license to use the Software and Documentation identified in the applicable SOW solely for Customer's own internal business operations.

b. **License to Deliverables.** Subject to the terms and conditions of this Agreement, MMS grants Customer a non-exclusive, non-transferable license to use the Deliverables identified in the applicable SOW solely for Customer's own internal business operations.

c. **Restrictions.** Customer acknowledges that the Software, Documentation and Deliverables are licensed and not sold. Customer shall not, nor permit others to, (a) decompile, reverse assemble or otherwise reverse engineer the Software, or Deliverables, (b) use the Software, or Deliverables for third party transactions, commercial time-sharing, rental or service bureau use, or, except as expressly authorized herein, publicly perform or publicly display the Software, Documentation or Deliverables, or (c) make copies of the Software, Documentation or Deliverables, except for one copy for archival or backup purposes or disclosure required by law, regulatory compliance or laboratory accreditation purposes.

8. **OWNERSHIP.**

a. Customer acknowledges that Data Innovations shall have sole and exclusive ownership of all right, title and interest, including Intellectual Property Rights, in and to the DI Products and DI Marks, including all future Updates, modifications and new versions, releases, compilations and translations thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to Customer herein. This Agreement does not provide Customer with title or ownership of the DI Products, but only a right of limited use. All suggestions, improvements, corrections, and other contributions provided by Customer that are related to DI Products or and DI Marks shall become the property of Data Innovations and Customer shall to assign any such right to Data Innovations. Use of the DI Products and DI Marks shall inure only to the benefit of Data Innovations.

b. Customer shall not use the DI Marks or MMS Marks as part of Customer's corporate or trade name, if any, or permit any third party to do so without the prior written consent of Data Innovations or MMS, as applicable.

c. Customer shall promptly notify MMS of any unauthorized access or use of the DI Products of DI Marks, or similar marks and all infringements, imitations, illegal use, or misuse of the Intellectual Property Rights that comes to Customer's attention. Data Innovations will have the right but not the obligation, to prosecute and defend, as the case may be, all claims of infringement, imitations, illegal use, or misuse of the Intellectual Property Rights.

d. All data and information input into the Products by Customer is and shall remain the sole and exclusive property of Customer.

9. **CONFIDENTIAL INFORMATION PROTECTION.**

   a. Each party agrees that it has no interest in or right to use the Confidential Information of the other except in accordance with the terms of this Agreement.

   b. Both parties acknowledge that Customer is a public agency subject to the disclosure requirements of the California Public Records Act (CPRA). Both parties acknowledge that this agreement will be made available to the public at the time it is up for approval by the Monterey County Board of Supervisors.

10. The parties agree that a disclosure subject to applicable law or legal process shall in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information except that all parties understand the County of Monterey doing business as Natividad Medical Center, is a public entity and as such certain documents, including the contract are deemed to be public documents.RULES-BASED SERVICES.

   a. As part of the Services provided under this Agreement, MMS may provide Customer with Rules-Based Decision Processing services ("Rules-Based Services") which may include:

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

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

   b. Customer agrees and acknowledges that the content of any algorithms, and any corresponding results and actions, shall be solely Customer's responsibility. While MMS 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 MMS to make final determinations regarding the content or direction of any Customer rules or processing decisions.

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

11. **WARRANTIES AND DISCLAIMERS.**

   a. **By Customer.** Customer represents and warrants that it owns or has obtained all rights in the materials and data (including patient information) necessary so that MMS's use of such materials and data to provide Services to Customer does not violate any intellectual property rights or other rights (e.g., privacy) of a third party. Customer is solely responsible for the results to be achieved from receiving the Services and from using the Products.

   b. **Software Warranty.** MMS provides no direct warranties for the Software or the related media upon which the Software is written. All warranties for the Software will be transferred to Customer upon Date of Shipment. MMS does not warrant that Customer's use of the Software will be error-free, virus-free or uninterrupted.

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c. **Services Warranty.** MMS warrants that the Services will be performed with reasonable skill and care by competent and trained personnel. As Customer's exclusive remedy and MMS's sole obligation for breach of this warranty, MMS shall use commercially reasonable efforts to correct defective Services at no additional charge, provided that Customer gives MMS specific written notice of the defective Services within thirty (30) days after the Services are performed.

d. **Third Party Software.** Any other-vendor software ("Third Party Software") that may be distributed with the Software or recommended in connection with installation and use of the Software is provided or recommended for Customer's convenience only, and MMS makes no representation or warranty of any kind regarding such Third Party Software, offers no support for such Third Party Software and shall have no liability associated with its use.

e. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, MMS DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS (WHETHER ORAL, WRITTEN OR EXPRESS OR IMPLIED), WHETHER STATUTORY, ARISING BY LAW OR CUSTOM, FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY TERMS AS TO QUALITY, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THERE ARE NO WARRANTIES BEYOND THE DESCRIPTION OF THE FACE HEREOF.

12. **LIMITATION OF LIABILITY.** EXCEPT FOR BREACHES OF OBLIGATIONS OF CONFIDENTIALITY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING WITHOUT LIMITATION CLAIMS FOR LOST REVENUE OR PROFITS, LOSS OF INCOME, OR OTHER ECONOMIC LOSS, LOSS OF DATA OR CONTENT OR BUSINESS INTERRUPTION), ARISING OUT OF BREACH OF WARRANTIES, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF OR OTHERWISE OR RELATED TO THE SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT OR ANY USE OR FAILURE TO BE ABLE TO USE THE SERVICES OR PRODUCTS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF PURPOSE OF ANY LIMITED REMEDY. Except for breaches of obligations of confidentiality, the maximum aggregate liability of MMS for damages for any and all causes whatsoever, and Customer's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall not exceed an amount equal to the the insurance thresholds stated in Section 19 of this Agreement giving rise to the action during the six (6) months immediately preceding the breach for which damages are claimed. The existence of one or more claims will not enlarge this limit. Customer acknowledges that MMS's pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy specified in this Agreement fails of its essential purpose.

13. INDEMNIFICATION.

a. **By MMS.** Subject to the limitations set forth in this Agreement, MMS will defend or settle, at its option, any third party claims brought against Customer alleging that the Products delivered under this Agreement infringes the copyrights of any third party, and will pay such damages or costs as are finally awarded against Customer attributable to such claim. Notwithstanding the foregoing, MMS will have no liability for any claim of arising out of or related to: (i) any information, design, specification, instruction, software, data or material provided by Customer to MMS and incorporated into the Products; (ii) incorporation into the Products of any feature or information specifically requested by Customer; (iii) Customer's use of the Products in combination with any information, design, specification, instruction, software, data or material not provided by MMS; (iv) Customer's use of a superseded or altered version of some or all of the Products if infringement would have been avoided by use of a later and/or unaltered version of the Products that are provided to Customer by MMS; or (v) modification of the Products unless the modification was made or approved expressly by MMS. Should the Products become, or in the opinion of MMS is likely to become, the subject of such a third party claim, MMS may, at its sole option (a) procure for Customer a license to use the Products at no additional cost to Customer; (b) modify, in whole or in part, the Products to make them non-infringing; (c) replace the Products with non-infringing Products which are functionally equivalent or, if none of (a), (b), or (c) are available, then (d) terminate the license for the infringing Products and refund the prorated Service Fees paid for such Products. THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF MMS 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 DI PRODUCTS.

MMS shall indemnify, defend, and hold harmless The County of Monterey on behalf of Natividad Medical Center (hereinafter the County), its officers, agents and employees from any claim, liability, loss, injury or damage rising out of, or in connection with, performance of this Agreement by MMS and/or its agents, members, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to this Agreement to provide the broadest possible indemnification for the County. MMS shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred by the County with respect to any litigation in which MMS is obligated to indemnify, defend and hold harmless The County under this Agreement.

b. **By Customer.** The County shall indemnify, defend, and hold harmless MMS, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by the County and/or its agents, members, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by MMS. It is the intent of the Parties to this Agreement to provide the broadest possible coverage for MMS. The County shall reimburse MMS for all costs, attorneys' fees, expenses and liabilities incurred by MMS with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless MMS under this Agreement.

c. **Procedures.** The indemnification obligations of the parties under this Agreement are conditioned upon the indemnified party (i) giving prompt written notice of the claim to the indemnifying party, (ii) granting sole defense or settlement of the claim or action to the indemnifying party, and (iii) providing reasonable cooperation to the indemnifying party and, at the request and expense of the indemnifying party.

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14. TERM, RESCHEDULING, TERMINATION AND SURVIVAL.

    a.   **SOWs:**

        i.   **Term.** The term is effective January 9, 2018 through January 8, 2023.

        ii.   **Rescheduling of Services.** If, after the Scheduled Date has been agreed upon by the parties, Customer requests to reschedule the Services, such written rescheduling request shall be provided to MMS at least twenty (20) business days prior to the Scheduled Date.

        iii.   **Effect of Rescheduling.** If the Services are rescheduled at the request of Customer, Customer shall be responsible for any reasonable fees and expenses incurred by MMS as a result of the rescheduling, including without limitation transportation change fees.

        iv.   **Termination with Cause.** If either party materially breaches the terms of an individual SOW (including, without limitation, any obligation to pay Services Fees or any other amounts due hereunder) and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may immediately terminate such SOW.

        v.   **Termination of the Agreement.** If the Agreement is terminated for any reason, all SOWs still in effect as of the date of termination of the Agreement ("Open SOWs") shall immediately terminate.

        vi.   **Effect of Termination.** Upon any termination of a SOW the terms and conditions of Section 14.b.v below shall apply as directly applicable to the terminated SOW.

    b.   **Agreement:**

        i.   **Term.** The term of this Agreement shall begin upon the Effective Date and shall continue in full force and effect for a period of five (5) years (the "Initial Term"), unless earlier terminated in accordance with the terms of this Agreement.

        ii.   **Termination Without Cause.** Either party may terminate this Agreement without cause upon sixty (60) days' written notice to the other.

        iii.   **Termination with Cause.** If either party materially breaches this Agreement (including, without limitation, any obligation to pay Services Fees or any other amounts due hereunder) and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may immediately terminate this Agreement.

        iv.   **Termination for Bankruptcy.** This Agreement, and any effective SOWs, 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.

        v.   **Effect of Termination.** Upon any termination of this Agreement:

            a)   All licenses granted herein, and under any applicable SOW, if any, shall

immediately terminate.

b) MMS shall cease performing the Services, and Customer shall immediately cease using delivered Products. Customer shall provide MMS with reasonable access to its facilities for the purpose of removing the Products.

c) Each party shall promptly return to the other all Confidential Information of the other party that it may have in its possession or control.

d) Any applicable Services Fees related to Services performed by MMS through the date of termination, shall become immediately due and payable.

c. **Survival.** The provisions of this Agreement and any Open SOW, 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 Products after termination of this Agreement and all Open SOWs if such termination is for Customer's material breach.

15. **ANTI-BOYCOTT.**

a. Customer agrees that the anti-boycott provisions of the U.S. Export Administration Act and the Tax Reform Act govern its conduct under this Agreement. Customer acknowledges that these provisions prohibit agreements to refuse to do business with a boycotted country that is friendly to the United States or to provide information in support of such a boycott. By way of example, prohibited conduct includes:

(i) Agreements to refuse or actual refusal to do business with or in Israel (or any other country friendly to the United States) or with blacklisted companies;

(ii) Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality;

(iii) Implementing letters of credit containing prohibited boycott terms or conditions.

b. Consistent with the anti-boycott regulations, Customer agrees to report to MMS any request that Customer receives to take actions to comply with, further, or support an unsanctioned foreign boycott.

16. **FOREIGN CORRUPT PRACTICES ACT.**

   a. Customer understands that Data Innovations is subject to the U.S. Foreign Corrupt Practices Act of 1977 (as amended) (the "**FCPA**") and therefore risks serious civil and criminal penalties if Data Innovations becomes involved in making payments in cash or in kind to foreign government officials, political candidates or political parties to obtain and maintain business. Customer acknowledges that it has reviewed and understands the FCPA as it relates to the Products. Accordingly, Customer shall not offer, promise, or pay (or use any commission payment or other payment or benefit received from Data Innovations) to offer, promise, or pay) any money, gift or any other thing of value to any person for the purpose of influencing official governmental actions or decisions in obtaining or retaining business for the Products or Services or take any other action which would violate the FCPA. If Customer becomes aware of any violation of the FCPA related to the Products, Customer hereby covenants and agrees to promptly report the details of such violation to MMS.

   b. Customer acknowledges that the FCPA governs activities performed on behalf of Data Innovations and Customer confirms to the best of Customer's knowledge that Customer has taken no action, on behalf of or even indirectly for Data Innovations that may have violated the FCPA.

17. **EXPORT COMPLIANCE.** Customer understands that the Software is subject to all the export laws of the United States, including, but not limited to, the Export Administration Regulations, 19 C.F.R. 730-744 (2002) (the "EAR") (the EAR and all other export laws of the United States are collectively referred to herein as the "U.S. Export Laws"). Customer acknowledges that it has reviewed and understands the U.S. Export Laws as they relate to the Products, including, but not limited to, the component of the U.S. Export Laws that prohibits the Products from being, directly or indirectly, exported or re-exported to any person, entity or country debarred, suspended or under embargo by the United States Government. Customer represents and warrants that it is not located within an embargoed nation and that it is not otherwise prohibited under the Export Laws from receiving the Products. Further, Customer agrees not to export, re-export or otherwise release the Products in violation of any U.S. Export Laws. If Customer becomes aware of any violation of export laws related to the Products, Customer hereby covenants and agrees to promptly report the details of such violation to MMS.

18. **GENERAL.**

   a. **Severability.** If any provision hereof is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining portions shall remain in full force and effect.

   b. **No Waiver.** No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof.

   c. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles of any jurisdiction.

   d. **Publicity.** With Customer's prior approval which shall not be unreasonably withheld, MMS may use Customer's name as a Customer reference, including a general description of its resumes, customer list, case studies, and in other promotional information including, but not limited to, press releases, brochures, reports, letters, white papers and electronic media such as e-mail or Web pages. Customer agrees that it may serve as a reference for prospects and will provide objective and independent comments to any prospect that may call upon Customer as a reference. Within thirty (30) days of this Agreement being executed, Customer and MMS may issue a press release announcing the business relationship in this Agreement. The substance/content of such press release is subject to approval by Customer.

e. **Force Majeure.** Except with regard to payments due MMS, neither party shall be liable for any delays or failures in performance due to an event of Force Majeure. However, MMS will make all reasonable efforts to continue services under the contract.

f. **Entire Agreement.** This Agreement, and each applicable attached SOW, together constitute and contain the entire understanding and agreement of the parties with respect to the subject matter herein and supersedes any and all proposals, agreements, communications, representations, discussions, undertakings, or advertising, whether written or oral, of the parties with respect to the subject matter hereof, including any terms and conditions in any purchase order, or other document furnished by Customer that are in addition to or inconsistent with this Agreement. All such additional terms and conditions are hereby expressly rejected. In the event of any conflict or inconsistency between the applicable terms of any other agreements and the terms of this Agreement, the terms of this Agreement shall govern and control with respect to the subject matter herein.

g. **Amendment.** This Agreement may not be modified or altered except by written amendment signed by an authorized officer both parties.

h. **Relationship of the Parties.** Nothing in this Agreement shall be construed to create any relationship between MMS and Customer other than that of independent contracting parties.

i. **Third Party Beneficiaries.** The parties hereby agree that Data Innovations is an express, intended third-party beneficiary of this Agreement, with the right to directly enforce against Customer the covenants and obligations of Customer set forth herein.

j. **Assignment.** Except as expressly provided in this Agreement, neither party may assign (whether by operation or law or otherwise), sublicense, share, pledge, rent or transfer any of its rights under this Agreement or any SOW without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, either party shall have the right to assign its rights and obligations hereunder (including any SOWs) whether upon change of control, or by sale of assets, reorganization, merger or otherwise provided such assignment is a) not to a direct competitor of the other party; (b) such assignment does not interfere with a party's performance obligations under this Agreement and any SOW; (c) such assignment does not change the scope of the Services and the intent contemplated by the parties under this Agreement and any SOW; and (d) such assignment is not pursuant to bankruptcy proceeding. Any assignment or transfer in violation of the above is void. This Agreement and any SOW will be binding on the parties, their successors and permitted assigns.

k. **Notices.** All notices required under this Agreement, and any SOW, shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the following:

Natividad Medical Center
1441 Constitution BLVD
Salinas, CA 93906
Attention: CONTRACTS
MANAGER
Telephone No: 831-755-4111
Fax No: 831-757-2592

McKesson Medical Surgical Inc.
1951 Bishop Lane, Suite 300
Louisville, Kentucky 40218
Attention Veronica Price
Telephone No: (502) 363-1891 x 1426
Fax No: (502) 364-1610

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

    i. **Dispute Resolution.** To initiate Dispute Resolution, a party must give written notice to the other party as to the details of the Dispute ("Dispute Notice"). Upon receipt of the Dispute Notice the following designated representatives of the parties shall meet within the number of days specified below:

        1. *Step One:* The MMS Service Consultant shall confer or meet with Customer's corresponding personnel within five (5) days of receipt of the Dispute Notice by either party.

        2. *Step Two:* If the Dispute remains unresolved, the Services Manager for MMS shall confer or meet with Customer's corresponding management level personnel within the next five (5) days.

        3. *Step Three:* If the Dispute remains unresolved MMS's VP Lab Intelligence shall confer or meet with Customer's corresponding management level personnel within five (5) days thereafter.

    ii. **Mediation.** If the Dispute cannot be settled internally by Dispute Resolution then the parties will attempt to settle their Disputes by third party mediation ("**Mediation**"). The parties will nominate an independent third party trained as a mediator (the "**Mediator**") who will act fairly and with complete impartiality towards the parties. The language of any Mediation shall be English.

    iii. **Relief.** The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, without breach of this Agreement.

    iv. **Court of Competent Jurisdiction.** In the event Mediation fails to resolve a Dispute, then any party who engaged in good faith in the Mediation process may pursue its rights under this Agreement in any court of competent jurisdiction in Monterey, California.

m. **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 Agreement, and any SOW, may result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the non-breaching party will be entitled to seek equitable relief in addition to its other available legal remedies.

n. **Counterparts.** This Agreement, and each SOW, 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.

o. **Facsimiles.** A fully executed facsimile, pdf copy or electronic transmission of this Agreement, and each SOW, shall serve as an original and shall be considered binding upon the parties.

p. **Authority.** Each person executing this Agreement on behalf of any entity hereby represents and warrants that he or she is duly authorized and has full authority to execute and deliver this Agreement.

19. INSURANCE

a. Evidence of Coverage: Prior to commencement of this Agreement, MMS shall provide a "Certificate of Insurance" with proof that coverage as required herein is maintained.

b. The certificate of insurance shall be sent to Customer's Contracts/Purchasing Department, unless otherwise directed. MMS shall not receive a "Notice to Proceed" with the work under this Agreement until it has provided proof of all insurance required and County has approved such insurance.

c. Qualifying Insurers: All coverages except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less that A-VII, according to the current Best's Key Rating Guide except for self-insurance and captive insurance or a company of equal financial stability that is approved by Customer's Contracts/Purchasing Director.

d. Insurance Coverage Requirements: MMS shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following limits of liability:

   i. **Commercial General Liability Insurance**, including premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Property Damage, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of $1,000,000 per occurrence and annual aggregate.

   ii. **Business Automobile Liability Insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of $per $500,000 per accident.

   iii. **Statutory Workers' Compensation Insurance**, and Employer's Liability with limits of $1,000,000 disease each person, $1,000,000 each accident and $1,000,000 each disease policy limit.

e. All insurance required by this Agreement shall be with a company acceptable to County. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date MMS completes its performance of services under this Agreement.

f. Commercial general liability and automobile liability policies shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County **and that the insurance of County shall not be called upon to contribute** to a loss covered by the MMS's insurance for the negligent acts, errors or omissions solely caused by MMS, except to the extent any liability, loss or damage is caused by County.

g. Prior to the execution of this Agreement by County, MMS shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the MMS has in effect the insurance required by this Agreement.

h. MMS shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send annual certificates of insurance to Customer's Contracts/Purchasing Department. If the certificate is not received by the expiration date, County shall notify MMS and MMS shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by MMS to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate the Agreement immediately.

MMS and its affiliates' use of self-insurance and captive insurance is deemed to satisfy all insurance requirements set forth under this entire Agreement.

20. Health Information Privacy and Protection
   a. Due to potential exposure of patient health information the parties agree that the attached Business Associate Agreement (Exhibit A) is incorporated into this Agreement.

[End of Text; Signature Page Follows]

IN WITNESS WHEREOF, Customer and MMS have executed this Customer Agreement as of the date first written above.

McKesson Medical-Surgical Inc.

Veronica A Price (signature)
_____

Signature

CONTRACT SPECIALIST
_____

Title

County of Monterey on behalf of Natividad Medical Center

_____

Signature

_____

Title

Return this signed Agreement in .pdf format as an email attachment or via mail to:

McKesson Medical-Surgical Inc.
1951 Bishop Lane, Suite 300
Louisville, Kentucky 40218
Attention: Veronica Price, VPrice@labsco.com

Reviewed as to fiscal provisions

_____
Auditor-Controller
County of Monterey

1-29-18

(signature)
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Dep coco
1-23-18

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STATEMENT OF WORK

This STATEMENT OF WORK (the "SOW"), effective January 9, 2018 (the "**Effective Date**"), is made and entered into by and between McKesson Medical-Surgical Inc. ("**MMS**"), a Virginia corporation, having its principal place of business at 9954 Mayland Drive, Suite 4000, Richmond, Virginia 23233, and the County of Monterey on behalf of _____Natividad Medical Center_____ ("**Customer**"), having its principal place of business at_____ 1441 Constitution Blvd, Salinas, CA 93906_____ (**Address**).

This SOW is subject to the terms and conditions of the Customer Agreement entered into between the parties on January 9, 2018 (the "**Agreement'**) to which it is a supplement. All terms and conditions in the Agreement are incorporated by reference herein and shall remain unchanged and in effect. All Services will be provided under this SOW and terms and conditions of the Agreement. In the event of any conflict between the terms and conditions of this SOW and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control. All definitions not set out in this SOW shall have the meaning as set forth in the Agreement.

1. **SERVICES.**

    a.   **Description of Services**. MMS will perform the following Services under this SOW:

    - Installation and training of DI Software.

    - Training and assistance with implementation of non-MMS provided instrument interfaces.

    - Training and assistance with implementation of MMS provided instrument interfaces.

    - Assistance with installing a thin client connection license.

    - Training and assistance with Auto-Verification algorithm design and implementation assistance of rules based decision processing.

    - Training and assistance with Maintenance manager profile design, and implementation assistance.

    - Training and assistance with design and implementation of Laboratory Intelligence Algorithms and key performance indicators (KPIs).

    - All training outlined above will be adjusted based on Customer's needs.

b. **General description of SOW.**

MMS is providing:
- Software License
- Consultation Services

The software product as stated in Attachment A herein shall provide the following functionalities based on features:
- Transmission of PT results to CAP;
- Autoverification on selected instrument interfaces;
- Electronic maintenance management; and
- Real-time metrics via lab intelligence.

c. **Service Considerations.**

- Installation by MMS.

- Implementation assistance by MMS.

- Advanced customer training and system optimization by MMS.

- End product is ultimate responsibility of Customer.

- Customer will only be billed upon shipment of product.

- If Services are to be performed on site at Customer's facility (as indicated on Attachment A), there will be one on site visit unless otherwise agreed in writing by MMS and Customer.

- The number of Service hours stated on Attachment A will be allocated to Customer to consult with MMS on the items requested.

- MMS will be responsible for tracking the number of Service hours performed. Upon signed written approval by both parties, additional Service hours may be purchased by Customer at the hourly rate set forth on the invoice.

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

a. Customer shall be responsible for any external facing interface related to the DI Software including logistics and all costs associated therewith, including LIS (Laboratory Information System) interface fees and external reference laboratory fees.

b. Customer will assign an individual to act as Customer's primary point of contact with respect to the Services.

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

d. Customer shall perform and/or provide in a timely fashion the tasks and

Primary SD² System Specifications

Compatible Operating Systems:	Windows XP (Service Pack 3); Windows Server 2003, or Server 2003, R2, Standard Edition (32-bit); Windows Server 2003, Enterprise Edition (32-bit) (Service Pack 2); Windows Server 2008, Standard Edition (32-bit); Windows 7 Professional (32-bit); Windows Server 2008 R2, Standard Edition (64-bit), Windows 7 Professional (64-bit)

Processor:	Minimum: Intel Pentium 4 - 2.8 GHz	
Hard Disk:	1 TB	*NOTE: Additional space is required based on the amount of data to retain and duration. Funcations that are heavily dependent on storage include: Delta Chcking, Data Collection, Archiving, Specimen Management, and Moving Averages.*
Drive Speed:	7200 RPM min	
Memory Specifications:	8GB	*Specifications for memory are calculated for your specific configuration and are in addition to operating systems and other application's memory requirements.*
Connectivity:	Options include: Client/Server connectivity via TCP/IP (Static IP address), device / terminal servers, serial board, file exchange, ODBC and/or Web Services; NOTE: Must be installed with a Static IP address.	
Other (software):	Internet Explorer 9,10; ability to connect with GoToMeeting	
Other (hardware):	Monitor, Keyboard, Mouse, CD/DVD drive for install.	

Client System Specifications

Compatible Operating Systems:	Windows XP (Service Pack 3); Windows Server 2003, or Server 2003, R2, Standard Edition (32-bit); Windows Server 2003, Enterprise Edition (32-bit) (Service Pack 2); Windows Server 2008, Standard Edition (32-bit); Windows 7 Professional (32-bit); Windows 7 Professional (64-bit); Windows Server 2008 R2, Standard Edition (64-bit), Windows Server class operating systems support a maximum of five (5) Thin Clients and can be added by purchasing (CAL9s) from Microsoft; Windows 7 Professional supports a maximum of 20 Thin Clients.

Processor:	Minimum: Intel Pentium 4 - 2.8 GHz	
Hard Disk:	50 MB	*NOTE: The specifications listed are necessary for SD2 Client use. Remember to include operating system and other application software and hardware requirement.*
Drive Speed:	7200 RPM min	
Memory Specifications:	32MB	*NOTE: The specifications listed are necessary for SD2 client use. Remember to include operating system and other application system and hardware requirements.*
Network Specifications:	Network interface card installed (NIC) TCP/IP networking installed; Dynamic Host Configuration protocol (DHCP) or Static IP address; Port 1972 is needed to communicate with primary; Remote Procedure Call (RPC services) must be running to configure SD²drivers;Local Administrator privileges are required for installation; Read, write, delete access to the shared folder on the primary system must be enabled	
Other (software):	Internet Explorer 9,10; ability to connect with GoToMeeting	
Other (hardware):	Monitor, Keyboard, Mouse, CD/DVD drive for install; Bar Code scanner or bar code printer may be needed if using certain functionality as well as printer access.	

MCKESSON

SD² Report Server System Specifications *(required if Lab Intelligence is purchased)*

Compatible Operating Systems:	Windows XP (Service Pack 3); Windows Server 2003, or Server 2003, R2, Standard Edition (32-bit); Windows Server 2003, Enterprise Edition (32-bit) (Service Pack 2); Windows Server 2008, Standard Edition (32-bit); Windows 7 Professional (32-bit); Windows Server 2008 R2, Standard Edition (64-bit), Windows 7 Professional (64-bit)

Note: The Report Server (Laboratory Intelligence) requires a separate environment from the primary SD2 system although it does not require the same bit level (32-bit vs 64-bit) operating system or hardware as the primary SD2 system.

Processor:	Minimum: Intel Pentium 4 - 2.8 GHz	
Hard Disk:	80GB	*NOTE: At least 20% larger than the primary SD2 system. Data Retention will be equial to the primary SD2 system.*
Drive Speed:	7200 RPM min	
Memory Specifications:	8GB	*Must be equal to or larger than primary SD2 system.. Specifications for memory are calculated for your specific configuration and are in addition to operating systems and other application's memory requirements.*

Network Specifications:
Network interface card installed (NIC) TCP/IP networking installed; Dynamic Host Configuration protocol (DHCP) or Static IP address; Port 1972 is needed to communicate with primary; Remote Procedure Call (RPC services) must be running to configure SD²drivers; Local Administrator privileges are required for installation; NOTE: The InterSystem's Cache ODBC driver must be loaded and a System DSN connection must be established if the ODBC Database Access module has been licensed and will

Other (software): Web Browser: Internet Explorer 9,10.

Other (hardware):
Monitor, Keyboard, Mouse, CD/DVD drive for install