**CINA Foundation Suite™ Licensed Software Agreement**

**Purchased Through the DARTNet Institute**

This CINA Foundation Suite™Licensed Software Agreement Purchased Through DARTNet Institute (the "Agreement") is entered into as of the date of the last signature hereto **<<EFFECTIVE DATE>>**, by and among **<<LICENSEE>>**(“Licensee”), witha principal place of business located at **<<ADDRESS>>**, and the DARTNet Institute (“DARTNet”), a Missouri non-profit corporation, with a principal address located at 11400 Tomahawk Creek Parkway, Leawood, KS 66211. Collectively, Licensee and DARTNet shall be known as the "Parties".

WHEREAS, pursuant to the terms of a certain Non-Exclusive License Agreement (the “CINA License Agreement”) DARTNet has licensed from QED Clinical, Inc. d/b/a CINA (“CINA”) certain business application software, databases and data files referred to as the CINA Foundation Suite™ (“CFS”), which includes, without limitation, the following components:

1. The **CINA Mapper™**
2. The **CINA Data Extractor™**;
3. The **CINA Data Source Definitions™**
4. The **CINA Clinical Data Repository™** **(CDR)**

WHEREAS, DARTNet’s license of the CFS from CINA includes the right to license the CFS as a stand-alone product to clinical organizations using electronic health data solely for research activities (collectively “Permitted Licensees”);

WHEREAS, DARTNet is the owner, developer, or licensee of certain sets of algorithms or processes which have been encoded using CINA’s proprietary methods, which may include, for example, national evidence-based clinical guidelines, proprietary guidelines owned by third-parties, or other sources;

WHEREAS, Licensee desires to enter into this Agreement with DARTNet in order to obtain from DARTNet a license to use the CFS ("Licensed Materials") and to receive from DARTNet support for such Licensed Materials (1) for the purpose of generating data that can be used for research purposes by Licensee to produce various reports and analyses, (2) for such other purposes as may be described in the Documentation (as defined herein), and (3) as otherwise approved by DARTNet, including, without limitation, for data transfer to allow the Licensee to participate in the DARTNet Practice Performance Quality Registry and other research and quality improvement activities (collectively, the “Permitted Uses”);

WHEREAS, Licensee acknowledges that the only use of the CDR granted by this Agreement is for research purposes in combination with the CFS and not as a stand-alone data repository for any clinical purposes of Licensee;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained below and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, DARTNet and Licensee agree to the terms of this Agreement, as set forth below.

**1. DEFINITIONS**

* 1. **“Activation Key”** means a series of electronic characters that uniquely identify some combination of an individual, computer, Licensed Material and/or location and that must be present and valid in order for the Licensed Material to function properly.
  2. **“Additional Fees”** mean the dollar amounts payable by Licensee to DARTNet as compensation for Additional Services, which may be provided from time to time by DARTNet to Licensee. These fees and their payment terms shall be mutually agreed upon by DARTNet and Licensee in advance in writing.
  3. **“Additional Services”** means those services that DARTNet may perform for or on behalf of Licensee and for which DARTNet may charge Additional Fees**.** Additional Services may include such services as: consulting, data management services or development. The specific additional services to be provided, the fees for such additional services and payment terms for such additional services shall be mutually agreed upon by DARTNet and Licensee in advance in writing.
  4. **“Applications Software”** means the business application software, databases and data files referred to as the CINA Foundation Suite™ (“CFS”).
  5. **“Back-Up Copies”** mean unmodified copies of the Licensed Materials that are made so that an accessible version of the Licensed Materials will be available only in the event of loss or damage to original copies of the Licensed Materials.
  6. **“Customer Support Services”** means those functions that DARTNet has agreed to perform as part of its on-going support of Licensed Materials as described in **Schedule A**.
  7. **“Customer Support Services and Maintenance Fees”** means the dollar amount paid to DARTNet for performing the Customer Support Services and Maintenance listed in **Statement of Work.**
  8. **“Development”** means the programming of: (i) any new data connectors required to integrate data from a new data source; (ii) regulatory/statutory mandated changes to the Application Software; (iii) version upgrades to the Application Software; and/or (iv) changes or enhancements to existing Application Software. Programming effort may include the pre and post development analysis, planning, design, coding, testing, installation and the provision of program training documentation or other training required to use the function.
  9. “**Documentation**” means the technical specifications, user or operator manuals, training materials, installation instructions or other documentation published by CINA or DARTNet or otherwise provided to Licensee for use in conjunction with the Licensed Materials.
  10. **“Enhancements”** mean any of CINA’s or DARTNet’s changes to the Licensed Materials intended to materially improve or alter functionality or provide additional benefits or features.
  11. **“Implementation Fees”** mean the dollar amount paid to DARTNet for performing the Implementation Services listed in **Schedule A.**
  12. **“Implementation Activities”** means the written list of tasks to be performed by DARTNet and Licensee prior to and during the installation of the Licensed Materials, including, but not limited to, access to the Licensee’s computer equipment, installation of the Licensed Materials, Licensee training, and the anticipated roll-out plan. Implementation Activities may be outlined on a separate Statement of Work.
  13. **“Installation”** means installation of the Application Software on a DARTNet or Licensee server, configured for network connectivity and security.
  14. **“License Fees”** mean the dollar amount payable to DARTNet for the on-going use of Licensed Materials by Licensee.
  15. **“Licensed Materials”** means all of the items listed in **Schedule A,** which may be modified from time to time by the mutual consent of DARTNet and Licensee, and which is a part of this Agreement.
  16. **“Maintenance”** means the defect identification and fixes, and installation of those fixes and updates as part of the normal maintenance and Customer Support Services to be provided by DARTNet with respect to the Licensed Materials as more particularly described in Section 3.4.
  17. **“Other Proprietary Software”** means any proprietary software that has been developed or licensed from third party companies other than CINA and DARTNet.
  18. **“Updates**” mean collectively all updates, bug fixes, patches, corrections, workarounds, and incremental or maintenance releases of the Licensed Materials. Updates shall include, at a minimum, those changes necessary to correct any failures of the Licensed Materials to perform accurately within the specifications provided by CINA or DARTNet.
  19. **“Upgrades”** mean all upgrades, enhancements or new releases of the Licensed Materials that add, enhance or increase features or functionality without materially altering existing features or functionality of the Licensed Materials.

**2. LICENSE & LICENSED MATERIALS**

* 1. **Grant of License.** DARTNet grants to Licensee a non-exclusive license: (a) to install, execute and use the Licensed Materials for the Permitted Uses solely for Licensee’s internal use; (b) to copy the Licensed Materials as reasonable and necessary to exercise the rights granted in this Agreement; and (c) to make and install the Back-Up Copies for use only in the event of loss or damages to the original copies of the Licensed Materials. Licensee shall ensure that its employees and all other persons using the Licensed Materials pursuant to Licensee’s license of the Licensed Materials under this Agreement will comply with all of the terms and conditions of this Agreement.
  2. **License Restrictions.**Except as permitted under this Agreement, Licensee may not transfer, sublicense, or otherwise distribute the Licensed Materials to any third party. Licensee will not copy, modify, or create derivative works of the Licensed Materials, in whole or in part, except as expressly authorized by this Agreement. Licensee acknowledges the Licensed Materials contain trade secrets of CINA, DARTNet and their licensors and, in order to protect such trade secrets and other proprietary interests that CINA, DARTNet and their licensors may have in the Licensed Materials, Licensee agrees that it will not cause the Licensed Materials to be disassembled, decompiled, or reverse engineered. Licensee acknowledges that the Licensed Materials may only be used as authorized herein, and that any use or attempted use of the Application Software, or any component thereof, other than as authorized herein, shall be considered a material breach hereof. Specifically, Licensee acknowledges and agrees that it will only use, and will instruct all employees and other persons using the Licensed Materials pursuant to Licensee’s license of the Licensed Materials under this Agreement to only use, the CDR in combination with the Application Software and not as a stand-alone data repository.
  3. **Limited Rights.** Licensee’s rights in the Licensed Materials are limited to those expressly granted by this Agreement. DARTNet reserves all other rights in and to the Licensed Materials that are not expressly granted to Licensee by this Agreement.
  4. **U.S. Government Restricted Rights.** The Licensed Materials have been developed without federal funding and, therefore, are the sole property of CINA, subject to CINA’s license of the Licensed Materials to DARTNet for licensure to Permitted Licensees. The Licensed Materials and related documentation are "Commercial Items", as that term is defined in 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are defined in 48 C.F.R. §252.227-7014(a)(5) and 48 C.F.R. § 252-227-7014(a)(1) and as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227-7202, as applicable. Consistent with 48 C.F.R. §12.212, 48 C.F.R. § 252.227-7015, 48 C.F.R. §§ 227.7202 through 227.7202-4, 48 C.F.R. § 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, the Licensed Materials are licensed to United States Government end-users with only those rights as granted to all other end-users, according to the terms and conditions contained in this Agreement.
  5. **Use of Other Proprietary Software.** During the initial setup and configuration of the Licensed Materials and thereafter, DARTNet may require access to Other Proprietary Software in order to verify proper setup and configuration of the Licensed Materials or to resolve problems. It is the responsibility of Licensee to provide such access to the extent legally permissible and to be responsible for any fees or other obligations that arise as a result of DARTNet’s access to Other Proprietary Software; provided that DARTNet agrees that it will abide by all terms and conditions imposed on Licensee by its licensors with respect to the Other Proprietary Software and it will be responsible and liable for, and indemnify and hold Licensee harmless from, any damages, costs or expenses resulting from any breach thereof by DARTNet or any person to which DARTNet provides access to such Other Proprietary Software.
  6. **Access to Customer Systems.** During the initial setup and configuration of the Licensed Materials and thereafter, DARTNet requires remote access to the computer network and/or systems on which copies of the Licensed Materials are installed. It is the Research Licensee’s responsibility to provide such access in a manner that allows DARTNet to perform the functions required under **Schedule A**, and it is DARTNet’s responsibility to comply with all requirements of the Licensee regarding such access of which DARTNet is made aware, including, without limitation, network security.
  7. **Referenced Information.** Various components of the Licensed Materials provide cross-reference mapping to commonly used nomenclatures and other materials, including, but not limited to:

1. International Classification of Diseases - Clinical Modification 9th revision (ICD9-CM) (and any successor versions or editions);
2. Current Procedural Terminology (CPT-4);
3. Diagnostic and Statistical Manual of Mental Disorders (DSM-IV);
4. Current Dental Terminology (CDT-3);
5. Logical Observation Identifiers Codes (LOINC); and
6. Systemized Nomenclature of Medicine Clinical Terms (SNOMED-CT)
7. NDC/Rx Norm

Some of these nomenclatures and materials may be licensed materials by third parties.

It is Licensee’s sole responsibility to obtain the rights to use any third party materials for which cross-reference mapping is included in the Licensed Materials; provided, however, that DARTNet will endeavor to notify Licensee in advance regarding those third party materials for which DARTNet is aware that authorization to access is required. DARTNet may, without penalty, cease to provide cross-reference mapping for any such third party material if DARTNet determines that providing such cross-reference mapping is likely to violate another person’s intellectual property rights.

* 1. **Activation Keys.** The use of the Licensed Materials may be limited as specified in **Schedule A** and may be subject to the issuance and periodic renewal of Activation Keys based on the Authorized Unit Count. Upon Licensee’s request, DARTNet will provide Licensee with a sufficient number of Activation Keys to activate all copies of the Licensed Materials for which Licensee has paid the applicable license fees. DARTNet reserves the right to refuse to issue or renew an Activation Key if Licensee has failed to pay any applicable fee(s) or otherwise is in material uncured breach of this Agreement after proper notice and opportunity to cure.
  2. **Updates, Upgrades, Enhancements and Back-Up Copies.** Licensed Materials shall include (and the terms and conditions of this Agreement shall apply to) Updates, Upgrades, Enhancements and Back-Up Copies of the Licensed Materials that are provided by or on behalf of DARTNet to Licensee. Notwithstanding any other provision of this Agreement, Licensee has no right to use an Update, Upgrade, or Back-Up Copies of the Licensed Materials unless Licensee holds a valid license to the original Licensed Materials or to use an Enhancement unless Licensee has paid the applicable fee for the Enhancement.
  3. **Access to External Data.**  Successful use of DARTNet’s proprietary methods for reading and translating information from various databases requires that DARTNet have access to and an understanding of the structure and content of those databases. Some databases may be subject to license(s), encryption, or other restrictions that may limit DARTNet’s access to the data. If so, Licensee must obtain the rights, to the extent legally permissible, necessary to facilitate sufficient access to the databases by DARTNet to enable the use of the Licensed Materials by Licensee and Research Partner only. Further, although DARTNet has extensive experience with database structure and content, DARTNet may from time to time require assistance from the author of a database source. In addition, the authors of some data sources may change or may restrict access to their data sources to preclude the access to the data from the Licensed Materials. In any of these cases, DARTNet’s responsibility and liability to Licensee will be limited in accordance with the provisions of this Agreement.
  4. **Licensee Duty to Provide Information.** Upon request by DARTNet and Licensee will complete and submit information and data or provide access to information and data, as DARTNet deems necessary to provide the services hereunder or the Additional Services hereunder, subject to the confidentiality and HIPAA compliance obligations set forth in this Agreement.
  5. **HIPAA Compliance.** In order to comply with various obligations under this Agreement, DARTNet may from time to time have access to information that is covered by the Privacy and Security Standards to the Health Insurance Portability and Accountability Act of 1996 (hereinafter referred to as HIPAA) and any and all amendments and modifications thereto (including, but not limited to, those amendments and modifications contained in the American Recovery and Reinvestment Act of 2009, which is hereinafter referred to as “ARRA”). In order to comply with the requirements of HIPAA and ARRA, the Parties are entering into a Business Associate Agreement in the form attached to this Agreement.
  6. **Ownership**.Licensee expressly acknowledges that CINA and its licensee, including DARTNet, own all worldwide right, title and interest in and to the Licensed Materials, including all worldwide intellectual property rights therein. Licensee will not delete or in any manner alter the copyright, trademark, patent, or other proprietary rights notices appearing on the Licensed Materials as delivered to Licensee. Licensee will reproduce such notices on all copies that it makes of the Licensed Materials.
  7. **Verification and Audit.** At DARTNet's written request, Licensee will certify that the Licensed Materials are being used by Licensee pursuant to the terms of this Agreement. Additionally, no more often than once per year and upon at least thirty (30) days prior written notice, DARTNet reserves the right to audit Licensee’s use of the Licensed Materials to ensure compliance with the terms of this Agreement subject to confidentiality obligations hereunder. Any such audit will be conducted during regular business hours and if such audit occurs at Licensee’s facilities DARTNet agrees not to unreasonably interfere with the Licensee’s business activities. Licensee will provide DARTNet with access to the relevant books and records and the portion of the facilities in which the Licensed Materials are used by Licensee. DARTNet shall provide Licensee with copies of all audit report(s). If an audit reveals that Licensee or any employee or other person utilizing the Licensed Materials pursuant to Licensee’s license of the Licensed Materials under this Agreement is not using the Licensed Materials in accordance with the terms and conditions of this Agreement, then DARTNet will notify Licensee in writing of the alleged material breach and Licensee will take action to cure such material breach within a reasonable period of time from the date of such notice. DARTNet and Licensee maintain the right to monitor usage of Licensed Materials and with mutual agreement, adjust fees as needed based on the actual usage of the Licensed Materials.
  8. **Implementation Plan.**

1. DARTNet shall be provided remote access to Licensee’s computer hardware to install the Licensed Materials within the time period set forth in **Schedule A**. If Licensee prefers to provide the computer hardware, it must be consistent with DARTNet’s specifications.
2. Licensee shall arrange for, or comply with, the installation of Third Party Software, as applicable, based on the requirements of all Licensed Materials in **Schedule A**. The installation of all third party software shall be on the same server as that which will be used for the Licensed Materials, unless otherwise stated.

(iii) DARTNet and Licensee shall arrange for delivery of the Licensed Materials and the Documentation to Licensee’s facilities on or about the dates agreed to with Licensee as part of the Implementation Activities. DARTNet shall perform the Installation Activities associated with the Licensed Materials on the computer hardware identified in the Implementation Activities, or as otherwise agreed to by the parties within the time period set forth in **Statement of Work**.

(v) In the event Licensee elects not to accept the Licensed Materials and Documentation during such acceptance period, Licensee shall immediately thereafter return the Licensed Materials and Documentation to DARTNet and Licensee shall be entitled to a refund of any fees paid by Licensee to date less the Implementation Fees detailed in the **Statement of Work.**

**3. CUSTOMER SUPPORT SERVICES, ENHANCEMENTS. ADDITIONAL SERVICES AND MAINTENANCE**

**3.1 Customer Support Services.** DARTNet will perform all Customer Support Services in a timely, professional manner in accordance with this Agreement and generally accepted best practice standards within the software industry.

**3.2 Enhancements.**From time to time, DARTNet will provide Licensee with Enhancements for the Licensed Materials in an effort to keep them consistent with evolving authoritative standards and generally accepted best practice guidelines. It is Licensee’s sole responsibility to evaluate and to implement Enhancements delivered in its sole discretion. DARTNet shall provide a true and complete copy of each Enhancement to Licensee on a regular basis in conjunction with planned upgrades.

**3.3 Additional Services.**  DARTNet may provide Licensee with Additional Services related to the Licensed Materials on a fee for service or time and materials basis. A scope of services document setting forth the service and fees proposed for such Additional Services will be provided; services will commence once approval in writing is received. Any supplemental software code developed by or on behalf of DARTNet that is provided to Licensee as part of the Additional Services shall be considered part of the Licensed Materials and will be subject to the terms and conditions of this Agreement, unless otherwise expressly agreed upon by the Licensee and DARTNet.

**3.4 Maintenance.**  As part of Maintenance, DARTNet shall provide to Licensee Maintenance and Customer Support Services for the Licensed Materials as required or necessary to correct any failure of the Licensed Materials to operate in accordance with all applicable Documentation. DARTNet shall install for Licensee all Upgrades and Updates on a mutually agreed upon schedule. Maintenance shall include the following:

1. Maintenance and Customer Support Services shall be available during normal business hours, Monday through Friday, excluding US Federal Holidays. Customer Support Services will ensure that qualified support personnel with expertise in the Licensed Materials and Documentation and all recommended operating environments will be available to Licensee during these time periods.
2. Licensee may request Maintenance from DARTNet via telephone, mail, or email. DARTNet shall respond to Licensee request for Maintenance within two (2) business days to acknowledge its receipt of such request. A further explanation of DARTNet’s Maintenance and Customer Support Services is set forth in **Schedule A**.
3. Licensee shall provide DARTNet with all information and assistance reasonably requested by DARTNet to detect, simulate and correct any error. Licensee will allow for the installation of all Updates or Upgrades within a reasonable time frame; provided, however, that Licensee shall not be obligated to implement Updates or Upgrades if they interfere with Licensee’s level of intended usage or operating environment and DARTNet and Licensee shall work together with mutual best efforts in order to determine a date for installation of all such Updates and/or Upgrades so that they function properly at the level of Licensee’s intended usage within the operating environment.
4. DARTNet shall maintain records of all service issues reported by Licensee, including the nature of the reported problems, scope of effect, DARTNet’s resolution and response time, and disposition of the service call. DARTNet shall provide records of service issues to Licensee upon request.

**4.** **LICENSE FEES.**

* 1. **License Fees.**Licensee will be responsible for the total License Fees applicable to all Licensed Materials specified in **Statement of Work,** unless otherwise stated in the Statement of Work or in an Addendum to this Agreement.Unless agreed to otherwise by the parties, the License Fees may be increased upon ninety (90) days prior to written notice by DARTNet to Licensee; provided that such increase will occur no more often than annually and shall not occur within the initial term of this Agreement.
  2. **Implementation Fees.** Licensee will be responsible for paying the one time Implementation Fees associated with the Licensed Materials, unless otherwise stated in the Statement of Work or in an Addendum to this Agreement. These non-refundable fees, due at contract signing or as agreed to between Licensee and DARTNet are set forth in **Statement of Work.**
  3. **Customer Support Services and Maintenance Fees.** Licensee will be responsible for paying the Customer Support Services and Maintenance Fees set forth in **Statement of Work,** unless otherwise stated in the Statement of Work or in an Addendum to this Agreement.
  4. **Interest.**Any amount(s) not paid when due as specified in **Statement of Work** will incur interest at a rate of ten percent (10%) per annum. Licensee or Payor specified in Statement of Work will reimburse DARTNet for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts.
  5. **Payment Terms and Taxes.**Licensee will pay all amounts due to DARTNet under this Agreement in U.S. currency, unless otherwise stated in the Statement of Work or in an Addendum to this Agreement. All fees payable under this Agreement to DARTNet are net amounts and are payable in full, without deduction for taxes or duties of any kind, at such times as set forth in this Agreement or on **Statement of Work**. Licensee or Payor specified in the Statement of Work will be responsible for, and will promptly pay, all applicable taxes and duties of any kind (including but not limited to sales and use taxes) associated with Licensee’s receipt or use of the Licensed Materials or the services as governed by law, except for taxes based on DARTNet's net income or personal property. If DARTNet is required to collect any tax for which Licensee is responsible, Licensee or Payor specified in the Statement of Work will reimburse DARTNet for such tax.

**5. WARRANTY**

**5.1 Limited Software Warranty.**

(i) Under the CINA License Agreement DARTNet received certain warranties regarding the Licensed Materials from CINA. These warranties included a warranty that: (a) CINA owns the Licensed Materials; (b) the CINA License Agreement does not violate the rights of another in the Licensed Materials, and there are no rights granted by CINA to third parties which would inhibit or otherwise affect the enforceability of the CINA License Agreement or CINA’s ability to grant the licenses and fully perform the CINA License Agreement; (c) CINA has the right to license the copyright and use of trademarks applicable to the Licensed Materials to clinical organizations in the United States using electronic health data for research and quality improvement (including DARTNet); (d) to the best of CINA’s knowledge, the Licensed Materials do not misappropriate the trade secrets or infringe the trademarks, copyrights, patents, or other proprietary right of any other person or entity; and (e) to the best of CINA’s knowledge, any copyrights, patents, and trademarks applicable to the Licensed Materials, and any registrations thereof, are valid and enforceable. At the request of Licensee, DARTNet will enforce its rights under these warranties against CINA for the benefit of and on behalf of Licensee.

(ii) DARTNet represents and warrants to Licensee it has the right to license the Licensed Materials and Documentation hereunder to Licensee. DARTNet further warrants to Licensee that the Licensed Materials and all media on which the Licensed Materials are distributed to Licensee will be free from defects in design, material and workmanship for a period of ninety (90) days after the date of installation. Licensee’s sole remedy in the event of any breach of this performance warranty will be the repair or replacement of any non-conforming Licensed Materials within the warranty period. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply. To the extent allowed by applicable law, implied warranties on the Licensed Materials, if any, are limited to 90 days. DARTNet does not warrant: (a) the Licensed Materials will operate uninterrupted or error-free; (b) all programming errors will be corrected; or (c) the Licensed Materials will meet all of Licensee’s needs or requirements. Licensee is solely responsible for the accuracy and adequacy of the information and data furnished for processing by Licensee and its employees using the Licensed Materials.

**5.2 Limitation on DARTNet’s Obligations.** DARTNet will have no obligation of any kind to provide any correction, circumvention procedure or refund under Section 5.1 for problems in the operation or performance of the Licensed Materials that are caused by any of the following:

(i) the use by Licensee of software or hardware products not approved by DARTNet for use with the Licensed Materials or use of the Licensed Materials in conjunction therewith;

(ii) modifications to the Licensed Materials that are not made by DARTNet or a party expressly authorized by DARTNet; or

(iii) Licensee’s use of the Licensed Materials other than for Permitted Uses or as authorized in this Agreement or as specified in the Documentation.

**5.3 Disclaimers**

1. **LICENSEE AGREES THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR FOR DETERMINING THE ACCURACY, COMPLETENESS, OR PROPRIETY OF ANY INFORMATION THAT MAY BE PROVIDED VIA THE APPLICATION SOFTWARE AND ANY UNDERLYING CLINICAL DATABASE RESIDES SOLELY WITH LICENSEE AND ITS LICENSED HEALTH CARE PROVIDERS. DARTNet ASSUMES NO RESPONSIBILITY FOR HOW SUCH INFORMATION IS USED BY LICENSEE AND PRACTITIONERS.**
2. **DARTNet DOES NOT WARRANT THE LICENSED MATERIALS WILL MEET ALL OF LICENSEE REQUIREMENTS, THAT THEY WILL OPERATE IN THE COMBINATIONS THAT LICENSEE MAY SELECT FOR USE, THAT THE OPERATION OF THE LICENSED MATERIALS WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5.1, DARTNet, ON BEHALF OF ITSELF AND ITS AFFILIATES AND LICENSORS, DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.**

**6. INDEMNIFICATION.**

* 1. **DARTNet’s Duty to Indemnify Licensee.**

(i) DARTNet will defend any action brought against Licensee that is based upon a claim that DARTNet violated any of its warranties under Section 5.1(ii) of this Agreement. DARTNet will pay any costs, damages and reasonable attorneys' fees incurred by Licensee attributable to such claim, provided that Licensee: (a) promptly notifies DARTNet in writing of the claim; (b) grants DARTNet sole control of the defense and settlement of the claim provided that Licensee shall have the right to participate and be represented by their own counsel at their own expense; and (c) provides DARTNet all assistance, information and authority reasonably required for the defense and settlement of the claim. In no event shall DARTNet compromise or settle any such claim, suit or proceeding materially affecting Licensee’s rights hereunder without Licensee’s prior written approval.

(ii) At the request of Licensee, DARTNet shall pursue a claim against CINA on behalf of and for the benefit of Licensee should Licensee be harmed by a violation by CINA of any of the warranties referenced in Section 5.1(i) of this Agreement.

* 1. **DARTNet’s Duty to Modify Licensed Materials.**If Licensee’s use of any of the Licensed Materials hereunder is, or in DARTNet's opinion is likely to be, enjoined due to the type of claim specified in Section 6.1 above, DARTNet may, at its sole option and expense: (a) procure for Licensee the right to continue using the Licensed Materials under the terms of this Agreement; (b) replace or modify the Licensed Materials so that they are non-infringing and continue to function in a manner that is substantially equivalent to the original Licensed Materials; or (c) if options (a) and (b) above cannot be accomplished after DARTNet uses commercially reasonable efforts, then DARTNet may terminate the License in the infringing Licensed Materials and DARTNet's obligations thereto under this Agreement subject to a full refund of license fees paid by Licensee to DARTNet with respect to such infringing Licensed Materials.
  2. **Exclusions.**Notwithstanding Section 6.1, DARTNet will have no liability for any claim that directly arises from: (a) any modifications to the Licensed Materials by a person other than DARTNet; (b) claims of patent infringement based on the combination, operation or use of the Licensed Materials with equipment, devices, software or data not supplied or approved DARTNet or otherwise specified in the Documentation; (c) Licensee’s failure to timely install or to use Enhancements or other Update or Upgrade to the Licensed Materials provided by DARTNet at no additional charge; (d) DARTNet's compliance with any designs, specifications or plans provided in writing by Licensee; or (e) Licensee’s use of the Licensed Materials other than in accordance with this Agreement.
  3. **Customer Sole Remedy. THE PROVISIONS OF THIS SECTION 6 SET FORTH DARTNet’s SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE’S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.**

1. **CONFIDENTIALITY.**

The protection and rights of the Confidential Information for DARTNet and Licensee is referenced in the Master Services Agreement (MSA) between DARTNet and Licensee, unless otherwise stated within this Agreement.

1. **INTELLECTUAL PROPERTY RIGHTS.**

CINAshall have the exclusive right to apply for, perfect, maintain, prosecute, and enforce all intellectual property rights in the Licensed Materials, including all Enhancements, Updates and Upgrades to Licensed Materials delivered by DARTNet to Licensee under this Agreement.

1. **TERMINATION.**
   1. **Term.**This Agreement will begin on the Effective Date and will remain in effect for the term specified in **Schedule A** or until terminated earlier by either party in accordance with the terms of this Agreement.
   2. **Termination for Breach.**Each party will have the right to terminate this Agreement or the license granted hereunder if the other party breaches any material term of this Agreement and such breach, if capable of cure, is not cured within thirty (30) days following receipt by the breaching party of written notice of such breach.
   3. **Termination Without Cause.** Either Party may terminate this Agreement upon thirty (30) days advance written notice beginning 12 months after the contract Effective Date, unless otherwise specified in **Schedule A**.
   4. **Effect of Termination.**Upon any termination of this Agreement, Licensee will promptly return to DARTNet the applicable Licensed Materials and all copies and portions thereof in the possession or control of Licensee, in all forms and types of media, and provide DARTNet with an officer's written certification, certifying to Licensee’s compliance with the foregoing; provided that Licensee may keep one copy of the CDR and copies of all reports to the extent necessary for its on-going compliance with government regulations. If Licensee requests a copy of the data, DARTNet will provide Licensee, at Licensee expense, a copy of the data in a file format to be agreed to by both parties.
   5. **Nonexclusive Remedy.**Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
   6. **Survival.**The rights and obligations of the parties contained in Sections 2.12, 6, 7, 8, 10.2, and 10.9 will survive the termination of this Agreement.
2. **GENERAL TERMS AND CONDITIONS**
   1. **Assignment.** Neither party will have the right to assign this Agreement, in whole or in part, by operation of law nor otherwise, without the other party’s express prior written consent, which shall not be unreasonably withheld. Any attempt to assign this Agreement, without such consent, will be null and void and of no force or effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and assigns. Each permitted assign must agree in writing to be unconditionally bound by the terms and conditions of this Agreement.
   2. **Governing Law and Jurisdiction**. This Agreement will be governed by and construed in accordance with the laws of the State of Missouri excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Jackson County, Missouri and the parties hereby consent to the personal jurisdiction and venue therein. In addition, each Party agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations at 41 C.F.R. Part 60. Each Party certifies that that it has not been debarred or suspended from participation in the Medicaid and/or Medicare programs, as well as any other applicable Federally-funded contracts.
   3. **Severability.**If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible under the law and the other provisions of this Agreement will remain in full force and effect.
   4. **Waiver.**The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.
   5. **Notices.**All notices under this Agreement will be in writing and delivered by confirmed facsimile transmission, by email with read receipt, by courier, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or as otherwise specified by either party in accordance with this Section. Either party may change its address for notices by giving written notice to the other party by the means specified in this Section.
   6. **Force Majeure** Neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, war, terrorism, riot, acts of God or governmental action.
   7. **Relationship of Parties.**The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other another party or incur obligations on the other another party’s behalf without the other party’s prior written consent.
   8. **Export Control**.Licensee agrees to comply fully with all relevant export laws and regulations of the United States and Canada ("Export Laws")to ensure that neither the Licensed Materials, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.
   9. **Entire Agreement.**This Agreement, including all related Schedules and Addendums, constitutes the complete understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties. The recitals to this Agreement are incorporated by reference herein as if set forth in full.
   10. **Counterparts.**This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the Effective Date, by their duly authorized representatives.

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| --- | --- | --- | --- | --- |
| **<<COVERED ENTITY NAME>>** | |  | **DARTNet Institute** | |
| By: | **(1)** |  | By: |  |
| Name: | **(2)** |  | Name: |  |
| Title: | **(3)** |  | Title: |  |
| Date: | **(4)** |  | Date: |  |