



DATA INNOVATIONS EUROPE S.A. GENERAL TERMS AND CONDITIONS

The following general terms and conditions, all exhibits attached hereto, and the applicable quote (collectively the "Agreement") by and between Data Innovations Europe S.A., a Belgian corporation, 34 avenue Jacques Brel, 1200 Brussels, Belgium ("DI") and customer, as named on the applicable quote ("Customer"), and sets for the terms and conditions under which DI shall provide, and Customer shall purchase, licences to DI products and related services. Each of DI or Customer may be referred to as a "Party" or together the "Parties". DI and Customer deem that this Agreement is accepted on the date upon which an order is received by DI from Customer against the applicable Quote ("Effective Date").

PART A – GENERAL

1) DEFINITIONS.

- a) **"Applicable Taxes"**: all value-added, sales, use, import, duties, customs or other taxes applicable to the Software licensed to Customer and/or Services performed, except for any taxes based upon DI's net income.
- b) **"Billable Expenses"**: out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Services.
- c) **"Bundled Software"**: software licensed by DI from a third party to be distributed to Customer with the Software that has its own separate install process.
- d) **"Change Order"**: a written, mutually agreed upon change to the Customer's requirements and/or the scope of the PCS, delivery schedule and/or PCS Fees.
- e) **"Confidential Information"**: all non-public data or information regarding the Parties' business or technical operations including, but not limited to, (i) all designs, models, documentation, reports, data, specifications, source code, object code, flow charts, file record layouts, databases, inventions, know-how and Trade Secrets (as defined by the Uniform Trade Secret Act), improvements, concepts and discoveries, whether or not patentable or copyrightable, relating to the Software, (ii) information with respect to either Party's existing or contemplated products, product development, services, marketing plans, suppliers, business opportunities, finances, operations, prices, customers or personnel, processes, techniques or know-how, sales data, internal performance results, or any information or data developed pursuant to the performance of the Services contemplated hereunder, (iii) any other information that is specifically designated by a Party as confidential or proprietary, (iv) information that, due to its character or nature, a reasonable person would treat as confidential, and (v) the terms and conditions of this Agreement. DI hereby designates the DI Property, including any permitted copies, as DI's Confidential Information. Confidential Information shall not include information that (A) is in or enters the public domain without breach of the terms and conditions of this Agreement by the Receiving Party, (B) was demonstrably in the possession of the Receiving Party prior to first receiving it from the Disclosing Party without restrictions on disclosure, (C) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information, or (D) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public.
- f) **"Date of Delivery"**: date when DI has delivered the Software to a third-party shipper addressed to Customer or when DI has made the Software electronically available to Customer.
- g) **"DI Extranet"**: a DI customer web portal with content and functions accessible exclusively by Customers of DI.
- h) **"DI Property"**: the Software, Work Product, Feedback, and DI Tools, including any future derivative works, enhancements or modifications thereto.
- i) **"DI Tools"**: any tools, databases, ideas, and methodologies used by DI in providing the PCS and the Work Products.
- j) **"Disclosing Party"**: the Party providing Confidential Information to the Receiving Party.
- k) **"Disputed Fee(s)"**: an invoiced Fee that is the subject of a good faith dispute between the Parties.
- l) **"Documentation"**: all user guides, related explanatory written materials, manuals, files or on-line help provided for the Software.
- m) **"Driver"**: the software developed by DI to connect laboratory devices and information systems to the Software.
- n) **"Driver Update"** means updates to Drivers to correct defects, improve Software operation, add features, or provide functional corrections to the Driver that DI chooses to develop solely at its own discretion.
- o) **"Due Date"**: the time specified on the Quote or Invoice on which all amounts billed by DI will be due and payable, or 30 days from the date of Invoice if no time was specified on the Quote or Invoice.
- p) **"Embedded Software"**: software licensed by DI from a third party to be distributed to Customer with the Software that is automatically installed with the Software.
- q) **"End of Life or EoL"** Software that has reached EoM and EoS and for which there is no successor Software. End of Life for a Software version is when DI will no longer provide Maintenance and Support Services for that Software version.
- r) **"End of Maintenance or EoM"** defines Software or a specific Software version for which DI will no longer provide Updates.
- s) **"End of Sale or EoS"** defines Software and Software specific versions that DI will no longer license or distribute.
- t) **"Export Laws"**: the collective reference to the United States Export Administration Act or any other export laws, restrictions or regulations.
- u) **"Feedback"**: all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Software and Services.
- v) **"Fees"**: the collective reference to the Software Fees, PCS Fees, Subscription Fees and M&S Fees set forth herein for the Software and Services.
- w) **"Force Majeure"**: 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; freight embargoes; or delays of a supplier or subcontractor due to such causes.
- x) **"GDPR"**: the General Data Protection Regulation, effective on 25 May 2018.
- y) **"Hardware"**: any third-party hardware purchased from DI by Customer.
- z) **"Intellectual Property Rights" or "I/P Rights"**: all patents, improvements, concepts and discoveries (whether patentable or not), copyrights, models, designs, trademarks, trade secret rights, service marks, trade names, brand names, trade dress, and other proprietary rights or applications thereof which pertain to the Software, DI Tools, Work Product and Services whether registered or not.
- aa) **"InterSystems"**: InterSystems Corporation.
- bb) **"Maintenance and Support Services" or "M&S"**: technical support services to diagnose and address a Software Error when the Software has been properly installed, if applicable, and is being Used to perform in accordance with the specifications set forth in the applicable Documentation. M&S do not include training of Customer's personnel, consulting or other available

PCS.

- cc) **"M&S Fees"**: all fees for the performance of M&S, including all actual Billable Expenses.
- dd) **"Major Release"** means a release with significant new or improved functionality within the same Software bearing the same name that DI in its sole discretion determines to release as a new Major Release.
- ee) **"Malware"**: any unauthorized code, virus, Trojan horse, worm or other software code, routine or software components designed to permit unauthorized access, disable, erase, or otherwise harm, impede Customer's use of the Software.
- ff) **"Open Source Software"**: software distributed to Customer with the Software that is automatically installed with the Software that meets the definition of "Open Source" as set forth at <https://opensource.org/osd>.
- gg) **"Permanent SSK"**: the permanent Software Security Key provided for a Perpetual Licence.
- hh) **"Perpetual Licence"**: a licence to the Software that has an indefinite term of Use, unless terminated subject to the terms of this Agreement.
- ii) **"Production System"**: an installation of the Software that processes patient results in the day-to-day operations of the Customer's laboratory. (i.e. not a test system).
- jj) **"Professional Consulting Services"** or **"PCS"**: training, implementation, installation and/or consulting services provided by DI to Customer pursuant to this Agreement, and as more specifically described in a SOW.
- kk) **"PCS Fees"**: all fees for the performance of PCS, including all actual Billable Expenses.
- ll) **"Privacy Regulations"**: Legislation or regulations pertaining to the control, processing and use of Personal Data (as such term is defined under GDPR) in the performance of Services.
- mm) **"Quote"**: the specific DI quote provided to Customer, for the Software, Hardware, M&S and PCS to which this Agreement pertains.
- nn) **"Receiving Party"**: the Party receiving the Confidential Information of the Disclosing Party.
- oo) **"Requested Enhancement"** means new functionality or enhancements to existing functionality of the Software.
- pp) **"Scheduled Date"**: the specific date set by the Parties to commence the PCS.
- qq) **"Services"**: the collective reference to M&S and PCS.
- rr) **"Statement of Work" or "SOW"**: the written form, incorporated hereto by reference, setting forth the PCS that DI shall perform for the Customer and any other specific terms that shall apply to the applicable Quote.
- ss) **"Software"**: (i) all application(s) or computer software in machine-readable, object code form, owned or licensed by DI to Customer pursuant to this Agreement, (ii) the Documentation, (iii) all Drivers and (iv) all Updates.
- tt) **"Software Error"**: a failure of the properly installed Software, licensed hereunder to Customer, to perform in accordance with the specifications set forth in the applicable Documentation.
- uu) **"Software Fees"**: all fees for a Perpetual License of the Software licensed by Customer under this Agreement.
- vv) **"Subscription Fees"**: all fees for a Subscription Licence of the Software licensed by Customer under this Agreement.
- ww) **"Subscription Licence"**: a license to the Software that has a set term of Use, that must be renewed, unless terminated subject to the terms of this Agreement
- xx) **"Subscription SSK"**: the Software security key, with a set term that expires at the end of each subscription period.
- yy) **"Supported Version"** is a version of Software that has not reached the state of EoS, or EoM.
- zz) **"Temporary SSK"**: the temporary Software security key provided as part of the initial delivery of a licence.
- aaa) **"Third Party Software"**: a collective reference to Bundled Software, Embedded Software or Open Source Software.
- bbb) **"Third Party Software List"**: a list of Third Party Software currently distributed with the Software that may be found at: <http://www.datainnovations.com/terms-and-conditions>.
- ccc) **"Update(s)"**: an error correction, bug fix, modification, enhancement, improvement, new feature, functional corrections, upgrade, modified version, addition, Driver Updates, Requested Enhancements or other or new release, generally made available to purchasers of M&S at no additional charge. Updates shall not include any major modifications, Requested Enhancements, Driver Updates, options or future products that DI, in its sole discretion, determines to license separately and charge a separate licence fee.
- ddd) **"Use", "Used" or "Using"**: to access, install, download, execute, display or otherwise benefit from using the functionality of the Software in accordance with the Documentation.
- eee) **"Work Product"**: any implementation artefacts, interfaces, or other items delivered to Customer under a SOW.

2) SOFTWARE AND SERVICES.

- a) DI shall provide Customer the Software and Services, pursuant to this Agreement.
- b) DI shall not be responsible for any delay in the performance of, or an inability to perform, any of its obligations contained in this Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Agreement.

3) FEES, PAYMENT, TAXES AND DELIVERY.

- a) All Fees and Billable Expenses shall be as set forth on the applicable Quote.
- b) Customer shall pay DI the Fees and Billable Expenses due, plus all Applicable Taxes as set forth in the applicable Quote, in the same currency as the Fees and Billable Expenses were listed on the Quote.
- c) DI shall invoice Customer for all Fees and Billable Expenses due. All amounts billed will be due and payable on the Due Date, except for a Disputed Fee.
- d) To the extent that DI is charged any form of payment fees (including wire transfer fees, bank fees and credit card fees) by Customer's accounts payable processor or bank, or DI's processor or bank, related to payments made by Customer to DI hereunder, Customer agrees to reimburse DI for such payment at cost.
- e) Except for a Disputed Fee, any payments not received by DI by the Due Date will be considered late. To the extent legally permissible, interest will accrue at the rate of 12% per year from the Due Date until all outstanding payments are paid.
- f) In the event of a Disputed Fee, Customer shall pay the undisputed amount and notify DI of the Disputed Fee in writing within ten (10) business days of the invoice date. Customer shall not be required to pay interest on any reasonable and documented Disputed Fees. If the Parties are unable to resolve the dispute themselves, the Parties agree to submit this dispute to Dispute resolution pursuant to Section 12(k).
- g) If Customer is not subject to any or all Applicable Taxes, then Customer is responsible for submitting the applicable documentation to DI. If this document is not provided prior to completion of the Services or Date of Delivery of the Software, Applicable Taxes will be calculated and included on the Customer's invoice.
- h) A Permanent Software Security Key will be provided to Customer when the respective Software Fees are paid in full.
- i) Each Subscription Licence shall be delivered with a Subscription SSK.
- j) If Customer requests cancellation of a Software licence (Perpetual or Subscription) or a refund prior to on-site activation of Customer's licence and within 14 days of the Software licence issue date, then DI will refund Customer's purchase in full. If Customer requests a cancellation or refund after the on-site activation or after 14 days of the Software licence issue date, then Customer's payment is non-refundable.



- 4) **TERM.** This Agreement shall begin on the Effective Date and shall continue until terminated by either Party in accordance with this Agreement.
- 5) **INTELLECTUAL PROPERTY.** The Parties acknowledge and agree that:
- a) DI owns all exclusive right, title and interest in and to the I/P Rights in the DI Property. Customer shall not take any action inconsistent with such title and ownership.
 - b) This Agreement are not a sale of the DI Property, and Customer acquires only the restricted right to Use the DI Property subject to the licence grants herein.
 - c) DI may utilize all Feedback without any obligation to Customer.
 - d) Customer shall notify DI of any unauthorized access to the DI Property and all infringements, limitations, illegal use, or misuse of the I/P Rights that come to Customer's attention.
 - e) Customer will not remove, alter or obscure any of DI's copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indication of DI's ownership contained on or in the DI Property or any portion thereof and Customer will reproduce all such notices on all copies permitted to be made by Customer under this Agreement.

- 6) **CONFIDENTIAL INFORMATION.** Each Party shall maintain the Confidential Information of the other Party in strict confidence until such time as the Confidential Information falls under one of the exceptions listed in Part A, Section 1.e) (A) – (D) above. Each Party shall:

- a) exercise no less than reasonable care with respect to the handling and protection of such Confidential Information, using the same protective precautions as such Party uses to protect its own Confidential Information.
- b) use the Confidential Information of the other Party only during the term of this Agreement and as expressly permitted herein
- c) shall not disclose such Confidential Information to any other person or third party without prior written consent of the Disclosing Party, except to its employees and independent contractors who are subject to written use and disclosure restrictions at least as protective as those set forth herein and only as is reasonably required in connection with the exercise of its rights and obligations under this Agreement.
- d) Shall not permit any third party, nor any employee, representative, or agent thereof, that develops, markets or licenses computer programs with functionality similar to the functionality of the Software to have access to DI's Confidential Information, which includes the Software.

Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to a valid order or requirement of a court or government agency, provided that the Receiving Party gives prompt notice to the Disclosing Party upon receiving the order or learning of the requirement so that it may seek a protective order or other appropriate remedy. Any such disclosure by the Receiving Party of the Confidential Information of the Disclosing Party, shall not be deemed a breach of this Agreement and shall, in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information.

7) **PRIVACY REGULATIONS.**

- a) The Parties agree to enter into separate privacy agreements, as necessary, to facilitate compliance with any applicable Privacy Regulations.

8) **GENERAL WARRANTIES AND DISCLAIMERS.**

- a) **Customer Warranty.** Customer represents and warrants that it owns or has obtained all rights in the materials and data (including customer/patient information) necessary so that the use of such materials and data by DI to provide Services to Customer does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.
- b) **DI Warranty.** DI Software and Service warranties are set forth in the applicable Schedules.
- c) **Hardware Warranty.** Any Hardware purchased from DI is covered by the manufacturer's warranty. Hardware warranty

coverage begins on the date of DI's initial purchase from the manufacturer.

d) **Mutual Warranty.**

- i) The Parties each have the power and the authority to agree to and perform this Agreement.
- ii) The Parties warrant that they shall comply with all applicable laws

- e) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SERVICES OR WORK PRODUCTS. DI EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED AND EXPRESS WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DI DOES NOT REPRESENT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PROVIDED THE SOFTWARE IS PERFORMING SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION, CUSTOMER IS RESPONSIBLE FOR THE RESULTS TO BE ACHIEVED FROM USING THE SOFTWARE AND WORK PRODUCT AND RECEIVING THE SERVICES.

9) **INDEMNIFICATION**

- a) **General Indemnification By Customer.** Customer will defend, indemnify, and hold DI harmless from all demands, claims, liabilities, actions, suits, judgments, decrees, proceedings, (including reasonable attorneys' fees incurred in connection therewith), losses, damages, and expenses (collectively "Claims and Losses") associated with a claim asserted against DI, arising out of bodily injury (including death) or damage to property or persons which may be sustained by any third party that occurs in connection with Customer's operation of its business, to the extent that such injury or damage is caused in whole or in part by the wilful misconduct, grossly negligent acts, errors, or omissions of Customer.
- b) **Infringement Indemnification By DI.** DI agrees to defend, indemnify, and hold Customer harmless from and against any third-party claims brought against Customer alleging that the Software or Work Product furnished and Used within the scope of this Agreement infringe or misappropriate a U.S. patent, copyright, trademark or trade secret of a third party, and will pay all final judgments awarded or settlements entered into on such claims.
 - i) The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to:
 - (1) use of the Software or Work Product outside the scope of the Documentation,
 - (2) a modification of the Software or Work Product by anyone other than DI or its authorized agent;
 - (3) the incorporation into the Software or Work Product of any feature or information provided by or requested by Customer;
 - (4) a combination of the Software or Work Product with any third-party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or
 - (5) the use of a version of the Software or Work Product other than the then-current version made available to Customer, if the infringement would have been avoided by use of the then-current version and Customer has been made aware of this fact by DI.
 - ii) In the event the Software or Work Product are held or are believed by DI to infringe, DI will, at its sole option and expense, choose to
 - (1) modify the infringing Software or Work Product so that they are non-infringing;
 - (2) replace the infringing Software or Work Product with non-infringing Software or Work Product which are functionally equivalent;
 - (3) obtain a licence for Customer to continue to use the Software or Work Product as provided hereunder at

- no cost to Customer; or
- (4) if none of (1), (2), or (3) is commercially reasonable, then (d) terminate the licence for the infringing Software or Work Product and refund the prorated Fees paid for the infringing Software or prorated PCS Fees paid, based on a five (5) year period from the Effective Date.

iii) THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF DI AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RECOURSE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S RIGHTS BY THE SOFTWARE OR WORK PRODUCT.

- c) **General Indemnification By DI.** DI will defend, indemnify, and hold the Customer harmless from all Claims and Losses associated with a claim asserted against Customer, arising out of bodily injury (including death) or damage to property or persons that occurs in connection with the performance by DI of its obligations under this Agreement, to the extent that such injury or damage is caused in whole or in part by the wilful misconduct, grossly negligent acts, errors, or omissions of DI.
- d) **Indemnification Procedure.** The indemnification obligations of a Party under this section are conditioned upon the indemnified Party:
 - i) giving prompt written notice of the claim to the indemnifying Party;
 - ii) granting sole control of the defence 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, assistance in the defence or settlement of the claim.

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

10) LIMITATION OF LIABILITY. EXCEPT AS PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR CONTENT, BUSINESS INTERRUPTIONS, LOSS OF INCOME, LOSS OF GOOD WILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, DAMAGES DUE TO FORCE MAJEURE, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, WORK PRODUCT OR SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, AND (D) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. DI SHALL NOT BE LIABLE FOR (A) DISTURBANCES AND FAILURE OF INTERNET CONNECTIONS, OR (B) CUSTOMER'S DATA INPUT IN THE SOFTWARE. A Party's total aggregate liability for any damages arising out of or related to this Agreement, for any and all causes whatsoever, and the other Party' maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, will not exceed the Fees paid by Customer hereunder, for the portion of the Software, Work Product or Service that is the subject of the action, for the six (6) months immediately preceding the breach for which the damages are claimed. The existence of one or more claims will not enlarge this limit. Customer acknowledges and agrees that the pricing set forth herein reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy is specified in this Agreement.

11) TERMINATION.

- a) **Without Cause.** This Agreement may be terminated without cause by Customer with thirty (30) days prior written notice to DI, at the end of any minimum term specified in any applicable Quote.

- b) **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.

c) **Termination with Cause.**

- i) This Agreement may be terminated immediately if either Party violates its confidentiality obligations or the licence grants and restrictions set forth herein; or
- ii) This Agreement may be terminated upon notice upon the material breach by the other Party of its obligations (including non-payment of Fees or Billable Expenses), when such breach has not been cured within thirty (30) days written notice of such breach.

d) **Effect of Termination.** Upon any termination of this Agreement, except for fully paid-up Software and Work Product being used by Customer under a Perpetual Licence and in accordance with the terms and conditions of this Agreement, the following shall occur:

- i) the Receiving Party agrees to immediately cease using the Confidential Information of the Disclosing Party, and
- ii) each Party shall promptly return to the Disclosing Party or destroy all Confidential Information of the other Party that it may have in its possession or control together with all copies thereof (including erasing such Confidential Information from all memory or data storage apparatus) and certify to the Disclosing Party such destruction / return within ten (10) days of such termination, and
- iii) DI shall cease performing the Services and all licences granted herein, and under any applicable SOW, if any, shall immediately terminate.
- iv) if the Receiving Party determines that returning or destroying the Confidential Information is infeasible, the Receiving Party shall provide to the Disclosing Party notification of the conditions that make return or destruction infeasible. The Receiving Party shall extend the protections of this Agreement to such Confidential Information and limit further uses and disclosures of such Confidential Information to those purposes that make return or destruction infeasible, for so long as the Receiving Party maintains such Confidential Information.
- v) Notwithstanding the foregoing, in case of termination by DI pursuant to Part A, Section 11.c, all licences granted herein shall immediately terminate and Customer shall immediately cease using delivered Software and Work Product and shall promptly return all Software and Work Product to DI.

e) **Consequences of Termination.** Upon any termination of this Agreement, except for Disputed Fees, any applicable Fees and Billable Expenses owed by Customer through the date of termination shall become due and payable regardless of any payment terms to the contrary.

f) **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 Software and Work Products after termination of this Agreement and all Open SOWs if such termination is for Customer's material breach.

12) MISCELLANEOUS TERMS.

- a) **Medical Care and Expertise.** Customer acknowledges and agrees that DI is not engaged in the practice of medicine and that DI shall not be responsible for any medical practice management and patient care decisions made using the Software and Services, and any Software customization done by DI for Customer. Customer acknowledges and agrees that all processes, forms, and reports contained in the Software or

Services are: (i) provided for Customer's information only, (ii) subject to errors and (iii) not a substitute for the exercise of professional judgment.

- b) **Force Majeure.** Except with regard to payments due DI, neither Party shall be liable for any delays or failures in performance due to an event of Force Majeure
- c) **Hiring.** During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall hire any employee of the other without prior written approval. The foregoing notwithstanding, neither Party will be deemed to have breached this section by (a) hiring personnel responding to non-targeted job postings or (b) hiring personnel of the other Party that have been terminated or notified of pending termination by the other Party.
- d) **Publicity.** Customer acknowledges and agrees that DI may publicize that Customer uses DI's Software and Services in a mutually agreed upon initial press release, DI website article, industry blog post, social media publication or similar industry-appropriate announcement. Thereafter, DI may use Customer name in any publicized list of customers.
- e) **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 addresses stated on the relevant Quote, or any more recent address of which the sending Party has been apprised. Notwithstanding the foregoing, Customer may provide official notice of termination of a Subscription License, as allowed hereunder, through any Data Innovations' electronic payment portal and/or by email to Europe-sales@datainnovations.com.
- f) **Equitable Relief.** The Parties agree that any breach of a Party's confidentiality obligations or a breach of the licence 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, notwithstanding the Dispute Resolution section set forth herein, in the event of any breach or threatened breach of such obligations, the non-breaching Party will be entitled to seek immediate and/or permanent injunctive relief as well as equitable relief in addition to its other available legal remedies.
- g) **Assignment.** Neither Party may assign (whether by operation or law or otherwise), sublicense, share, pledge, rent or transfer any of its rights under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party shall have the right to assign its rights and obligations hereunder (including any SOWs) upon change of control, or by sale of assets, reorganization, merger, consolidation or otherwise provided such assignment: a) is not to a direct competitor of the other Party; (b) does not interfere with a Party's performance obligations under this Agreement; (c) does not change the scope of the Services and the intent contemplated by the Parties under this Agreement and any SOW; or (d) is not pursuant to bankruptcy proceeding. Further, any assignment of Customer: (x) must include the assignment of all the Software and all other software or Hardware bundled or pre-installed with the Software, including all copies, Updates and prior versions, to such person or entity; (y) must not retain any copies of the Software, including backups and copies stored on a Computer; and (z) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which Customer legally licensed the Software. Any assignment or transfer in violation of the above is void. This Agreement will be binding on the Parties, their successors and permitted assigns.
- h) **Entire Agreement.** This Agreement, together with all Exhibits constitutes and contains the entire understanding and agreement of the Parties with respect to the subject matter herein and, supersedes all prior representations, proposals, discussions, undertakings, communications, agreements, advertisements, and understandings, whether oral or written,

between the Parties. Any "click-through" or "shrink-wrap" terms and conditions delivered with the Software or any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by Customer that are different from or in addition to those set forth herein are hereby expressly rejected and shall not be binding on the Parties, even if signed and returned, unless both Parties hereto expressly agree, in an instrument separate from and in addition to the purchase order, acknowledgement, or confirmation, to be bound by such separate or additional terms and conditions.

- i) **Amendment.** This Agreement may only be modified, altered or amended by written agreement signed by an authorized officer of both Parties.
- j) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of Belgium, without regard to conflicts of laws principles of any jurisdiction. The Parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- k) **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) **Internal 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 Parties shall designate representatives to confer or meet with each within a reasonable period of time (as agreed upon by the Parties) to discuss and attempt to resolve the Dispute.
 - ii) **Mediation.** If the Dispute cannot be settled internally by Internal 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 Belgium.
- l) **Language.** The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement and the Schedules.
- m) **Section Headings.** Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.
- n) **No Waiver.** No failure or delay by either Party in exercising any right hereunder will operate as a waiver thereof.
- o) **Relationship of the Parties.** The Parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture or employment relationship between DI and Customer.
- p) **Third Party Beneficiaries.** This Agreement is not intended to create and does not create enforceable obligations for the benefit of any third party.
- q) **Severability.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and in full force and effect.

PART B - SOFTWARE



- 1) **SOFTWARE LICENCE.** Subject to Customer's compliance with these Terms, DI grants to Customer, for the term, a non-exclusive, non-transferable, non-sublicensable, revocable, licence to Use the Software only as allowed herein solely for Customer's internal business purposes.
 - a) Type. Each applicable Quote shall indicate the licence type (Perpetual or Subscription).
 - b) General Use. Customer may install and Use one (1) copy of each licence the Software granted to Customer hereunder on one (1) computer or server.
 - c) Reproduction. Customer shall not copy the Software without the prior written approval of DI. Notwithstanding the foregoing, Customer may make one backup copy of the Software, into machine readable form, for archival and disaster recovery purposes, provided Customer's backup copy is not in Use on any Computer. All backup copies shall remain the property of DI and are subject to the terms and conditions of this SA. Customer shall maintain a record of the number and location of all copies of Software, including copies merged with other software, and shall make those records available to DI upon request. Any backup copy of the Software that Customer makes must contain the same titles, trademarks, copyright notices, legends and other proprietary notices that appear on or in the Software.
 - d) No Modification. Customer shall not, and shall not permit any third party to, (i) modify, adapt, alter or translate (excluding any language translation features that are part of the Software, and default project data files) the Software or (ii) reverse engineer, decompile, disassemble, create derivative works of any part of the Software, attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software including, without limitation, any such mechanism used to restrict or control the functionality of the Software; or otherwise attempt to discover the source code or the underlying ideas, algorithms, structure or organization form of the Software, except to the extent Customer may be expressly permitted to decompile under applicable law. DI reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.
 - e) Transfer. Customer may not, rent, lease, sublicense, assign, distribute, sell or transfer Customer's rights in the Software, use the Software for commercial time-sharing, or for service bureau use, or authorize all or any portion of the Software to be copied onto another user's Computer except as may be expressly permitted herein. Customer may, however, transfer the Software from one Customer Computer to another, provided that the transfer is carried out within a reasonable timeframe. Customer may ensure that the Software is successfully loaded on the new Computer prior to erasing from Customer's old Computer.
 - f) Updates. If the Software is an Update to a previous version of the Software, Customer must possess a valid licence to such previous version in order to Use such Update. All Updates are provided to Customer on a licence exchange basis. Customer agree that by Using an Update, Customer voluntarily terminates Customer's right to Use any previous version of the Software and will transfer all data to the new Update.
 - 2) **WARRANTIES.**
 - a) DI warrants that for as long as Customer has a valid M&S agreement in effect for the Software and has paid all applicable M&S Fees or Subscription Fees due under the M&S agreement, the Software, when properly installed and used in accordance with the applicable Documentation, will substantially perform in accordance with the Documentation provided with the Software. Customer's exclusive remedy under the limited warranty set forth herein and the sole obligation of DI for breach of this warranty shall be for DI to use commercially reasonable efforts to correct any reproducible error of the Software to conform to the Documentation, at no additional charge.
 - b) RESERVED.
 - c) DI warrants that as of Date of Delivery, the Software does not contain any Malware.
 - 3) **DISCLAIMER OF WARRANTIES.** Except to the extent expressly provided herein:
 - a) DI does not warrant that Customer's Use of the Software will be error-free, Malware-free or that Customer will be able to operate the Software without problems or interruptions.
 - b) DI DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE.
 - c) THE SOFTWARE IS PROVIDED "AS IS".
 - 4) **RESERVED.**
 - 5) **EXPORT RULES.** Customer agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the "Export Laws". In addition, if the Software is identified as export controlled items under the Export Laws, Customer represents and warrants that Customer is not a citizen, or otherwise located within, an embargoed nation and that Customer is not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if Customer fails to comply with the terms of this SA.
 - 6) **THIRD PARTY SOFTWARE.**
 - a) Open Source Software and Bundled Software: Open Source Software and Bundled Software are licensed for use by Customer, directly by the third party vendors of such software, and Data Innovations makes no representation or warranty of any kind regarding such software, and shall have no liability associated with its use. Customer is to look to the licence agreements of such software vendors for terms and conditions of use, warranties and liabilities as set forth on the Third Party Software List.
 - i) InterSystems' proprietary applications are Bundled Software delivered and used with DI's Instrument Manager™ software, subject to the InterSystems' End User License & Service Agreement, attached as an Exhibit 1 this Part B. Such Bundled software is named as follows:
 - (1) Caché™ bundled with Instrument Manager™ versions up to 8.17.
 - (2) InterSystems IRIS™ bundled with Instrument Manager™ versions 9.00 and greater.Customer's execution of this Agreement; or the delivery of an order from Customer to DI against an applicable Quote provided under this Agreement shall be Customer's affirmative agreement that it accepts the term and conditions of the InterSystems' End User License & Service Agreement.
 - b) Embedded Software: Embedded Software is licensed for use by Customer subject to terms and conditions set forth in this Agreement.
 - 7) **AUDIT RIGHT.** During normal business hours and at any time during which the Software or Documentation are being utilized, DI, or its authorized representative or licensors, shall have the right upon reasonable notice to audit and inspect Customer's Use of the Software, in order to verify compliance with the terms of this SA. If Customer is found to not be in substantial compliance with its obligations, Customer shall pay the reasonable expenses incurred by DI associated with such audit and will promptly take measures to come into compliance.
- ## PART C – SUBSCRIPTION
- 1) Term.
 - a) Each Subscription License shall have a set time period of Use ("Subscription Term").
 - b) The initial Quote will specify a minimum "Initial Subscription Term" for each Subscription License.
 - c) On expiry of the Initial Subscription Term, the Subscription Term will automatically extend "Extended Subscription Term" in increments as specified in the applicable Quote (e.g. month, quarter, year or multiple thereof).

- d) The license grant for Use of the Software on a Subscription basis shall only be for the Subscription Term.
 - e) Customer shall be liable to DI for the Subscription Fees for the entire Subscription Term (Initial or Renewal), specified in the applicable Quote.
- 2) Suspension of Subscription License.**
- a) DI reserves the right to suspend a Subscription License and any pending Services, if Customers fails to pay the appropriate Subscription Fees within thirty (30) days from when the Subscription Fee is due.
 - b) Upon suspension, Customer shall lose access to the Software and any pending Services.
 - c) The effects of suspension are:
 - i) Any instrument, host and other system connections will stop working.
 - ii) Customer will be unable to process laboratory production work or use any extended packages (e.g. Quality, Analytics) while Software access is suspended.
 - iii) DI will not provide any M&S.
 - iv) Customer will not be able to access the Extranet. Updates, Drivers and other functions and Services will not be available.
 - d) Customer acknowledges and agrees that it shall not attempt to circumvent any suspension restrictions imposed on the Software or Services due to payment default.
- 3) Technical requirements for Subscription**
- a) Subscription SSKs require periodic, automatic updates.
 - b) Unless specifically agreed by DI in writing, the computer or server where the Software is installed requires internet access in order to download updates to the Subscription SSK from DI's server.
 - c) Should internet access be unavailable or access to DI's server be impeded, the Software may become suspended as set forth in Section 2 of this Part C.
 - d) DI shall not be liable for any failure of Customer to update the Subscription SSK.

PART D - MAINTENANCE AND SUPPORT SERVICES

- 1) GENERAL.** DI will provide the Maintenance and Support Services set forth in this Part D, and any related Exhibits, for the current Major Release and the previous Major Release of a Supported Version of the Software for which Customer has a valid licence to Use and for which Customer is current on all Maintenance and Support Services Fees.
- 2) M&S TERM.**
- a) Perpetual Licence: The term of M&S for Perpetual Licences of the Software is for twelve (12) months, unless otherwise specified in the Quote. The start date and accrual of the M&S Fees for all Software begins thirty (30) days from the Date of Delivery of the Software.
 - b) Subscription Licence: The term of M&S for Subscription Licences of the Software shall coincide with the subscription period as set forth in the applicable Quote.
 - c) Upon reasonable notice, DI reserves the right to modify the terms and conditions of M&S by written amendment, provided, however, no such amendment for the modification of M&S shall become effective until completion of Customer's then-current M&S term.
- 3) M&S FEES.**
- a) Perpetual Licence: Unless stated on the Quote or otherwise agreed in writing, the initial M&S Fee for the Software is eighteen percent (18%) per year of the current list price of all the Software covered.
 - b) Subscription Licence: M&S Fees for Subscription Licences of the Software are included as part of the annual Subscription Fee.
 - c) Software covered under this MSA includes all Software licensed to Customer under any existing and future quotes and/or proposals, which are or may be executed through the submission of purchase orders by the Customer for Software licensed or sublicensed to the Customer.
- d) All Software installed on a single system must be covered.
 - e) M&S Fees are due and payable as set forth on the applicable Quote.
- 4) M&S RENEWAL.** Renewals are conducted as follows:
- a) Perpetual Licence:
 - i) Unless terminated as provided herein, M&S shall automatically renew on an annual basis.
 - ii) DI will endeavour to provide Customer with notice of M&S renewal terms and fees ("Renewal Notice") at least forty-five (45) days prior to the end of the then-current M&S term.
 - iii) Customer may discontinue M&S by providing notification to DI at least thirty (30) days in advance of the expiration date of the current M&S term.
 - iv) Customer must pay the M&S Fees for the renewal term prior to the expiration date of the then-current M&S term.
 - v) DI reserves the right to terminate Customer's M&S if renewal fees are not paid prior to the M&S term.
 - vi) DI may increase its charges for M&S Fees for each successive annual M&S term by providing no less than forty-five (45) days advance notice of such increase before the beginning of the M&S term for which the increase is to be in effect.
- 5) M&S SUSPENSION AND TERMINATION.**
- a) Suspension. DI reserves the right to suspend M&S where any M&S Fees or Subscription Fees are in default.
 - b) Termination For Cause. MSA may be terminated immediately upon written notice by either Party upon the material breach by the other Party of its obligations under this MSA (including non-payment of any M&S Fees), which breach has not been cured within thirty (30) days after the breaching Party has received written notice thereof.
 - c) Termination of M&S by either DI or Customer does not terminate any perpetual licence to the Software.
- 6) REINSTATEMENT OF LAPSED M&S.** In the event Customer allows M&S to lapse, DI may allow Customer to reinstate M&S upon Customer's performance of both of the following conditions
- a) Customer agrees to install the latest version of the Software immediately upon M&S reinstatement; and
 - b) payment of up to two (2) times all M&S Fees accruing between the date in which the prior M&S term expired and the effective date of reinstatement.
- 7) M&S PRIORITY LEVELS.** Upon request for M&S where the issues being experienced by the Customer are identified as a Software Error, Customer and DI will mutually agree on the severity level of the Software Error. DI will respond to problems with the Software according to the following schedule:
- a) Critical Priority: System or Production Connection Down:
 - i) Critical Priority shall mean a Software Error that renders the Software inoperable and causes a significant, time-dependent stoppage of Customer's business operations.
 - ii) Critical Priority instances must be reported via telephone.
 - iii) DI will acknowledge Critical Priority instances within one (1) hour of the initial contact via telephone and commence working towards a resolution at that time.
 - b) High Priority: Significant Business Impact:
 - i) High Priority shall mean a Software Error that causes the Software to fail resulting in significant revenue or operational impact on Customer's business, although certain functions of Customer's business remain in operation.
 - ii) High Priority instances may be reported via telephone, email or via the DI Extranet.
 - iii) DI will acknowledge High Priority instance within four (4)



hours of the initial contact and commence working towards a resolution at that time.

- c) **Medium Priority: Low Impact Failure:**
 - i) Medium Priority shall mean a Software Error causes a feature of the Software to fail resulting in a non-critical situation which allows the Customer's business to remain in operation. A Medium Priority incident may include issues only impacting a single user or issues where the business impact under a Critical Priority or High Priority is resolved, but there is ongoing research needed to determine the root cause of the failure.
 - ii) Medium Priority instances may be reported via telephone, email or via the DI Extranet.
 - iii) DI will acknowledge Medium Priority instances within twenty-four (24) hours of the initial contact.
- d) **Low Priority: Assistance:**
 - i) Low Priority shall mean Software Error opened when Customer has general Software questions or needs that do not impact day-to-day functionality.
 - ii) Low Priority instances may be reported via telephone, email or via the DI Extranet.
 - iii) DI will acknowledge Low Priority instances within forty-eight (48) hours of the initial contact.

8) OBTAINING SUPPORT. A Customer requesting that DI provide M&S for the Software shall contact DI during the times and in the manner set forth below. While M&S is Active ("Active" being defined as M&S being valid and in effect and Customer having paid the applicable M&S Fees due) DI shall provide M&S to Customer and Customer shall provide DI with (a) an accurate description of the Software Error; (b) the steps necessary to reproduce the Software Error; (c) if required, the data being processed at the time of the Software Error and associated log files; and (d) the severity of the Software Error, including the circumstances that lead to the Software Error.

- a) **Non-Emergency Support:** Non-emergency support is available Monday through Friday, excluding holidays published on www.datainnovations.com during the hours for the region listed below.

Support Hours	Technical Support Contact
8:00 am – 6:00 pm CET/CEST Monday – Friday	DI Extranet* europa-support@datainnovations.com +32 2 332 24 13
Note(s): * DI Extranet may be accessed via support.datainnovations.com .	

- b) **During Support Hours:** During Support Hours, Customer may log requests for M&S in the following manner:
 - i) **Telephone:** Customer may log M&S requests by calling the telephone number provided in the table above. All Critical Priority and High Priority instances, as defined in Section 7 Priority Levels, must be logged via telephone.
 - ii) **E-mail:** Customer may log M&S requests by sending e-mails to the appropriate DI Regional Support Office via the email address provided in the table in Section 8.a). All Critical and High Priority instances must be logged via telephone. E-mail is reserved for Medium and Low Priority instances as defined in Section 7 Priority Levels.
 - iii) **DI Extranet:** Using the DI Extranet, Customers can log Medium and Low Priority instances, view the status of outstanding instances, download Drivers, (for Instrument Manager™ only), Documentation, and access a Knowledgebase of known issues and resolutions, for troubleshooting assistance and update contact information. DI does not warrant the DI Extranet will operate without interruption or without errors.
- c) **Emergency Support:** Emergency M&S is available 24x7x365. An Emergency M&S request may be submitted for a Production System where all or a portion of the Production System has become non-operative and is affecting a critical laboratory

function. Emergency M&S is defined as Critical and/or High Priority instance(s) as defined in *Section 7 Priority Levels*.

- d) **Non-Emergency Support After Hours:** Customers requesting that DI provide non-Emergency M&S outside of Support Hours may purchase services for 'Custom Support Services'. Such support must be scheduled and is subject to DI's resource availability and shall be provided subject to a separate, SOW entered into between the parties.

9) CUSTOMER RESPONSIBILITIES.

- a) **Remote Access:** In order to assist DI in meeting the commitments above, Customer agrees to provide an approved remote method to the devices running the Software with connectivity to the Software and access that permits connectivity and administration using Software's administration tools accessing the database engine.
- b) **Diagnostics Data:** In the event DI requests any data dumps, logs or any other documentation from Customer to resolve a reported M&S issue, such information shall be forwarded by overnight courier at Customer's expense or through electronic means such as e-mail, remote access, or FTP.
- c) **Primary Technical Contact(s):** DI reserves the right to only provide M&S for up to three (3) individuals employed or subcontracted by the Customer which have been identified and trained as the Primary Technical Contacts of the Software.
- d) **Hardware Platform / Infrastructure:** Customer is responsible for the maintenance of its hardware platform and technical infrastructure. This infrastructure includes but is not limited to a reliable backup solution, networking components, virus protection and security software applications (i.e. firewalls).

10) UPDATES. If this MSA is Active, Customer shall have the right to receive Updates at no additional charge by accessing the Updates from the DI Extranet. If Customer requests that Updates be provided to Customer via electronic media (e.g. CD/DVD), DI may charge reasonable processing and shipping fees.

11) RESERVED.

12) DRIVER UPDATES. If this MSA is Active, Customer shall have the right to receive Driver Updates at no additional charge by accessing the Driver Updates from the DI Extranet.

13) REQUESTED ENHANCEMENTS. If this MSA is Active, the Customer may submit a request to DI for a Requested Enhancement. DI may, at its discretion, develop the Requested Enhancement in full, in part, and/or with variations to the request. Note: Requested Enhancements are not applicable to EP Evaluator®.

14) LICENCE GRANT. Customer acknowledges and agrees that all Updates, Driver Updates, Requested Enhancements and Driver Enhancements ("M&S Updates"), along with any associated Documentation provided to Customer under this MSA are licensed to Customer pursuant to the terms and conditions of the MSA, and as such are subject to all of the terms and conditions of the MSA, including but not limited to terms of ownership, confidentiality, export control, and warranties.

15) NO LIABILITY FOR INACCURATE DIAGNOSTICS.

- a) DI will attempt to provide accurate advice and information to Customer's employees requesting support for the Software as described herein;
- b) The Parties acknowledge that DI cannot guarantee that such advice and information will be error-free and accurate in all instances as such advice and information is dependent upon Customer's presentation and interpretation of the support needed as well as complete disclosure of the circumstances leading up to the request.
- c) DI will not be liable to Customer for any damages sustained by Customer as a result of incorrect or inaccurate advice by DI unless such damages were directly caused by the gross negligence or wilful misconduct of DI.

16) INSTALLATION OF THIRD PARTY SOFTWARE AND UPDATES. Customer should not install any version, update, or upgrade of any vendor software, licensed directly by Customer through its own suppliers, on a shared platform with the Software ("Additional



Software”), unless Customer understands the impact and necessity of the Additional Software version, update, or upgrade with the Software. Customer must understand and assume the risk to the Software for the application of Additional Software versions, updates, or upgrade.

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

- a) Issues regarding installation in the event Customer chooses to install or implement the Software on its own;
- b) Troubleshooting of Customer’s computer hardware, operating system, system monitoring software, virus/malware software, or network;
- c) Database management including but not limited to database backups, database archiving, database disk utilization monitoring, database patching, database upgrades;
- d) Setup of Customer-provided equipment;
- e) Troubleshooting Third-Party Software not sold/distributed by DI;
- f) Troubleshooting Third-Party Software sold by DI but the Customer does not have separate Third-Party Software maintenance and support agreement through DI;
- g) Software recovery or data manipulation and recovery due to hardware failure (regardless of whether or not the hardware was purchased by Customer directly from DI or from another third party vendor) caused by circumstances such as lightning strikes, floods or other Acts of God, neglect, power surges, power failures, or air conditioning or humidity control issues;
- h) Database modifications or alterations made by non-DI personnel;
- i) Data modification caused by Customer error or host computer system error;
- j) Promotion to a Production System of any modifications to the Software, Software Updates or Third Party Software versions, updates, or upgrades;
- k) Customer-requested modifications to the Documentation;
- l) Server maintenance including disk management, hardware operation, operation system updates, virus software management, removal of Customer-introduced viruses; and
- m) Troubleshooting or defect resolution if Customer performs its modifications or enhancements to the Software and/or system changes (“Customer Modifications and Enhancements”), unless such Customer Modifications and Enhancements were performed on behalf of Customer by DI or an authorized implementation partner of DI. For those Customer Modifications and Enhancements that were not performed by DI or an authorized implementation partner of DI, DI will Support the same only if Customer documents its Customer Modifications and Enhancements and pays PCS fees to DI (on a time-and-material basis) for DI to conduct a design review and quality assurance (“QA”) process and to transition the Customer Modifications and Enhancements to DI’s Worldwide Support.

18) OPERATING SYSTEMS. The Software has been validated for operation on a variety of operating systems and hardware configurations. Minimum system specifications and supported operating systems are available, upon request, per major version of

the Software.

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

20) NOTIFICATIONS REGARDING EOS, EOM AND EOL:

- a) Communications related to Software may be frequent. DI suggests that Customer subscribe to the appropriate email notifications at [E-mail Updates | Data Innovations](#).
- b) EoS - DI policy is to provide a minimum 12-month notification for an End of Sale event, whenever possible.
- c) EoM - DI policy is to provide a minimum 12-month notification, whenever possible, when Customer is required to act in response to an End of Maintenance event to avoid degradation of the normal Use of the Software or a specific Software version.
- d) EoL - DI policy is to provide a minimum of 24 months notification prior to an End of Life event for Software. It is DI’s policy to provide a minimum of 12 months’ notification prior to an End of Life event for a specific Software version whenever possible. Maintenance and Support Services for Software and specific Software versions will be provided based on the [published End of Life dates](#).

PART E – PROFESSIONAL CONSULTING SERVICES

1) PCS FEES & PAYMENT TERMS.

- a) As consideration for the PCS provided by DI to Customer, Customer, will compensate DI for the PCS Fees set forth in each Quote or applicable SOW.
- b) DI’s performance is dependent on Customer carrying out its obligations as set forth in this PSA, and the applicable SOW, and Customer acknowledges and agrees that the PCS Fees take into account these obligations.
- c) Customer shall pay DI all PCS Fees, plus Applicable Taxes, by the Due Date. An invoice will be generated by DI as detailed in the applicable Quote or SOW

2) CHANGE ORDER.

- a) The PCS Fees set forth in each Quote are only for the PCS scoped in each applicable SOW.
- b) The Parties shall enter into a Change Order to document any changes to the scope of a SOW.
- c) DI shall have no obligation to begin work on any additional or altered PCS prior to the Change Order being in place.

3) LICENCE GRANT AND OWNERSHIP.

- a) Subject to the terms and conditions of this PSA, and the applicable terms set forth in a SOW, and upon payment of all PCS Fees owed under the SOW, DI hereby grants Customer a perpetual (subject to the termination provisions of Section 6 below and Part A, Section 11), non-exclusive, non-transferable, licence to use the Work Products solely for Customer’s internal business purposes. Nothing contained herein shall grant any rights of ownership to Customer in the DI Tools. If any Software (whether pre-existing or new) is delivered as part of the PCS provided herein, Customer acknowledges and agrees that i) nothing contained herein shall grant any rights of use or ownership to Customer in such Software, and ii) all such Software shall be licensed to Customer pursuant to separately executed licence agreements.
- b) Customer acknowledges and agrees that DI shall have sole and exclusive ownership of all right, title and interest in and to the Work Products, including any and all DI copyright material, including algorithms, predefined rules and validation templates, provided to Customer under the scope of this PSA and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject



only to the rights and privileges expressly granted to Customer herein. This PSA does not provide Customer with title to or ownership of the Work Products, but only a right of limited use as set forth herein.

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

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

- a) Consulting and/or training Customer on designing and developing rules and algorithms of their own creation to direct Instrument Manager in the processing of patient test results.
- b) Predefined rules and algorithms that have been modified with Customer's input and approval to direct Instrument Manager in the processing of patient test results.
- c) Templates and consulting to Customer for use and approval to validate the PCS provided under this PSA for the Instrument Manager system prior to processing patient test results.
- d) Customer acknowledges and agrees that the content of any algorithms, and any corresponding results and actions, shall be solely Customer's responsibility. While DI may offer Customer consulting, training and/or predefined algorithms and rules to implement certain parameters for processing patient test results, Customer acknowledges and agrees that the final identified parameters shall at all times be determined by, and be the sole responsibility of, Customer. Customer shall not, under any circumstances, rely upon DI to make final determinations regarding the content or direction of any Customer rules or processing decisions.
- e) Because the responsibility for any and all parameters, content and direction of any rules implemented via Instrument Manager through Rules-Based Services rests solely with Customer, DI makes no representations or warranties with respect to any algorithms, or their content, implemented via its Rules-Based Services.

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

6) SOW TERM, RESCHEDULING AND TERMINATION.

- a) **Term.** Each SOW shall have the term set forth in the SOW. If a term is not specified in the SOW, the SOW shall begin upon the effective date of the SOW and shall continue until all PCS are completed, unless earlier terminated as provided herein.
- b) **Rescheduling of PCS.** If, after the Scheduled Date has been agreed upon by the Parties, Customer requests to reschedule the PCS, such written rescheduling request shall be provided to DI at least twenty (20) business days prior to the Scheduled Date.
- c) **Effect of Rescheduling.** If the PCS are rescheduled, Customer is responsible for any fees and expenses already incurred by DI prior to the rescheduling, associated with the PCS, including transportation and lodging, change or rebooking fees and any reasonable and appropriate corresponding increase in PCS Fees due to the Rescheduling.
- d) **Termination Without Cause.** Either Party may terminate an individual SOW without cause upon thirty (30) days' written notice to the other.
- e) **Termination with Cause.** If either Party materially breaches

the terms of an individual SOW, (including, without limitation, any obligation to pay PCS Fees), 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 terminate such SOW.

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

- g) **Effect of Termination.** Upon any termination of a SOW, the terms and conditions of Part A, Section 11.d shall be directly applicable to the terminated SOW.

EXHIBIT 1 TO PART B - SOFTWARE ADDENDUM



END USER LICENSE & SERVICES AGREEMENT

1. This Agreement is between InterSystems Corporation ("ISC") and you the customer (hereinafter "you") that has ordered license(s) to use ISC's proprietary software (the "Licensed Software") and/or services ("Services") from ISC as a part of your agreement with DI, a licensed Application Partner of ISC ("AP").
2. Upon ISC's acceptance of your order (the "Effective Date") and the payment of the appropriate fee (the "License Fee") to ISC, ISC shall grant to you a nontransferable and nonexclusive license to use the Licensed Software internally solely in the conduct of your business (the "License"). For the avoidance of doubt, the "Licensed Software" shall not include any open source or third party software that may be shipped with, installed with or used in conjunction with ISC's proprietary software. No license shall be granted upon the physical delivery of any software to you. The granting of each License is subject to the approval of ISC, who has the right to disapprove any such request. A Trade In shall be deemed to be the cancellation of your old paid up License and the granting of a new paid up License. Services ordered by you shall be provided in accordance with the terms and conditions contained in ISC's Price List ("Price List") in effect on the date such Services are rendered, provided that ISC has received the appropriate fee therefor ("Service Fee"). If you ordered a License or Services through an AP, you may only use the Licensed Software and Services in conjunction with such AP's software.
3. To enter into a License, you must accept the terms of this Agreement as a schedule to your agreement with DI. Your agreement with DI specifies whether your License is a paid-up License or is a subscription License. The term ("License Term") of a paid-up License shall be 30 years from the Effective Date. The License Term of a subscription License begins on the Effective Date and is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided. The License Term of a paid-up or a subscription License is subject to earlier termination in accordance with Section 6 below.
4. ISC hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with ISC's documentation relating thereto for one (1) year following the Effective Date, and (ii) all Services shall be performed in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with ISC's documentation and instructions, and upon the absence of any misuse, damage, alteration or modification thereto. ISC SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO YOU AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR SERVICES. Your exclusive remedy for a breach of the above warranties shall be for ISC to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Services, as applicable. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with ISC's documentation and instructions, ISC shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at ISC's option. LIMITED WARRANTY HEREIN DOES NOT INCLUDE TECHNICAL ASSISTANCE AND SOFTWARE UPDATE SERVICES AND IS NOT A SUBSTITUTE FOR SUCH SERVICES, WHICH ARE AVAILABLE FOR A SEPARATE FEE.
5. ISC's liability to you shall in no event exceed the License Fees or Services Fees received by ISC in respect of the specific Licensed Software or Services on account of which such liability arose. In no event shall ISC be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
6. Either party may terminate this Agreement upon the other's breach. You shall be liable for all fees relating to Licensed Software or Services provided prior to termination, and Sections 5, 6, 7, 8 and 10 hereof shall survive.
7. The Licensed Software and related documentation are and shall remain the sole property of ISC. You may make copies of the Licensed Software for backup and archival purposes only. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by ISC or its affiliates relating to the Licensed Software, Services or this business relationship. You agree to allow ISC or its representatives to audit your use of the Licensed Software upon five (5) days' notice by ISC, including providing access to your premises.
8. This Agreement shall be construed in accordance with and governed by the laws and regulations of the Commonwealth of Massachusetts. Any litigation arising herein shall be initiated and conducted exclusively in the state or federal courts in Boston, Massachusetts.
9. You agree to comply with all applicable laws, including, but not limited to, U.S. export control or similar laws with respect to use of the Licensed Software and technical data. The English version of this Agreement shall control unless otherwise required by local law.
10. These terms together with any applicable terms provided to you by DI constitute the entire agreement (collectively, the "Agreement") between you and ISC relating to the subject matter hereof and supersede any prior understandings between us as well as any purchase orders or similar documents that may be submitted to ISC. ISC shall have the right to transfer or assign this Agreement without your consent. This Agreement may only be modified or amended by a writing signed by both Parties.

InterSystems Corporation: V. Aug07 1.0