



**DATA INNOVATIONS LLC  
PROFESSIONAL SERVICES AGREEMENT**

This agreement for the provision of professional services is by and between Data Innovations LLC, a Delaware limited liability company with principal offices at 463 Mountain View Drive, Colchester, VT 05446 (“DI”) and company (“Customer”). Each of DI or Customer may be referred to as a “Party” or together the “Parties”.

This agreement consists of (i) the following General Terms and Conditions; (ii) any number of Schedules and Exhibits attached hereto; and (iii) any Quote, Statement of Work, or other written agreement entered into by the Parties (the “Professional Services Agreement”).

This Professional Services Agreement is for the provision of training, implementation, installation, and/or consulting service for certain DI software licensed by Customer under a separate end user license agreement (“EULA”).

This Professional Services Agreement governs each Quote or Statement of Work and other written agreement entered into by the Parties at any time.

<b>SCHEDULES AND EXHIBITS TO PROFESSIONAL SERVICES AGREEMENT</b>
Professional Services Terms and Conditions Schedule

**PLEASE READ THIS PROFESSIONAL SERVICES AGREEMENT CAREFULLY. EXECUTION OF A QUOTE, SUBMISSION OF A PURCHASE ORDER OR PAYMENT OF THE FEES RELATED TO THE PROVISION OF THESE PROFESSIONAL SERVICES WILL BE DEEMED CUSTOMER’S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (“EFFECTIVE DATE”). CUSTOMER AGREES THAT THIS PROFESSIONAL SERVICES AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY CUSTOMER. IF CUSTOMER DOES NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS PROFESSIONAL SERVICES AGREEMENT CUSTOMER SHOULD IMMEDIATELY NOTIFY DATA INNOVATIONS OF ITS DESIRE TO TERMINATE THE PROFESSIONAL SERVICES.**

**GENERAL TERMS AND CONDITIONS**

**1) DEFINITIONS.**

- a) **“Additional Software”** means third-party vendor software, licensed directly by Customer through its own suppliers and not sold or distributed by DI, whether or not it was recommended for use in connection with installation and Use of the Software.
- b) **“Affiliate(s)”** means any company controlling, controlled by or under common control with Customer.
- c) **“Applicable Taxes”** means all value-added, sales, use, import, duties, customs or other taxes applicable to the Software licensed to Customer and/or Services performed, under this Professional Services Agreement, except for any taxes based upon DI’s net income.
- d) **“ARRA”** means Title XIII of the American Recovery and Reinvestment Act of 2009
- e) **“Bank Fees”** means any form of payment fees (including wire transfer fees, bank fees, and credit card fees) assessed by Customer’s A/P processor or bank, or DI’s processor or bank, to DI related to payments made by Customer to DI hereunder.
- f) **“Billable Expenses”** means all actual, out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Professional Services under this Professional Services Agreement, as further described in the Professional Services Schedule.
- g) **“Change Order”** means a written, mutually agreed upon change to the Customer’s requirements and/or the scope of the Professional Services, delivery schedule, and/or Professional Services Fees.
- h) **“Claims and Losses”** means any and all third-party, claims, demands, liabilities, actions, suits, judgments, decrees, proceedings, (including reasonable attorneys’ fees incurred in connection therewith), losses, damages, and expenses.
- i) **“Confidential Information”** means 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, technical process, any device, technique, or compilation of information, formula, source code, object code, flow charts, file record layouts, databases, inventions, technical data or information know-how, patents, and Trade Secrets (as defined by the Uniform Trade Secret Act), improvements, concepts and discoveries, whether or not patentable or copyrightable, relating to the Work Product, and Professional Services, (ii) information with respect to either Party’s existing or contemplated products, product development, services, marketing plans, suppliers, business data or information, partner relationships, business opportunities, finances (including, without limitation, revenues, expenses, taxes, and contracts), operations, pricing and, customers or personnel, processes, techniques or know-how, sales data, internal performance results, validation reports, or any information or data developed pursuant to the performance of the Professional 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 Professional Services Agreement. DI hereby designates the DI Property, including any permitted copies, as DI’s Confidential Information. Customer



Data, including permitted copies, shall be deemed “Customer Confidential Information”. Confidential Information shall not include information that (A) is in or enters the public domain without breach of this Professional Services 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.

- j) **“Customer Data”** means all Customer data entered into, or coming in from an outside source, and captured by, the Software, including any Protected Health Information, if either are applicable, forming part of such data. Customer Data shall include Affiliate data.
- k) **“DI Property”** means the Software, Work Product, Feedback, and DI Tools, and DI’s Confidential Information, including any future derivative works, enhancements or modifications thereto.
- l) **“DI Tools”** means any tools, databases, ideas, and methodologies used by DI in providing the Professional Services and the Work Products.
- m) **“Disclosing Party”** means the Party providing Confidential Information to the Receiving Party.
- n) **“Disputed Fee(s)”** means an invoiced Fee that is the subject of a good faith dispute between the Parties.
- o) **“Dispute(s)”** mean any and all disputes, controversies, differences or claims arising from or related to this Professional Services Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Professional Services Agreement.
- p) **“Dispute Notice”** means written notice given by one Party to the other Party setting forth the details of a Dispute.
- q) **“Documentation”** means all guides, related explanatory written materials, manuals, files or on-line help, provided to Customer, for the Software, and any modifications thereto.
- r) **“Driver”** means the software developed by DI to connect laboratory devices and information systems or Additional Software to the Software.
- s) **“Due Date”** means thirty (30) days from the date of invoice on which all amounts billed by DI will be due and payable.
- t) **“Export Laws”** means the collective reference to the United States Export Administration Act or any other export laws, restrictions or regulations that apply to the access and Use of the Software and Professional Services.
- u) **“Feedback”** means all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Professional Services.
- v) **“Fees”** means a reference to any or all of the fees due under this Professional Services Agreement for the Professional Services, Renewals, Bank Fees, and any Applicable Taxes.
- w) **“Force Majeure”** means any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected Party, including, without limitation, acts of God, acts of terrorism, acts of nature or of a public enemy, acts of a federal government or any state or political subdivision thereof, internet brownouts, fires, floods, explosions, wars, pandemics, or other catastrophes; freight embargoes; or delays of a supplier or subcontractor due to such causes.
- x) **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996.
- y) **“Intellectual Property Rights”** means 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, Professional Services whether registered or not, including any future release, update, modifications, new version, release, compilation, and translation of the DI Property and Professional Services.
- z) **“Internal Resolution”** means the resolution of a Dispute by the assigned representatives of each Party.
- aa) **“Mediation”** means the attempt to settle a Dispute that cannot be settled by Internal Resolution through the use of third-party mediation.
- bb) **“Mediator”** means an independent third party trained as a mediator to act fairly and impartially, who has been nominated by the Parties to oversee Mediation.
- cc) **“Privacy Regulations”** means HIPAA and ARRA as applicable to Customer and DI.
- dd) **“Professional Services”** means training, implementation, installation, and/or consulting services provided by DI to Customer pursuant to this Professional Services Agreement, and as more specifically



- described in a PS Agreement.
- ee) **“Professional Services Fees”** means all fees for the performance of Professional Services, including all actual Billable Expenses.
  - ff) **“Protected Health Information”** means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium that is protected under the Health Insurance Portability and Accountability Act of 1996 and Title XIII of the American Recovery and Reinvestment Act of 2009 also known as the Health Information Technology for Economic Clinical Health Act.
  - gg) **“PS Agreement”** means the applicable Quote or SOW executed by both Parties, setting forth the Professional Services that DI shall perform for the Customer.
  - hh) **“PS Appendix”** means an appendix to a Quote setting forth the specific details and additional terms and conditions regarding the Professional Services that DI shall perform for the Customer.
  - ii) **“Quote”** means the specific proposal prepared by DI and provided to Customer, which may include a PS Appendix, if applicable, setting forth the details of the Professional Services the Customer is purchasing.
  - jj) **“Receiving Party”** means the Party receiving the Confidential Information of the Disclosing Party.
  - kk) **“Scheduled Date”** means the specific date set by the Parties to commence the Professional Services.
  - ll) **“Software”** means (i) all application(s), (ii) Documentation, (iii) Drivers (iv) Driver Updates, (v) Requested Enhancements, and all (vi) Updates, licensed by DI to Customer.
  - mm) **“Statement of Work” or “SOW”** means the written form executed by both Parties, setting forth the specific details and additional terms and conditions regarding the Professional Services that DI shall perform for the Customer.
  - nn) **“Update(s)”** means a Software Error correction, bug fix, modification, enhancement, improvement, new feature, functional corrections, upgrade, modified version, addition, Driver Updates, Requested Enhancements or new releases, generally made available to purchasers of Maintenance and Support Services at no additional charge. Updates shall not include any major modifications, options or future products, Driver Updates or Requested Enhancements, that DI, in its sole discretion, determines to license separately and charge a separate license fee.
  - oo) **“Work Product”** means any implementation artifacts, interfaces, or other items delivered to Customer under a SOW.
- 2) **CONSTRUCTION.** Quotes, Statement of Works, or other written agreements related to the provision of Professional Services entered into by Customer and DI after the Effective Date (“Addenda”), will be subject to this Professional Services Agreement. The provisions of the various Addenda and Schedules will, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. In the event of a conflict between the terms and conditions of these General Terms and Conditions, a Schedule, Exhibit, or Addenda, the conflict will be resolved by giving precedence in the following order: (i) the General Terms and Conditions, (ii) the Schedule, (iii) the Exhibit, and then (iii) the Addenda, unless explicitly stated otherwise in the Schedule, Exhibit, or Addenda, and in that case the conflicting terms and conditions in such Schedule, Exhibit or Addenda will apply only to that Schedule, Exhibit or Addenda.
- 3) **AFFILIATES.**
- a) DI grants Customer the following rights related to its Affiliates, subject to the terms and conditions of this Professional Services Agreement. Affiliate may:
    - i) purchase Professional Services pursuant to a purchase order issued directly by the Affiliate to DI or a SOW entered into between Affiliate and DI.
  - b) Prior to an Affiliate’s purchase of Professional Services, Customer agrees that it shall require each of its Affiliates to comply with the terms, conditions and restrictions contained in this Professional Services Agreement, including, but not limited to, the use restrictions and confidentiality obligations, and that Customer remains responsible for all of the actions of the Affiliates, including a breach by Affiliate, and the actions of the Affiliates shall be deemed the actions of Customer.
  - c) In the event of termination of this Professional Services Agreement, all **“Effects of Termination”**, as set forth in Section 12.d, that apply to Customer, shall apply in the same manner to each Affiliate.
- 4) **PROFESSIONAL SERVICES.** DI shall provide Customer the Professional Services, pursuant to the terms and conditions contained in this Professional Services Agreement. DI’s performance is dependent on Customer carrying out its obligations as set forth in this Professional Services Agreement, and the applicable PS Agreement, and Customer acknowledges that the Professional Services Fees take into account these obligations. DI shall not be responsible for any delay in the performance of, or an inability to perform, any of its obligations contained in this Professional Services Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Professional Services Agreement.
- 5) **FEES, PAYMENT, AND TAXES.**
- a) In consideration of the Professional Services and any accompanying licenses provided to Customer by DI under this Professional Services Agreement, Customer or a third party on Customer’s behalf,



shall pay DI the Fees and Billable Expenses set forth on each applicable Quote, SOW, or Schedule, plus all Applicable Taxes. All Fees and Billable Expenses are quoted in U.S. dollars and Customer shall pay the Fees and Billable Expenses in U.S. dollars.

- b) DI shall invoice Customer for all Fees, Billable Expenses and Applicable Taxes, due hereunder, and unless otherwise specified in an applicable Quote, SOW, or Schedule, all amounts billed will be due and payable on the Due Date, except for a Disputed Fee.
  - c) A Quote will be deemed to have been accepted and agreed to by Customer, by either Customer i) signing and returning an executed copy of the Quote to DI; or ii) submitting a purchase order to DI for the Professional Services detailed on the Quote, provided the purchase order:
    - i) references the Quote number;
    - ii) the purchase order value matches the corresponding value on the Quote; and
  - d) All discounts, if any, provided under this Professional Services Agreement are intended to comply with the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, Customer must fully and accurately reflect in cost reports or other submissions to federal healthcare programs all discounts provided under this Professional Services Agreement and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, must make available information provided to Customer by DI concerning the discounts.
  - e) To the extent that DI is charged any Bank Fees, Customer agrees to reimburse DI for such payment at cost.
  - f) Except for a Disputed Fee, any payments not received by DI by the Due Date will be considered past due, and to the extent legally permissible, interest will accrue at the rate of twelve percent (12%) per year from the Due Date until all outstanding payments are paid.
  - g) 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 resolution pursuant to Section 13.k) (“Disputes”).
  - h) 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 the start of Professional Services, Applicable Taxes will be calculated and included on the Customer’s invoice.
- 6) **TERM.** The term of this Professional Services Agreement shall begin on the Effective Date and shall continue until terminated by either Party as set forth in this Professional Services Agreement.
- 7) **INTELLECTUAL PROPERTY.** The Parties acknowledge and agree that:
- a) DI, or its licensors, own all exclusive right, title, and interest in and to the Intellectual Property Rights in the DI Property. Customer shall not take any action inconsistent with such title and ownership. All title rights and Intellectual Property Rights may be protected by applicable copyright or other intellectual property laws and treaties.
  - b) This Professional Services Agreement is not a sale of the DI Property, and Customer does not acquire any ownership rights or title or any Intellectual Property Rights in the DI Property. Customer acquires only the restricted right to Use the DI Property subject to the license 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 Intellectual Property Rights that come to Customer’s attention.
  - e) Customer will not remove, alter, or obscure any copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indicia of 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 Professional Services Agreement.
  - f) Customer agrees not to use trademarks or other business names of DI for any purpose or to take any actions which are harmful to or inconsistent with the rights of DI in its trademarks, service marks, and trade names.
  - g) Customer owns all exclusive right, title and interest, including Intellectual Property Rights in the Customer Data. DI shall not take any action inconsistent with such title and ownership. DI hereby agrees to assign any such right to Customer.
  - h) Customer grants to DI during the term of this Professional Services Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Customer Data, solely as necessary to perform the Professional Services and as otherwise may be agreed in writing by the Customer.
- 8) **CONFIDENTIAL INFORMATION.**
- a) **Confidentiality.** 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 Section 1.i) (A) – (D) (“Confidential Information”) above. Each Party shall 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. Each Party shall use the Confidential Information of the other Party only during the term of this Professional Services Agreement and as expressly permitted herein, and 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 Professional Services Agreement. 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 Professional Services Agreement and shall, in no way, be deemed to change, affect, or diminish the confidential status of such Confidential Information. Customer acknowledges and agrees that it will 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.

- b) **Privacy Regulations.** The Parties agree that the Parties must meet the requirements of applicable Privacy Regulations related to the use and protection of Protected Health Information. Therefore, the Parties agree to abide by the applicable terms and conditions of the "Privacy Regulations" and agree to enter into separate privacy and security agreements, as necessary, to facilitate compliance with the Privacy Regulations.

## 9) GENERAL WARRANTIES AND DISCLAIMERS.

- a) **Customer Warranty.** Customer is solely responsible for obtaining and represents and warrants that, prior to uploading any Customer Data into the Software, it owns or has obtained all necessary consents, licenses, approvals, and rights in the Customer Data necessary so that the use of such Customer Data by DI to provide Professional Services to Customer does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.
- b) **DI Warranties.**
  - i) DI Professional Services warranties are set forth in the applicable Schedules.
- c) **Mutual Warranty.**
  - i) The Parties each have the power and the authority to enter into and perform this Professional Services Agreement.
  - ii) The Parties warrant that they shall comply with all applicable laws and regulations governing the provision, access and Use of the Software and Professional Services.
- d) **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN THIS PROFESSIONAL SERVICES AGREEMENT, DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE PROFESSIONAL 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.

## 10) INDEMNIFICATION

- a) **By Customer.**
  - i) Customer will defend, indemnify, and hold DI harmless from all 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 or an Affiliate's obligations under this Agreement, to the extent that such injury or damage is caused in whole or in part by: (i) the willful misconduct, grossly negligent acts, errors, or omissions of Customer or its Affiliate; or (ii) DI's use of the Customer Data.
- b) **By DI.**
  - i) DI agrees to defend, indemnify, and hold Customer harmless from and against any third-party claims brought against Customer alleging that the Work Product furnished and Used within the scope of this Professional Services Agreement infringes or misappropriates 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. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) use of the Work Product outside the scope of the Documentation, (ii) a modification of the Work Product by anyone other than DI or its authorized agent; (iii) the incorporation into the Work Product of any feature or information or Customer Data provided by or requested by Customer; (iv) a combination of the Work Product with any third-party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or (v) the use of a version of the 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. In the event the Work Product are held or are believed by DI to infringe, DI will, at its sole option and expense, choose to (a) modify the infringing Work Product so that they are non-infringing; (b) replace the infringing Work Product with non-infringing Work Product which are functionally equivalent; (c) obtain a license for Customer to continue to use the Work Product as provided hereunder at no cost to Customer; or if none of (a), (b), or (c) is commercially reasonable, then (d) DI will terminate the license for the infringing Work Product and refund the prorated Professional Services Fees paid for the infringing Work Product, based on a five (5) year period from the Effective Date. 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 WORK PRODUCT.

- ii) 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 Professional Services Agreement, to the extent that such injury or damage is caused in whole or in part by the willful misconduct, grossly negligent acts, errors, or omissions of DI.
  - c) **Indemnification Procedure.** The indemnification obligations of a Party under this section are conditioned upon the indemnified Party: (a) giving prompt written notice of the claim to the indemnifying Party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying Party; and (c) providing reasonable cooperation to the indemnifying Party and, at the request and expense of the indemnifying Party, assistance in the defense or settlement of the claim. The indemnifying Party shall not enter into any defense 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.
- 11) **LIMITATION OF LIABILITY.** EXCEPT AS REQUIRED 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 PROFESSIONAL SERVICES AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, WORK PRODUCT, PROFESSIONAL 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, OR DI'S USE OF CUSTOMER DATA. A Party's total aggregate liability for any damages arising out of or related to this Professional Services Agreement, for any and all causes whatsoever, and the other Party's maximum remedy, regardless of the form of action, whether in contract, tort, or otherwise, will not exceed the Professional Services Fees paid by Customer hereunder, for the portion of the Professional Services or Work Product 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 that DI's pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy is specified in this Professional Services Agreement.
- 12) **TERMINATION.**
- a) **Without Cause.** Customer may terminate this Professional Services Agreement without cause upon sixty (60) days written notice to DI.
  - b) **Termination for Bankruptcy.** This Professional Services Agreement, and any effective PS Agreement, 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 Professional Services Agreement may be terminated immediately if either Party violates the confidentiality obligations or the license grants and restrictions set forth herein; or
    - ii) This Professional Services Agreement may be terminated upon written notice upon the material breach by the other Party of its obligations (including nonpayment of Fees or Billable Expenses) when such breach has not been cured within thirty (30) days after the breaching Party has received written notice thereof.
  - d) **Effect of Termination.** Upon any termination of this Professional Services Agreement:



- i) DI shall cease performing the Services and except for termination by DI for the uncured material breach of Customer pursuant to Section 12.c) (“**Termination with Cause**”) above, all fully paid Work Product licenses shall remain in effect. In case of termination by DI pursuant to Section 12.c) above, all licenses granted herein, and under any applicable PS Agreement, if any, shall immediately terminate, and Customer shall immediately cease using any delivered Work Product and Customer shall promptly return all Work Product to DI.
- ii) DI shall cease performing the Professional Services.
- iii) The Receiving Party agrees to immediately cease using the Confidential Information of the Disclosing Party and 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. Notwithstanding the foregoing, 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 Professional Services 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.
- iv) Except for Disputed Fees, any applicable Fees and Billable Expenses owed by Customer shall become immediately due and payable regardless of any payment terms to the contrary.
- e) **Survival.** The provisions of this Professional Services Agreement and any Open PS Agreement (as defined in the Professional Services Schedule), 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 Work Products after termination of this Professional Services Agreement and all Open PS Agreements if such termination is for Customer’s material breach.

### 13) GENERAL TERMS.

- a) **Force Majeure.** Except with regard to payments due DI, neither Party shall be liable for any delays or failures in its performance due to an event of Force Majeure.
- b) **Hiring.** During the term of this Professional Services 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.
- c) **Publicity.** Customer agrees that DI may publicize the fact that Customer is a user of the Software and Professional Services in a mutually agreed upon initial press release. Thereafter, DI may use Customer name in a list of other Professional Service customers.
- d) **Export.** Customer agrees that any Work Product provided under the Professional Services will not be shipped, transferred, or exported into any country in any manner prohibited by the Export Laws. Nor will Customer allow the Work Product or Professional Services to be accessed and used in in any manner prohibited by 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 Professional Services Agreement.
- e) **Notices.**
  - i) General. Notwithstanding the foregoing, all general correspondence regarding the basic, day-to-day performance and general operations under this Professional Services Agreement, including notices that relate to Updates, the availability, or interoperability of the Software or Professional Services, may be made by email, or by DI through its website and/or via the My DI Community, or Customer Web Portal.
  - ii) Legal. All legal notices required under this Professional Services Agreement, and any PS Agreement, 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. Except as otherwise specified below, all legal notices to Customer shall be to the address noted for Customer on the Notice and Contact Information Schedule attached to this Professional Services Agreement. All legal notices to DI shall be to the address noted for DI on the first page of this Professional Services Agreement to the attention of the “Office of President”.
- f) **Equitable Relief.** The Parties agree that any breach of a Party’s confidentiality obligations or a breach of the license grant and restrictions set forth in this Professional Services Agreement, and any PS Agreement, may result in irreparable injury to the other Party for which there is no adequate remedy



at law. Therefore, notwithstanding the Disputes 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 of law or otherwise), sublicense, share, pledge, rent, or transfer any of its rights under this Professional Services 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, without acquiring consent from the other Party, to assign its rights and obligations hereunder (including any PS Agreements) 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 Professional Services Agreement; (c) does not change the scope of the Professional Services and the intent contemplated by the Parties under this Professional Services Agreement and any PS Agreement; or (d) is not pursuant to bankruptcy proceeding. Further, any assignment by Customer must require that the receiving party accepts the terms and conditions of this Professional Services Agreement. Any assignment or transfer in violation of the above is void. This Professional Services Agreement will be binding on the Parties, their successors, and permitted assigns.
- h) **Entire Agreement.** This Professional Services Agreement, together with all Schedules, Exhibits, and Quotes, 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 terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by Customer (whether in hard copy, electronic form, or by reference) 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. Additionally, DI shall not be bound by any terms or conditions of Customer or any third party that Customer utilizes for its business activities (including but not limited to vendor registrations, security/privacy reviews, or for purchase order and payment related processes) sent to DI electronically, including links to a website, application, or "click to approve" or "click to acknowledge" pages that are different from or in addition to those set forth herein, and such terms are hereby expressly rejected and shall not be binding on the Parties.
- i) **Amendment.** This Professional Services Agreement may only be modified, altered, or amended by written agreement signed by an authorized officer of both Parties.
- j) **Governing Law.** This Professional Services Agreement will be governed by and construed in accordance with the laws of the State of Vermont, 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 Disputes, shall be settled or resolved in the following manner:
  - i) **Internal Resolution.** The Parties shall first engage in Internal Resolution. To initiate Internal Resolution, a Party must provide the other Party with a Dispute Notice. Upon receipt of the Dispute Notice, the Parties shall designate representatives to confer or meet with each other 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 Mediation. The Parties will nominate a 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 Professional Services 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 Professional Services Agreement in any court of competent jurisdiction in the United States.
- l) **Language.** The English language version of this Professional Services Agreement shall be controlling in the interpretation or application of the terms of this Professional Services Agreement and the Schedules.
- m) **Section Headings.** Section headings contained in this Professional Services Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Professional Services 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 Professional Services Agreement shall be construed to create a partnership, joint venture, or employment relationship between DI and Customer.
- p) **Third-Party Beneficiaries.** Except as expressly set forth in this Professional Services Agreement, this Professional Services 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 Professional Services Agreement is found void and unenforceable, it will not affect the validity of the balance of this Professional Services Agreement, which shall remain valid and in full force and effect.



## PROFESSIONAL SERVICES SCHEDULE

All Professional Services are provided pursuant to the General Terms and Conditions, this Schedule, and any Exhibit or Appendix attached by reference.

- 1) **PROFESSIONAL SERVICES FEES.** DI will invoice Customer for the Professional Services Fees as set forth in the applicable PS Agreement.
- 2) **CHANGE ORDER.** Customer acknowledges and agrees that the Professional Services Fees set forth in each PS Agreement are only for the Professional Services scoped in such PS Agreement. The Parties shall enter into a Change Order to document any changes. DI shall have no obligation to begin work on any additional Professional Services prior to the Change Order being in place.
- 3) **LICENSE GRANT AND OWNERSHIP.**
  - a) Subject to the terms and conditions of this Professional Services Agreement, and the applicable terms set forth in a PS Agreement, and upon payment of all Professional Services Fees owed under the PS Agreement, DI hereby grants Customer a perpetual (subject to the termination provisions below and as set forth in Section 12 ("**Termination**") of the General Terms and Conditions), non-exclusive, non-transferable, license 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 Professional Services 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 license agreements.
  - b) Customer acknowledges 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 Professional Services Agreement 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 Professional Services Agreement 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 license 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 Professional Services Agreement, 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 Professional Services provided under this Professional Services Agreement, 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 Professional Services provided under this Professional Services Agreement for the Instrument Manager system prior to processing patient test results.
  - d) Customer agrees and acknowledges 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 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) **DI EXPENSE REIMBURSEMENT GUIDELINES.** All Billable Expenses incurred by DI while performing the Professional Services shall be incurred and billed to Customer subject to the following DI Reimbursement Guidelines:
  - a) **General.**
    - i) Travel, lodging, and related expenses should be governed by what is reasonable and appropriate for the business purpose involved and should be the least expensive alternative that meets reasonable quality standards and scheduling needs.
    - ii) When requesting reimbursement, DI will report expenses as they were actually spent and support with appropriate receipt.
  - b) **Receipts.** Receipts are required for reimbursement of all expenses over \$10.00.



- c) **Meals.** Reasonable food and beverage expenses will be reimbursed for breakfast, lunch, and dinner meals only. No other incidental food or beverages will be expensed.
  - d) **Air Travel.**
    - i) DI will secure the lowest coach class fare available for direct, non-stop flights.
    - ii) Customer will not be expected to reimburse for first class tickets or upgrades. First class exception will not apply if airlines place traveler in first class at the coach fare rates.
  - e) **Ground Transportation.**
    - i) DI will use the most economical ground transportation appropriate under the circumstances.
    - ii) No "luxury" or "stretch" limousine expenses will be expensed or expected to be reimbursed.
  - f) **Lodging.**
    - i) DI will book lodging with a reasonable cost for hotel accommodations at the single room rate at a business quality hotel.
    - ii) No "deluxe" or "luxury" room rate expenses will be reimbursed.
  - g) **Parking and Tolls.**
    - i) Parking and toll expenses, including hotel parking, will be reimbursed by Customer.
    - ii) Parking tickets, fines, car washes, and valet service will not be reimbursed by Customer.
  - h) **Other Reimbursable Travel Expenses.** Business-related long-distance telephone, fax, or postage charges and hotel internet are reimbursable with a documented business purpose.
  - i) **Entertainment and Business Meeting Expenses.**
    - i) Entertainment and business meeting expenses are reimbursable if incurred for a specific business purpose, there is a reasonable expectation of a benefit to be derived by Customer, there is written substantiation to support the business purpose, and the expense is not excessive with respect to the frequency or overall expense amount.
    - ii) Detailed documentation is required for all entertainment and business meeting expenses which must include: the date and place; the nature of the expense; the names and corporate affiliation of those entertained; a complete description of business purpose and specific matter discussed; and an itemized receipt for any expenses over \$25.
  - j) **Non-Reimbursable Expenditures.** In general, those expenses that exceed reasonableness or are not appropriately documented will not be reimbursed. Additionally, expenses that are not reimbursable include, but are not limited to:
    - i) airline or other travel insurance
    - ii) first class tickets or upgrades
    - iii) "deluxe" or "luxury" room rates
    - iv) stretch or luxury limousine expenses
    - v) traffic and parking violations and valet or laundry services
    - vi) spa or exercise charges
    - vii) barbers and hairdressers
    - viii) toiletry articles
    - ix) gasoline for personal cars
    - x) movie rentals
    - xi) cost of hotel safes
    - xii) rental of sport utility vehicles or luxury cars
- 6) **WARRANTY.** DI warrants that the Professional Services 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 PS Agreement. As Customer's exclusive remedy and DI's sole obligation for breach of this warranty, DI shall use commercially reasonable efforts to correct defective Professional Services and/or Work Products at no additional charge to Customer, provided that Customer gives DI specific written notice of the defective Professional Services or Work Products within thirty (30) days after the Professional Services are performed.
- 7) **TERM, RESCHEDULING, AND TERMINATION.**
- a) **Term.** Each PS Agreement shall have the term set forth in the PS Agreement. If a term is not specified in the PS Agreement, the PS Agreement shall begin upon the effective date of the PS Agreement and shall continue until all Professional Services are completed, unless earlier terminated as provided herein.
  - b) **Rescheduling.** If, after the Scheduled Date has been agreed upon by the Parties, Customer requests to reschedule the Professional Services, such rescheduling request shall be provided to DI as follows:
    - i) Professional Services, excluding training: If, after the Scheduled Date has been agreed upon



- by the Parties, Customer requests to reschedule the Professional Services (excluding training), such written rescheduling request shall be provided to DI at least twenty (20) business days prior to the Scheduled Date.
- ii) Professional Services specifically for training: Requests by Customer to cancel or reschedule training must be made at least thirty (30) business days prior to training Scheduled Date.
- c) **Effect of Rescheduling.**
- i) Professional Services, excluding training: If the Professional Services are rescheduled Customer is responsible for any fees and expenses, already incurred by DI prior to the rescheduling, associated with the Professional Services, including transportation change fees and any reasonable and appropriate corresponding increase in Professional Services Fees due to the Rescheduling.
  - ii) Professional Services specifically for training:
    - (1) If training reschedule requests are received at least thirty (30) business days prior to Scheduled Date, Customer's trainees can be rescheduled for an available seat in a comparable program either in person or virtually. DI cannot guarantee seat availability for training in the original site for which Customer's trainee had been scheduled.
    - (2) Reschedule requests or cancellations by Customer made less than thirty (30) business days prior to the Schedule Date, or no shows, are subject to a rescheduling fee up to the full price of the training seat.
- d) **Termination Without Cause.** Either Party may terminate an individual PS Agreement without cause upon thirty (30) days' written notice to the other. If Customer terminates any PS Agreement without cause, Customer shall promptly reimburse DI for any Fees for Professional Services performed, and Billable Expenses incurred, prior to the date of termination.
- e) **Termination with Cause.** If either Party materially breaches the terms of an individual PS Agreement, (including, without limitation, any obligation to pay Professional Services 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 PS Agreement.
- f) **Termination of this Professional Services Agreement.** If this Professional Services Agreement is terminated for any reason, all PS Agreements still in effect as of the date of termination of this Professional Services Agreement ("Open PS Agreements") shall immediately terminate.
- g) **Effect of Termination.** Upon any termination of a PS Agreement, Section 12.d) ("**Effect of Termination**") of the General Terms and Conditions shall be directly applicable to the terminated PS Agreement.



**NOTICE AND CONTACT INFORMATION SCHEDULE**

Please print and complete this form and return a copy to [DINA-Contracts@datainnovations.com](mailto:DINA-Contracts@datainnovations.com).

1) **Legal Notice Information:** List the contact information for all legal Notices required under the General Terms and Conditions.

Attention:	
Address:	
City:	
State:	
Zip Code:	