



**DATA INNOVATIONS LLC
AGREEMENT FOR INSTRUMENT MANAGER™ (PERPETUAL)
MAINTENANCE AND SUPPORT SERVICES**

This agreement for the provision of maintenance and support services, for certain software licensed by company (“Customer”) under a separate end user license agreement, is by and between Customer and the applicable Data Innovations entity specified below based on the region Customer is located in (“DI”). Each of DI or Customer may be referred to as a “Party” or together the “Parties”.

Region	DI Entity	Address
North America	Data Innovations LLC	463 Mountain View Drive, Suite 305, Colchester, VT 05446
Europe Middle East & Africa	Data Innovations Europe S.A.	Cours Saint Michael, 30A, 1040 Etterbeek, Brussels, Belgium
Latin America	Data Innovations Latin America LTDA.	Rua Cotoxo, at 303 Cj 71, Perdizes Tower II, Sao Paulo, Brazil, 05021-000
Asia-Pacific	D.I. Hong Kong Limited	Room 1303, 13/F, Laws Commercial Plaza, 788 Cheung Sha Wan Road, Kowloon

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

This Agreement governs each Quote and other written agreement entered into by the Parties at any time.

SCHEDULES AND EXHIBITS TO AGREEMENT
Maintenance and Support Services Terms and Conditions Schedule
<ul style="list-style-type: none">Exhibit to Maintenance and Support Services Terms and Conditions Schedule; On-Premises Software – Perpetual License
Notice and Contact Information Schedule

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



GENERAL TERMS AND CONDITIONS

Some of the following definitions may not be applicable, depending on the Software or Service licensed. See also attached Schedules, Exhibits, and Appendices for additional Software and Service specific definitions that may be applicable.

1) DEFINITIONS.

- a) **“Reserved”**.
- b) **“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.
- c) **“Affiliate(s)”** means any company controlling, controlled by or under common control with Customer.
- d) **“Reserved”**.
- e) **“Reserved”**.
- f) **“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 Agreement, except for any taxes based upon DI's net income.
- g) **“ARRA”** means Title XIII of the American Recovery and Reinvestment Act of 2009.
- h) **“Reserved”**.
- i) **“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.
- j) **“Billable Expenses”** means all actual, out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Services under this Agreement
- k) **“Reserved”**.
- l) **“CCPA”** means the California Consumer Privacy Act of 2018.
- m) **“Reserved”**.
- n) **“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.
- o) **“Reserved”**.
- p) **“Reserved”**.
- q) **“Computer”** means an electronic device, owned by Customer that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
- r) **“Reserved”**.
- s) **“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 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 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. 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 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.

- t) **“Critical Priority Software Error”** means a Software Error that renders the Software inoperable and causes a significant, time-dependent stoppage of Customer’s business operations.
- u) **“Customer Data”** means all Customer data entered into, or coming in from an outside source, and captured by, the Software, including if applicable any Protected Health Information and Personal Data, if either are applicable, forming part of such data. Customer Data shall include Affiliate data.
- v) **“Customer Web Portal”** means the DI web portal used by customers outside of North America for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a Knowledgebase of known issues and resolutions, for troubleshooting assistance and to update contact information.
- w) **“DI Property”** means the Software, Feedback, and DI’s Confidential Information, including any future derivative works, enhancements or modifications thereto.
- x) **“Delivery”** means the date upon which DI has delivered the Software to a third-party shipper addressed to Customer or when DI has made the Software electronically available to Customer.
- y) **“Reserved”**.
- z) **“Disclosing Party”** means the Party providing Confidential Information to the Receiving Party.
- aa) **“Reserved”**.
- bb) **“Disputed Fee(s)”** means an invoiced Fee that is the subject of a good faith dispute between the Parties.
- cc) **“Dispute(s)”** mean any and all disputes, controversies, differences or claims arising from or related to this Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Agreement.
- dd) **“Dispute Notice”** means written notice given by one Party to the other Party setting forth the details of a Dispute.
- ee) **“Documentation”** means all guides, related explanatory written materials, manuals, files or on-line help, provided to Customer, for the Software and any modifications thereto.
- ff) **“Driver”** means the software developed by DI to connect laboratory devices and information systems or Additional Software to the Software.
- gg) **“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.
- hh) **“Due Date”** means thirty (30) days from the date of invoice on which all amounts billed by DI will be due and payable.
- ii) **“Reserved”**.
- jj) **“Emergency Maintenance and Support Services”** is defined as Critical and/or High Priority Software Errors.
- kk) **“End of Life or EoL”** means 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.
- ll) **“End of Maintenance or EoM”** defines Software or a specific Software version for which DI will no longer provide Updates.
- mm) **“End of Sale or EoS”** defines Software and Software specific versions that DI will no longer license or distribute.
- nn) **“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 Services.
- oo) **“Feedback”** means all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Services.
- pp) **“Fees”** means a reference to any or all of the fees due under this Agreement including the fees for the Maintenance and Support Services, Renewals, Bank Fees, and any Applicable Taxes.
- qq) **“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.
- rr) **“GDPR”** means the General Data Protection Regulations as they became effective on May 25, 2018.
- ss) **“Reserved”**.
- tt) **“High Priority Software Error”** means 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.

- uu) **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996.
- vv) **"Reserved"**.
- ww) **"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, and Services whether registered or not, including any future release, update, modifications, new version, release, compilation, and translation of the DI Property and Services.
- xx) **"Internal Resolution"** means the resolution of a Dispute by the assigned representatives of each Party.
- yy) **"Low Priority Software Error"** means a Software Error incident opened when Customer has general Software questions or needs that do not impact day-to-day functionality.
- zz) **"Maintenance and Support Services"** means DI's standard technical support and maintenance 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. Maintenance and Support Services do not include training of Customer's personnel, consulting, or other available Professional Services.
- aaa) **"Maintenance and Support Services Fees"** means all fees for the performance of Maintenance and Support Services, including all actual Billable Expenses.
- bbb) **"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.
- ccc) **"Malware"** means unauthorized programming (code, scripts, active content, and other software) that is designed to, disable, erase, or otherwise harm, impede disrupt or deny Customer's Use of the Software or Services, gather information that leads to loss of privacy or exploitation, or gain unauthorized access to system resources or the Software, or that otherwise exhibits abusive behavior, including computer viruses, worms, trojan horses, spyware, dishonest adware, scareware, crimeware, most rootkits, or other malicious or unwanted software or programs. Malware does not include the Temporary SSK delivered with On-Premises Software.
- ddd) **"Mediation"** means the attempt to settle a Dispute that cannot be settled by Internal Resolution through the use of third-party mediation.
- eee) **"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.
- fff) **"Medium Priority Software Error"** means a Software Error that 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.
- ggg) **"Reserved"**.
- hhh) **"My DI Community"** means the DI web portal used by customers located within North America, for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a knowledgebase of known issues and resolutions, for troubleshooting assistance, and to update contact information.
- iii) **"Reserved"**.
- jjj) **"On-Premises Software"** means Software licensed to Customer for installation on Customer's hardware at Customer's site.
- kkk) **"Reserved"**.
- lll) **"Reserved"**.
- mmm) **"Personal Data"** means any information relating to an identified or an identifiable natural person that is protected under an applicable Privacy Regulations. Personal Data includes restricted categories of information, such as: government-issued identification numbers (e.g. social security number); financial account information or credit and debit card numbers; unique biometric identifiers; health information; and any other information deemed "personal," "sensitive" or "special categories of Personal Data". Personal Data may include the Personal Data of Customer's employees or the Personal Data that Customer processes on behalf of its clients.
- nnn) **"Reserved"**.
- ooo) **"Privacy Regulations"** means HIPAA, ARRA, CCPA and/or GDPR, as applicable to Customer and DI.



- ppp) **“Professional Services”** means training, implementation, installation, and/or consulting services provided by DI to Customer pursuant to a separate agreement entered into between the Parties.
- qqq) **“Reserved”**.
- rrr) **“Reserved”**.
- sss) **“Reserved”**.
- ttt) **“Reserved”**.
- uuu) **“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 an applicable Privacy Regulation.
- vvv) **“Reserved”**.
- www) **“Reserved”**.
- xxx) **“Quote”** means the specific proposal prepared by DI and provided to Customer, setting forth the details of the Software and Services the Customer is purchasing.
- yyy) **“Receiving Party”** means the Party receiving the Confidential Information of the Disclosing Party.
- zzz) **“Renewal Fees”** means the fees charged by DI to Customer to renew Maintenance and Support Services for an additional set term.
- aaaa) **“Renewal Notice”** means the written notice provided by DI to Customer with the terms and conditions, including the applicable Fees, for renewing of Maintenance and Support Services.
- bbbb) **“Renewal Term”** means any renewal term of a Maintenance and Support Services Term.
- cccc) **“Requested Enhancement”** means new functionality or enhancements to existing functionality of the Software.
- dddd) **“Reserved”**.
- eeee) **“Services”** means a reference to any of the Maintenance and Support Services provided under this Agreement.
- ffff) **“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 pursuant to this Agreement.
- gggg) **“Software Error”** means a failure of the Software, licensed hereunder to Customer, when properly, installed, if applicable, and being Used to perform in accordance with the specifications set forth in the applicable Documentation.
- hhhh) **“Software Fees”** means all fees for the Software licensed by Customer under this Agreement.
- iiii) **“SSK”** means the Software security activation key (a unique code, specific to the Computer the On-Premises Software is installed on) with either a perpetual term or a set term, that allows Customer to activate the Software license.
- jjjj) **“Reserved”**.
- kkkk) **“Sub-Processors”** shall have the definition set forth in the applicable Data Processing Agreement.
- llll) **“Reserved”**.
- mmmm) **“Reserved”**.
- nnnn) **“Reserved”**.
- oooo) **“Reserved”**.
- pppp) **“Support Hours”** mean the hours Maintenance and Support Services are available, as set forth in Maintenance and Support Services Schedule.
- qqqq) **“Supported Version”** is a version of Software that has not reached the state of EoS, or EoM.
- rrrr) **“Temporary SSK”** means a temporary ninety (90) day SSK provided as part of the initial Delivery of On-Premises Software licensed on a perpetual basis.
- ssss) **“Reserved”**.
- tttt) **“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 other 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.
- uuuu) **“Use”, “Used,” or “Using”** means to access, install, download, execute, display or otherwise benefit from using the functionality of the Software in accordance with the Documentation.
- vvvv) **“Reserved”**.



- 2) **CONSTRUCTION.** Quotes or other written agreements entered into by Customer and DI after the Effective Date (“Addenda”), will be subject to this 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 Agreement. Affiliate may, pursuant to a purchase order issued directly by the Affiliate to DI:
 - i) Reserved
 - ii) purchase Services for:
 - (1) connection to the Software at Customer’s site, or
 - (2) Software installed at the Affiliate’s site.
 - b) Prior to an Affiliate’s purchase, Customer agrees that it shall require each of its Affiliates to comply with the terms, conditions and restrictions contained in this 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 Agreement, all “**Effects of Termination**”, as set forth in Section 12.e, that apply to Customer, shall apply in the same manner to each Affiliate.
- 4) **SOFTWARE AND SERVICES.** DI shall provide Customer the Services, pursuant to the terms and conditions contained in this Agreement. DI’s performance is dependent on Customer carrying out its obligations as set forth in this Agreement and Customer acknowledges that the Maintenance and Support 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 Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Agreement.
- 5) **FEES, PAYMENT, AND TAXES.**

- a) In consideration of the Services and any accompanying licenses provided to Customer by DI under this Agreement, Customer or a third party on Customer’s behalf, shall pay DI the Fees and Billable Expenses set forth on each applicable Quote, or Schedule, plus all Applicable Taxes. All Fees and Billable Expenses are quoted in, and Customer shall pay in, the currency indicated below for the applicable DI entity Customer is contracting with:

Region	DI Entity	Currency
North America	Data Innovations LLC	US Dollars
Europe Middle East & Africa	Data Innovations Europe S.A.,	Euros
Latin America	Data Innovations Latin America LTDA.	Brazilian Reals or US Dollars
Asia-Pacific	D.I. Hong Kong Limited,	Hong Kong Dollars, Australian Dollars or US Dollars

- b) DI shall invoice Customer for all Fees, Billable Expenses and Applicable Taxes due hereunder, and unless otherwise specified in an applicable Quote 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, either by Customer i) signing and returning an executed copy of the Quote to DI; or ii) submitting a purchase order to DI for the Services detailed on the Quote, provided the purchase order specifically references the Quote number, and the value on the purchase order matches the value on the Quote.
- d) Customer authorizes DI to charge a Customer provided credit card, in the amount indicated on a Quote if it is less than or equal to \$25,000. DI does not accept credit card payments for amounts greater than \$25,000. A receipt for a payment by credit card will be provided to Customer by DI.
- e) All discounts, if any, provided under this 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 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.

- f) To the extent that DI is charged any Bank Fees, Customer agrees to reimburse DI for such payment at cost.
- g) 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.
- h) 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.o) (“**Disputes**”).
- i) 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 start of the Services, Applicable Taxes will be calculated and included on the Customer’s invoice.

6) TERM. The term of this Agreement shall begin on the Effective Date and shall continue until terminated by either Party as set forth in this 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 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 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) Reserved.
- h) 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.
- i) Customer grants to DI during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable (except to its Sub-Processors as required for the provision of Services) right to use the Customer Data, solely as necessary to perform the 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.s) (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 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 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 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 to abide by the terms and conditions of the applicable Privacy Regulations and agree to enter into the necessary separate privacy and security agreements to facilitate compliance with the Privacy Regulations.

9) GENERAL WARRANTIES AND DISCLAIMERS.

- a) **Customer Warranty.** Customer 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 Services to Customer does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.
- b) **DI Warranties.**
 - i) Reserved.
 - ii) DI Services warranties are set forth in the applicable Schedules.
- c) **Reserved.**
- d) **Mutual Warranty.**
 - i) The Parties each have the power and the authority to enter into and perform this Agreement.
 - ii) The Parties warrant that they shall comply with all applicable laws and regulations governing the provision, access and Use of the Services.
- e) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SERVICES. 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 (i) an Affiliate's breach of any obligation under this Agreement; or (ii) 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 its Affiliate's, operation of its business, 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 Customer or its Affiliate; or (iii) DI's use of the Customer Data.
- b) **By DI.**
 - i) Reserved.
 - 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 real or tangible property (excluding any claims for lost data or intellectual 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 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 AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE 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 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 Fees paid by Customer hereunder, for the portion of the Services 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 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.

12) TERMINATION.

- a) **Without Cause.** Customer may terminate this Agreement without cause upon sixty (60) days written notice to DI.
- b) **Reserved.**
- c) **Termination for Bankruptcy.** This 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.
- d) **Termination with Cause.**
 - i) This Agreement may be terminated immediately if either Party violates the confidentiality obligations set forth herein; or
 - ii) This 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.
- e) **Effects of Termination.** Upon any termination of this Agreement:
 - i) DI shall cease performing the Services.
 - ii) 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 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.
 - iii) 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.
- f) **Survival.** The provisions of this Agreement 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 Services after termination of this Agreement if such termination is for Customer's material breach.

13) GENERAL TERMS.

- a) **Reserved.**
- b) **Professional Judgment.** 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 Services. Customer acknowledges that all processes, forms, and reports contained within the Services may be subject to errors and are not a substitute for the exercise of professional judgment.
- c) **Subcontracting.** DI may (i) assign and reassign personnel as it deems appropriate in its discretion to perform the Services and (ii) subcontract the performance of Services, provided DI remains liable for the Services to the same extent as if such Services had been performed by DI's employees.
- d) **Audit Right.** During normal business hours and at any time during which the Services are being utilized, DI, or its authorized representative or licensors, shall have the right, upon reasonable notice, either remotely or at Customer's premises, to audit and inspect Customer's Use of the Services, in order to verify compliance with the terms of this Agreement. 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.
- e) **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.
 - f) **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.
 - g) **Publicity.** Customer agrees that DI may publicize the fact that Customer is a user of the Software and Services in a mutually agreed upon initial press release. Thereafter, DI may use Customer name in a list of other Service customers.
 - h) **Export.** Customer agrees that the Software will not be shipped, transferred, or exported into any country in any manner prohibited by the Export Laws. Nor will Customer allow the Software or Services to be accessed and 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 Agreement.
 - i) **Notices.**
 - i) **General.** Notwithstanding the foregoing, all general correspondence regarding the basic, day-to-day performance and general operations under this Agreement, including notices that relate to changes/updates to the Notice and Contact Information Schedule, Updates, the availability of the 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 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. All legal notices to Customer shall be to the address noted for Customer on the Notice and Contact Information Schedule this Agreement. All legal notices to DI shall be to the address noted for DI on the first page of this Agreement to the attention of the "Office of President and Chief Executive Officer".
 - j) **Equitable Relief.** The Parties agree that any breach of a Party's confidentiality obligations or a breach of the license grant and restrictions set forth in this Agreement, 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.
 - k) **Assignment.** Neither Party may assign (whether by operation of 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, without acquiring consent from the other Party, to assign its rights and obligations hereunder 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; 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 Agreement. Any assignment or transfer in violation of the above is void. This Agreement will be binding on the Parties, their successors, and permitted assigns.
 - l) **Entire Agreement.** This 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.

- m) **Amendment.** This Agreement may only be modified, altered, or amended by written agreement signed by an authorized officer of both Parties.
- n) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws indicated below for the applicable DI entity Customer is contracting with:

Region	DI Entity	Governing Law
North America	Data Innovations LLC	the State of Vermont
Europe Middle East & Africa	Data Innovations Europe S.A.,	Belgium
Latin America	Data Innovations Latin America LTDA.	San Paulo, Brazil
Asia-Pacific	D.I. Hong Kong Limited,	Hong Kong

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.

- o) **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 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 the location indicated below for the applicable DI entity Customer is contracting with:

Region	DI Entity	Venue
North America	Data Innovations LLC	United States
Europe Middle East & Africa	Data Innovations Europe S.A.,	Belgium
Latin America	Data Innovations Latin America LTDA.	San Paulo, Brazil
Asia-Pacific	D.I. Hong Kong Limited,	Hong Kong

- p) **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.
- q) **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.
- r) **No Waiver.** No failure or delay by either Party in exercising any right hereunder will operate as a waiver thereof.
- s) **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.
- t) **Third-Party Beneficiaries.** Except as expressly set forth in this Agreement, this Agreement is not intended to create and does not create enforceable obligations for the benefit of any third party.
- u) **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.



MAINTENANCE AND SUPPORT SERVICES SCHEDULE

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

DI will provide the Maintenance and Support Services set forth in this Schedule, 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 license to Use and for which Customer is current on all Maintenance and Support Services Fees.

- 1) **MAINTENANCE AND SUPPORT SERVICES PRIORITY LEVELS.** Upon request for Maintenance and Support Services 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 issues with the Software according to the following schedule:
 - a) **Critical Priority Software Error:**
 - i) Critical Priority Software Errors must be reported via telephone.
 - ii) DI will acknowledge Critical Priority Software Errors within one (1) hour of the initial contact via telephone and commence working towards a resolution at that time.
 - b) **High Priority Software Errors:**
 - i) High Priority Software Errors must be reported via telephone.
 - ii) DI will acknowledge High Priority Software Errors within four (4) hours of the initial contact via telephone and commence working towards a resolution at that time.
 - c) **Medium Priority Software Errors:**
 - i) Medium Priority Software Errors may be reported via telephone, email, or through the My DI Community, and/or the Customer Web Portal (as specified in the table in the Exhibit, attached to this Schedule by reference, for the specific Software license type.
 - ii) DI will acknowledge Medium Priority Software Errors within twenty-four (24) hours of the initial contact.
 - d) **Low Priority Software Errors:**
 - i) Low Priority Software Errors may be reported via telephone, email, or through the My DI Community, and/or the Customer Web Portal (as specified in the table in the Exhibit, attached to this Schedule by reference, for the specific Software license type.
 - ii) DI will acknowledge Low Priority Software Errors within forty-eight (48) hours of the initial contact.
- 2) **OBTAINING SUPPORT.** A customer requesting that DI provide Maintenance and Support Services for the Software shall contact DI during the times and in the manner set forth in the Exhibit, attached to this Schedule by reference, for the specific Software license type. 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) **During Support Hours.** Customer may log requests for Maintenance and Support Services in the following manner:
 - i) Telephone: Customer may log Maintenance and Support Services requests by calling the telephone number provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type. All Critical Priority and High Priority Software Errors must be logged via telephone.
 - ii) E-mail: Customer may log Maintenance and Support Services requests by sending e-mails to the appropriate DI regional support center via the email address provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type. All Critical and High Priority Software Errors must be logged via telephone. E-mail is reserved for Medium and Low Priority Software Errors.
 - iii) My DI Community, and/or Customer Web Portal: Using the My DI Community, and/or Customer Web Portal, as indicated in the Exhibit attached to this Schedule by reference, for the specific Software license type, Customers can log Medium and Low Priority Issues, view the status of outstanding issues, 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 My DI Community, and/or Customer Web Portal will operate without interruption or without errors.
 - b) **Emergency Support.** Emergency Maintenance and Support Services are available 24x7x365. An Emergency Maintenance and Support Services request may be submitted for a live Software system where all or a portion of the system has become non-operative and is affecting a critical laboratory function.
 - c) **Non-Emergency Support After Hours.** Customers requesting that DI provide non-Emergency Maintenance and Support Services outside of Support Hours may purchase Professional Services for



“Custom Support Services”. Custom Support Services must be scheduled and are subject to DI’s resource availability and shall be provided subject to a separate, Professional Services agreement entered into between the Parties.

3) 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 Software Error, 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 Maintenance and Support Services for up to three (3) individuals employed or subcontracted by the Customer who have been identified and trained as the Primary Technical Contacts of the Software. Customer shall identify its designated Primary Technical Contacts in the Notice and Contact Information Schedule for the specific Software license type.

4) **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, Malware protection, and security software applications (i.e. firewalls).

5) **UPDATES.** Customer shall have the right to receive Updates at no additional charge by requesting the same from the Customer’s respective DI’s regional support center or accessing the Updates from the DI’s customer web site. If Customer requests that Updates be provided to Customer via electronic media (e.g. CD/DVD), DI may charge reasonable processing and shipping fees.

6) **REQUESTED ENHANCEMENTS.** Customer may submit a request to DI for a Requested Enhancement. DI may, at its discretion, develop the Requested Enhancements in full, in part, and/or with variations to the request.

7) **DRIVER UPDATES.** Customer shall have the right to receive Driver Updates at no additional charge by requesting the same from the Customer’s respective regional DI’s support center or accessing the Driver Updates from the DI customer web site. If Customer requests that the Driver Updates be provided to Customer via electronic media (e.g. CD/DVD), DI may charge reasonable processing and shipping fees.

8) **NEW DRIVERS.** Customer may submit a request to DI for the development of a new Driver. DI may, at its discretion, develop the requested new Driver in full, in part, and/or with variations to the request.

9) **NO LIABILITY FOR INACCURATE DIAGNOSTICS.** DI will attempt to provide accurate advice and information to Customer’s employees requesting telephone or web-based, e-mail support with respect to the Software; however, 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 and, as such, 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 willful misconduct of DI.

10) **INSTALLATION OF ADDITIONAL SOFTWARE AND UPDATES.** Customer should not install any version, update, or upgrade of any Additional Software, on a shared platform with the 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.

11) **MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS.** DI will not be obligated to provide Maintenance and Support Services 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 Software Error malfunction or defect reported by Customer is found by DI to be due to a cause other than the Software or Updates as delivered by DI; (d) Customer has not installed the Updates in a timely manner (see the Updates and Driver Updates sections above); or (e) the 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 Maintenance and Support Services include but are not limited to the following:

- a) Troubleshooting of Customer’s computer hardware, operating system, system monitoring software, Malware software, or network;
- b) Database management including but not limited to database backups, database archiving, database disk utilization monitoring, database patching, database upgrades;
- c) Set up of Customer-provided equipment;
- d) Troubleshooting Additional Software;



- e) Troubleshooting Additional Software issues;
- f) Data modification caused by Customer error or host computer system error;
- g) Customer-requested modifications to the Documentation;
- h) Customer account management (e.g. password resets).

12) MAINTENANCE AND SUPPORT SERVICES WARRANTY AND DISCLAIMER: DI warrants that Maintenance and Support 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. As Customer's exclusive remedy and DI's sole obligation for breach of this warranty, DI shall use commercially reasonable efforts to correct defective Maintenance and Support Services at no additional charge to Customer, provided that Customer gives DI specific written notice of the defective Maintenance and Support Services within thirty (30) days after the Maintenance and Support Services are performed.

13) 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](#).



**EXHIBIT TO MAINTENANCE AND SUPPORT SERVICES SCHEDULE
ON-PREMISES SOFTWARE – PERPETUAL LICENSE**

This Exhibit is attached to the Maintenance and Support Services Schedule by reference and sets forth the additional terms, conditions, and restrictions that are specific to the provision of Maintenance and Support Services for On-Premises Software licensed to Customer on a perpetual license basis.

- 1) **GENERAL.** Provided Customer is current on all applicable Fees, Customer shall receive Maintenance and Support Services for the Software in accordance with the terms and conditions set forth herein.
- 2) **TERM.** The term of Maintenance and Support Services is for twelve (12) months. The start date and accrual of Maintenance and Support Services Fees for all Software licensed under this Agreement shall be from the date of Delivery of the Software.
- 3) **FEES.** The Maintenance and Support Services Fee for the Software is eighteen percent (18%) per year of DI's then current list price of the Software.
- 4) **RENEWAL:**
 - a) Unless terminated as provided herein, Maintenance and Support Services shall automatically renew on an annual basis and DI will endeavor to provide Customer with a Renewal Notice at least forty-five (45) days prior to the end of the then-current Maintenance and Support Services term.
 - b) Customer will have the option to discontinue its Maintenance and Support Services by providing notification to DI at least thirty (30) days in advance of the expiration date of the current Maintenance and Support term. Customer must pay the Maintenance and Support Services Fees for the Renewal Term prior to the expiration date of the then-current Maintenance and Support Services term.
 - c) DI reserves the right to terminate Customer's Maintenance and Support Services if Fees are not paid prior to the start of the Renewal Term.
 - d) DI may increase its charges for Maintenance and Support Services Fees for each successive Renewal Term by providing no less than forty-five (45) days advance notice of such increase before the beginning of the Renewal Term for which the increase is to be in effect.
- 5) **TERMINATION.** Termination of Maintenance and Support Services by either DI or Customer shall not terminate any fully paid-up, perpetual license to the Software.
- 6) **REINSTATEMENT.** In the event Customer allows Maintenance and Support Services to lapse, DI may allow Customer to reinstate Maintenance and Support Services upon Customer's performance of both of the following conditions (a) Customer agrees to install the latest version of the Software immediately upon Maintenance and Support Services reinstatement and (b) payment of up to two (2) times all Maintenance and Support Services Fees accruing between the date in which the prior Maintenance and Support Services term expired and the effective date of reinstatement.
- 7) **NON-EMERGENCY MAINTENANCE AND SUPPORT SERVICES.** The following table sets forth the times and manner in which Customer may request non-Emergency Support Maintenance and Support Services:

Non-Emergency Support is available Monday through Friday, excluding holidays published on www.datainnovations.com during the hours for the region listed below.		
Region	Support Hours	Technical Support Contact
Asia	8:30 am– 6:00 pm HKT Monday – Friday	Customer Web Portal * asia-support@datainnovations.com +852 2398 3182
Europe	8:00 am – 6:00 pm CET/CEST Monday – Friday	Customer Web Portal * europa-support@datainnovations.com +32 2 332 24 13
Latin America	8:30 am– 6:00 pm BRT/BRST Monday – Friday	Customer Web Portal * latinamerica-support@datainnovations.com +55 11 38013283
North America	9:00 am – 8:00 pm EST/EDT Monday – Friday	My DI Community * northamerica-support@datainnovations.com +1 802 658 1955
Note(s): * Based on Customer's regional location, the My DI Community or Customer Web Portal may be accessed via support.datainnovations.com .		

- 8) **PRIMARY TECHNICAL CONTACT(S).** As of the Effective Date, Customer designates the individuals set forth on the Notice and Contact Information Schedule as the Primary Technical Contacts.
- 9) **MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS.** The following items are added as additional sub-items to Section 11 (“Maintenance and Support Service Exclusions”) of the Maintenance and Support Services Schedule:



- a) Issues regarding installation in the event Customer chooses to install or implement the Software on its own;
 - b) Software recovery or data manipulation and recovery due to hardware (regardless of whether or not the hardware was purchased by Customer directly from DI or from another third-party vendor) failure 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;
 - c) Database modifications or alterations made by non-DI personnel; and
 - d) Server maintenance including disk management, hardware operation, operation system updates, Malware software management, removal of Customer-introduced Malware.
- 10) **OPERATING SYSTEMS:** On-Premises Software has been validated for operation on a variety of operating systems and hardware platforms. Minimum system specifications and supported operating systems can be provided per version of Software.



NOTICE AND CONTACT INFORMATION SCHEDULE

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

Name:	
Address:	
City:	
State:	
Zip or Province/Postal Code:	
Country:	

Attention to:	
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- 2) **Primary Technical Contact Information:** List the contact information for the three Primary Technical Contacts for Maintenance and Support Services for the specific Software being licensed:

Instrument Manager™

Primary Technical Contact #1	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	
Primary Technical Contact #2	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	
Primary Technical Contact #3	
Name:	
Primary Telephone Number:	
Secondary Telephone Number:	
Email:	