



DATA INNOVATIONS LLC
MASTER AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. EXECUTION OF A QUOTE, SUBMISSION OF A PURCHASE ORDER OR PAYMENT OF THE FEES RELATED TO THE PROVISION OF THE SOFTWARE AND/OR SERVICES OR USE OF ALL OR ANY PORTION OF THE SOFTWARE OR SERVICES WILL BE DEEMED CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN ("ACCEPTANCE").

This agreement for the provision of software, maintenance and support, professional services and/or subscription services, effective as of the date of Acceptance by Customer (as defined above) (the "Effective Date") 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 between you either individually or as an authorized representative of the company you represent in accepting these Terms ("Customer").

This agreement consists of (i) this introduction page; (ii) the following General Terms and Conditions; (iii) any number of Schedules and Exhibits attached hereto; and (iv) any Quote, Statement of Work or other written agreement entered into by the Parties (the "Master Agreement").

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

Table with 1 column and 8 rows listing SCHEDULES AND EXHIBITS TO MASTER AGREEMENT, including On-Premises Software Schedule, Maintenance and Support Services Terms and Conditions Schedule, etc.



## GENERAL TERMS AND CONDITIONS

- 1) **DEFINITIONS.** Some of the following definitions may not be applicable, depending on the Software or Service licensed. See also attached Schedules, Exhibits and Appendices for Software and Service specific definitions that may be applicable.
- 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) **“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 Master Agreement, except for any taxes based upon DI's net income.
  - c) **“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.
  - d) **“Billable Expenses”** means all actual, out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Services under this Master Agreement, as further described in the Professional Services Schedule.
  - e) **“Bundled Software”** means software licensed by DI from a third party to be distributed to Customer with the Software that has its own separate install process.
  - f) **“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.
  - g) **“Claims and Losses”** means any and all demands, claims, liabilities, actions, suits, judgments, decrees, proceedings, (including reasonable attorneys' fees incurred in connection therewith), losses, damages, and expenses.
  - h) **“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.
  - 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 Software, Work Product, and 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 Master 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 Master 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) **“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.
  - k) **“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.
  - l) **“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.
  - m) **“DI Property”** means the Software, Work Product, Feedback, DI Tools, and DI's Confidential Information, including any future derivative works, enhancements or modifications thereto.
  - n) **“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.



- o) **“DI Tools”** means any tools, databases, ideas, and methodologies used by DI in providing the Professional Services and the Work Products.
- p) **“Disclosing Party”** means the Party providing Confidential Information to the Receiving Party.
- q) **“Disputed Fee(s)”** means an invoiced Fee that is the subject of a good faith dispute between the Parties.
- r) **“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 Master Agreement.
- s) **“Dispute Notice”** means written notice given by one Party to the other Party setting forth the details of a Dispute.
- t) **“Distributed Software”** means software licensed by DI from a third party to be licensed to Customer that is not embedded nor bundled with the Software.
- u) **“Documentation”** means all guides, related explanatory written materials, manuals, files or on-line help, provided to Customer, for the Software, and any modifications thereto.
- v) **“Driver”** means the software developed by DI to connect laboratory devices and information systems or Additional Software to the Software. Drivers communicate via TCP/IP, Serial, File I/O, ODBC and more.
- w) **“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.
- x) **“Due Date”** means thirty (30) days from the date of invoice on which all amounts billed by DI will be due and payable.
- y) **“Embedded Software”** means software licensed by DI from a third party to be distributed to Customer with the Software that is automatically installed with the Software.
- z) **“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.
- aa) **“Feedback”** means all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Software, and Services.
- bb) **“Fees”** means a reference to any or all of the fees due under this Master Agreement including the fees for the Software, Professional Services, Maintenance and Support Services, Renewals, Bank Fees and any Applicable Taxes.
- cc) **“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.
- dd) **“Hardware”** Any third party hardware purchased from DI by Customer.
- ee) **“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.
- ff) **“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, Cloud Platform and Services whether registered or not, including any future release, update, modifications, new version, release, compilation and translation of the DI Property and Services.
- gg) **“Internal Resolution”** means the resolution of a Dispute by the assigned representatives of each Party.
- hh) **“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.
- ii) **“Maintenance and Support Services”** means DI’s standard technical support and maintenance services to diagnose and address a Software Error. Maintenance and Support Services do not include training of Customer’s personnel, consulting or other available Professional Services.
- jj) **“Maintenance and Support Services Fees”** means all fees for the performance of Maintenance and Support Services, including all actual Billable Expenses.
- kk) **“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.
- ll) **“Mediation”** means the attempt to settle a Dispute that cannot be settled by Internal Resolution through the use of third party mediation.



- mm) **“Mediator”** means the independent third party trained as a mediator to act fairly and impartially, who has been nominated by the Parties to oversee Mediation.
- nn) **“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.
- oo) **“My DI, My 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.
- pp) **“On-Premises Software”** means Software licensed to Customer for installation on Customer’s hardware at Customer’s site.
- qq) **“Open Source Software”** means software distributed to Customer with the Software that is automatically installed with the Software that meets the definition of “Open Source” as set forth at <https://opensource.org/osd>.
- rr) **“Professional Services”** means training, implementation, installation and/or consulting services provided by DI to Customer pursuant to this Master Agreement, and as more specifically described in a PS Agreement.
- ss) **“Professional Services Fees”** means all fees for the performance of Professional Services, including all actual Billable Expenses.
- tt) **“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.
- uu) **“PS Agreement”** means the applicable Quote or SOW executed by both Parties, setting forth the Professional Services that DI shall perform for the Customer.
- vv) **“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.
- ww) **“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 Software and Services the Customer is purchasing.
- xx) **“Receiving Party”** means the Party receiving the Confidential Information of the Disclosing Party.
- yy) **“Renewal Fees”** means the fees charged by DI to Customer to renew Maintenance and Support Services and/or Subscription Services for an additional set term.
- zz) **“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 and/or for renewing Subscription Services.
- aaa) **“Renewal Term”** means any renewal term of a Maintenance and Support Services Term or a Subscription Term.
- bbb) **“Requested Enhancement”** means new functionality or enhancements to existing functionality of the Software.
- ccc) **“Scheduled Date”** means the specific date set by the Parties to commence the Professional Services.
- ddd) **“Services”** means a reference to any of the Maintenance and Support Services, Professional Services and/or Subscription Services provided under this Master Agreement.
- eee) **“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 Master Agreement.
- fff) **“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.
- ggg) **“Software Fees”** means all fees for the Software licensed by Customer under this Master Agreement.
- hhh) **“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 expires at the end of each Subscription Term, that allows Customer to activate their Software license.
- iii) **“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.
- jjj) **“Subscription Fees”** means a reference to the fees due for Subscription Services.
- kkk) **“Subscription Services”** means the license of Software and the provision of related Maintenance and Support Services to Customer on a subscription term basis.



- lll) **“Subscription Services Start Date”** shall have the meaning set forth in the applicable Schedule.
  - mmm) **“Subscription Term”** means the term of Subscription Services, as set forth in the applicable Schedule or Quote.
  - nnn) **“Support Hours”** mean the hours Maintenance and Support Services are available, as set forth in Maintenance and Support Services Schedule.
  - ooo) **“Temporary SSK”** means a temporary ninety (90) day SSK provided as part of the initial Delivery of On-Premises Software.
  - ppp) **“Third Party Software”** means a collective reference to Bundled Software, Distributed Software, Embedded Software or Open Source Software.
  - qqq) **“Third Party Software List”** means a list of Third Party Software currently distributed with the Software or other-vendor software licensed directly by Customer through its own suppliers, whether or not it was recommended for use in connection with installation and use of the Software.
  - rrr) **“Update(s)”** means a Software Error correction, patch, bug fix, modification, enhancement, improvement, new feature, functional corrections, upgrade, modified version, addition, Driver Updates, Requested Enhancements or new release, 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.
  - sss) **“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.
  - ttt) **“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 entered into by Customer and DI after the Effective Date (“Addenda”), will be subject to this Master 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) **SOFTWARE AND SERVICES.** DI shall provide Customer the Software and Services, pursuant to the terms and conditions contained in this Master Agreement. DI’s performance is dependent on Customer carrying out its obligations as set forth in this Master 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 Master Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Master Agreement.
- 4) **FEES, PAYMENT, AND TAXES.**
- a) In consideration of the Software and Services and any accompanying licenses provided to Customer by DI under this Master 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) 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 Software or Services detailed on the Quote.
  - c) DI shall invoice Customer for all Fees and Billable Expenses 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.
  - d) All discounts, if any, provided under this Master 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 Master 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 12.n) (“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 Delivery of the Software or completion of the Services, Applicable Taxes will be calculated and included on the Customer’s invoice.

**5) TERM.** The term of this Master Agreement shall begin on the Effective Date and shall continue until terminated by either Party as set forth in this Master Agreement.

**6) 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 Master 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 Master 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) The Software (i) was developed at private expense and is the proprietary information of DI or its licensors; (ii) was not developed with government funds; (iii) is a trade secret of DI or its licensors, for all purposes of the Freedom of Information Act; (iv) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government’s use, duplication or disclosure of the Software is subject to the restrictions set forth by DI and the restrictions set forth in subparagraph c(1) and c(2) of Commercial Computer Software - Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Furthermore, if the Software is being licensed to U.S. Government end users, the Software and related Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211 through 12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation is licensed (A) only as Commercial Items and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
- h) During normal business hours and at any time during which the Software are being utilized, DI, or its authorized representative or licensors, shall have the right upon reasonable notice to audit and inspect Customer’s Use of the Software, in order to verify compliance with the terms of this Master 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.
- i) 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.
- j) Customer grants to DI during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, right to use the Customer Data, solely as necessary to perform the Services and as otherwise may be agreed in writing by the Customer.

**7) 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.k) (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 Master 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 Master



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 Master 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 certain regulations related to the use and protection of personal information. Therefore, the Parties agree to abide by the applicable terms and conditions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Title XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA") also known as the Health Information Technology for Economic Clinical Health Act (the "HITECH Act") (referred to herein as the "Privacy Regulations"). The Parties agree to enter into separate privacy and security agreements, as necessary, to facilitate compliance with the Privacy Regulations, including but not limited to a Business Associate Agreement, for the provision of Services to Customers, attached hereto as the Business Associate Agreement Schedule.

## 8) 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 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 warrants that it owns, or has the right to license, the Software.
- ii) DI Software and Services warranties are set forth in the applicable Schedules.
- c) **Hardware Warranty.** Any Hardware purchased from DI is covered by the manufacturer's warranty. Hardware warranty coverage begins on the date of DI's initial purchase from the manufacturer.
- d) **Mutual Warranty.**
- i) The Parties each have the power and the authority to enter into and perform this Master 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 Services.
- b) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS MASTER AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SERVICES OR WORK PRODUCTS. DI EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED AND EXPRESS WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DI DOES NOT REPRESENT NOR WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, MALWARE FREE OR THAT CUSTOMER WILL BE ABLE TO ACCESS AND USE, OR OPERATE THE SOFTWARE, WITHOUT PROBLEMS OR INTERRUPTIONS. SUBJECT TO THE TERMS AND CONDITIONS OF THIS MASTER AGREEMENT AND PROVIDED THE SOFTWARE IS PERFORMING SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION, CUSTOMER IS RESPONSIBLE FOR THE RESULTS TO BE ACHIEVED FROM USING THE SOFTWARE AND WORK PRODUCT AND RECEIVING THE SERVICES.

## 9) INDEMNIFICATION

- a) **By Customer.** 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 operation of its business, 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 (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 Software or Work Product furnished and Used within the scope of this Master Agreement infringe or misappropriate a U.S. patent, copyright, trademark or trade secret of a third party, and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) use of the Software or Work Product outside the scope of the Documentation, (ii) a modification of the Software or Work Product by anyone other than DI or its authorized agent; (iii) the incorporation into the Software or Work Product of any feature or



information or Customer Data provided by or requested by Customer; (iv) a combination of the Software or Work Product with any third party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or (v) the use of a version of the Software or Work Product other than the then-current version made available to Customer, if the infringement would have been avoided by use of the then-current version and Customer has been made aware of this fact by DI. In the event the Software or Work Product are held or are believed by DI to infringe, DI will, at its sole option and expense, choose to (a) modify the infringing Software or Work Product so that they are non-infringing; (b) replace the infringing Software or Work Product with non-infringing Software or Work Product which are functionally equivalent; (c) obtain a license for Customer to continue to use the Software or 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 do the following:

- (1) for Software licensed on a subscription basis, terminate Customer's license to Use the infringing Software, and refund the prorated Subscription Fees, paid by Customer hereunder for the portion of the Subscription Services that is the subject of the action for the twelve (12) month period of the Subscription Term immediately preceding the breach for which the damages are claimed, regardless of the length of such term, and/or
- (2) for Work Product, 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 SOFTWARE OR 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 Master 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.

- 10) **LIMITATION OF LIABILITY.** EXCEPT AS PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR CONTENT, BUSINESS INTERRUPTIONS, LOSS OF INCOME, LOSS OF GOOD WILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, DAMAGES DUE TO FORCE MAJEURE, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, WORK PRODUCT OR SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, AND (D) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. DI SHALL NOT BE LIABLE FOR (A) DISTURBANCES AND FAILURE OF INTERNET CONNECTIONS, OR (B) CUSTOMER'S DATA INPUT IN THE SOFTWARE, OR DI'S USE OF CUSTOMER DATA. A Party's total aggregate liability for any damages arising out of or related to this Master Agreement, for any and all causes whatsoever, and the other Party' maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, will not exceed:

- a) For the Software licensed on a subscription basis, the Subscription Fees paid by Customer hereunder for the portion of the Subscription Services that is the subject of the action, for the twelve (12) month period of the Subscription Term immediately preceding the breach for which the damages are claimed, regardless of the length of such term.
- b) For 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 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 Master Agreement.

- 11) **TERMINATION.**

- a) **Without Cause.** Customer may terminate this Master Agreement without cause upon sixty (60) days written





- notice to DI.
- b) **Termination of all Subscription Services.** If Customer is only licensing Subscription Services from DI under this Master Agreement, this Master Agreement will automatically terminate at such time as Customer has terminated, or Customer has allowed to expire without renewal, all Subscription Services.
  - c) **Termination for Bankruptcy.** This Master 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.
  - d) **Termination with Cause.**
    - i) This Master Agreement may be terminated immediately if either Party violates the confidentiality obligations or the license grants and restrictions set forth herein; or
    - ii) This Master 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) **Effect of Termination.** Upon any termination of this Master Agreement:
    - i) DI shall cease performing the Services and except for termination by DI for the uncured material breach of Customer pursuant to Section 11.d) ("Termination with Cause") above, all fully paid Software and Work Product licenses shall remain in effect. In case of termination by DI pursuant to Section 11.d) above, all licenses granted herein, and under any applicable PS Agreement, if any, shall immediately terminate, and Customer shall immediately cease using any delivered Software and Work Product and Customer shall promptly return all Software and Work Product to DI.
    - 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 Master 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.
  - f) **Consequences of Termination.** Upon any termination of this Master Agreement, 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.
  - g) **Survival.** The provisions of this Master 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 Software and Work Products after termination of this Master Agreement and all Open PS Agreements if such termination is for Customer's material breach.

## 12) GENERAL TERMS.

- a) **Third Party Software.**
  - i) Open Source Software and Bundled Software: Open Source Software and Bundled Software are licensed for use by Customer, directly by the third party vendors of such software, and DI makes no representation or warranty of any kind regarding such software, and shall have no liability associated with its use. Customer is to look to the license agreements of such software vendors for terms and conditions of use, warranties and liabilities as set forth on the Third Party Software List.
  - ii) Distributed Software and Embedded Software: Distributed Software and Embedded Software are licensed for Use by Customer subject to terms and conditions set forth in this Master Agreement for the Software.
  - iii) A link to the Third Party Software List will be provided upon request.
- b) **Professional Judgment.** The Software is provided as an aid in the practice of healthcare and is not intended as a substitute for 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 Software and Services. The Customer is responsible for the supervision, management and control of its use of the Software including, but not limited to, ensuring that proper controls are in place to validate content delivered with the Software, and the data and results obtained through its use. Customer acknowledges that all processes, forms, and reports contained within the Software or Services may be subject to errors and are not a substitute for the exercise of professional judgment.



- c) **Audit Right.** During normal business hours and at any time during which the Software and/or Services are being utilized, DI, or its authorized representative or licensors, shall have the right, upon reasonable notice to audit and inspect Customer's Use of the Software or 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.
- d) **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
- e) **Hiring.** During the term of this Master 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.
- f) **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.
- g) **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 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 Master Agreement.
- h) **Notices.**
  - i) **General.** Notwithstanding the foregoing, all general correspondence regarding the basic, day-to-day performance and general operations under this Master Agreement, including notices that relate to Updates the availability or interoperability of the Software or Services, may be made by email, or by DI through its website and/or via the My DI, My Community or Customer Web Portal.
  - ii) **Legal.** All legal notices required under this Master 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. All legal notices to Customer shall be to the address noted on the Notices and Contact Information Schedule. All legal notices to DI shall be to the address noted for DI on the first page of this Master Agreement to the attention of the "Office of President".
- i) **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 Master 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.
- j) **Assignment.** Neither Party may assign (whether by operation or law or otherwise), sublicense, share, pledge, rent or transfer any of its rights under this Master 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 Master Agreement; (c) does not change the scope of the Services and the intent contemplated by the Parties under this Master Agreement and any PS Agreement; or (d) is not pursuant to bankruptcy proceeding. Further, any assignment of Customer: (x) must include the assignment of all the Software and all other software or Hardware bundled or pre-installed with the Software, including all copies, Updates and prior versions, to such person or entity; (y) must not retain any copies of the Software, including backups and copies stored on a Computer; and (z) the receiving party accepts the terms and conditions of this Master Agreement and any other terms and conditions upon which Customer legally licensed the Software. Any assignment or transfer in violation of the above is void. This Master Agreement will be binding on the Parties, their successors and permitted assigns.
- k) **Entire Agreement.** This Master 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 "click-through" or "shrink-wrap" terms and conditions delivered with the Software or any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by Customer (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.

- l) **Amendment.** This Master Agreement may only be modified, altered or amended by written agreement signed by an authorized officer of both Parties.
- m) **Governing Law.** This Master 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.
- n) **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 Master 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 Master Agreement in any court of competent jurisdiction in the United States.
- o) **Language.** The English language version of this Master Agreement shall be controlling in the interpretation or application of the terms of this Master Agreement and the Schedules.
- p) **Section Headings.** Section headings contained in this Master Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Master Agreement.
- q) **No Waiver.** No failure or delay by either Party in exercising any right hereunder will operate as a waiver thereof.
- r) **Relationship of the Parties.** The Parties are independent contractors and nothing in this Master Agreement shall be construed to create a partnership, joint venture or employment relationship between DI and Customer.
- s) **Third Party Beneficiaries.** Except as expressly set forth in this Agreement, this Master Agreement is not intended to create and does not create enforceable obligations for the benefit of any third party.
- t) **Severability.** If any part of this Master Agreement is found void and unenforceable, it will not affect the validity of the balance of this Master Agreement, which shall remain valid and in full force and effect.



## ON-PREMISES SOFTWARE SCHEDULE

All Software licensed to Customer as On-Premises Software, is provided pursuant to the General Terms and Conditions, this Schedule and any Exhibit or Appendix attached by reference.

### 1) RESTRICTIONS AND USE.

- a) **Installation.** Customer may install and Use one (1) copy of each license of the Software granted to Customer hereunder on one (1) Computer.
- b) **Reproduction.** Customer shall not copy the Software without the prior written approval of DI. Notwithstanding the foregoing, Customer may make one backup copy of the Software, into machine readable form, for archival and disaster recovery purposes, provided Customer's backup copy is not in Use on any Computer. All backup copies shall remain the property of DI and are subject to the terms and conditions of this Master Agreement. Customer shall maintain a record of the number and location of all copies of Software, including copies merged with other software, and shall make those records available to DI upon request. Any backup copy of the Software that Customer makes must contain the same titles, trademarks, copyright notices, legends and other proprietary notices that appear on or in the Software.
- c) **No Modification.** Customer shall not, and shall not permit any third party to, (i) remove or alter any copyright notices on and all copies of the Software (ii) modify, adapt, alter or translate (excluding any language translation features that are part of the Software, and default project data files) the Software or (iii) reverse engineer, decompile, disassemble, create derivative works of any part of the Software, attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software including, without limitation, any such mechanism used to restrict or control the functionality of the Software; or otherwise attempt to discover the source code or the underlying ideas, algorithms, structure or organization form of the Software, except to the extent Customer may be expressly permitted to decompile under applicable law. DI reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.
- d) **Transfer.** Customer may not, rent, lease, lend, sublicense, assign, distribute, sell or transfer Customer's rights in the Software, use the Software for commercial time-sharing, or for service bureau use, or authorize all or any portion of the Software to be copied onto another user's Computer except as may be expressly permitted herein. Customer may, however, transfer the Software from one Customer Computer to another, provided that the transfer is carried out within a reasonable timeframe. Customer may ensure that the Software is successfully loaded on the new Computer prior to erasing from Customer's old Computer.
- e) **Updates.** If the Software is an Update to a previous version of the Software, Customer must possess a valid license to such previous version in order to Use such Update. All Updates are provided to Customer on a license exchange basis. Customer agrees that by Using an Update, Customer voluntarily terminates Customer's right to Use any previous version of the Software and will transfer all data to the new Update.

### 2) WARRANTIES.

- a) **Software Warranty.** DI warrants that for as long as Customer has a valid license, has a current Maintenance and Support Services term in effect for the Software and has paid all applicable Fees due under this Master Agreement, the Software, when properly installed and Used in accordance with the applicable Documentation, will substantially perform in accordance with the Documentation provided with the Software. Customer's exclusive remedy under the limited warranty set forth herein and the sole obligation of DI for breach of this warranty shall be for DI to use commercially reasonable efforts to correct any reproducible error of the Software to conform to the Documentation, at no additional charge.
- b) **Malware Warranty.** DI warrants that as of the date of Delivery, the Software does not contain any Malware.
- c) **Media Warranty.** DI warrants that any media upon which DI provides the Software to Customer shall be free of defects in materials and workmanship for a period of ninety (90) days from Delivery of such media to Customer. As Customer's exclusive remedy and the sole obligation of DI for breach of this warranty, DI shall provide Customer with a new copy of such Software in non-defective media at no additional charge.

### 3) SPECIFIC SOFTWARE TERMS AND CONDITIONS.

- a) **Instrument Manager™.**
  - i) Third Party Software. InterSystems Corporation's ("InterSystems") proprietary application, Caché™, is Bundled Software delivered and used with DI's Instrument Manager™ software. The use of Caché™ by Customer is subject to InterSystems' End User License & Service Agreement, attached as Exhibit 1 to this Schedule.

**Note: Not applicable for EP Evaluator®**



## EXHIBIT TO ON-PREMISES SOFTWARE SCHEDULE - SUBSCRIPTION LICENSE

This Exhibit is attached to the On-Premises Software Schedule by reference and sets for the additional terms, conditions and restrictions that are specific to On-Premises Software licensed to Customer on a subscription license basis.

### 1) LICENSE AND USE.

- a) Subject to Customer's compliance with the terms of this Master Agreement, DI grants to Customer, for the term of this Master Agreement, a non-exclusive, non-transferable, non-sublicensable, revocable, term license to receive and Use the Software, in accordance with the Documentation, only as allowed herein and solely for Customer's internal business purposes, as part of Subscription Services, for the length of the Subscription Term indicated on the applicable Quote.
- b) Each Software license will be delivered with a Temporary SSK.  
**Note: Not applicable for EP Evaluator®**
- c) Upon the payment of the applicable Subscription Fees, a new SSK will be provided to Customer set for the length of the Subscription Term.
- d) The date of receipt of payment of the Subscription Fees shall be deemed the Subscription Services Start Date.
- e) Each Subscription Term, including a Renewal Term, shall be no less than a twelve (12) month period.
- f) Upon payment of all applicable Renewal Term Fees, Customer will be provided with a renewal code for the SSK set for the new Renewal Term.

### 2) FEES.

- a) Customer must pay the Subscription Fees, set forth on the applicable Quote, prior to the start of any Subscription Term (initial or a Renewal Term).
- b) DI will invoice Customer annually for the Subscription Fees due for each calendar year of the Subscription Term ("Calendar Year Portion").
- c) Customers will be notified in advance of an upcoming expiration of a Subscription Term and will be provided with a Quote for the Subscription Fees due for the Renewal Term.

### 3) SUSPENSION OF A SUBSCRIPTION SERVICES.

- a) DI reserves the right to suspend a Subscription Services and any pending Professional Services if Customer fails to pay the appropriate Subscription Fees within thirty (30) days from when the Subscription Fee is due ("**Suspension**").
- b) During any term of Suspension:
  - i) DI will not provide Maintenance and Support Service, including Updates or any Professional Services; and
  - ii) Customer will not be able to access the MY DI, MY Community or the Customer Web Portal, Updates and Drivers.
- c) Customer acknowledges and agrees that it shall not attempt to circumvent any Suspension restrictions imposed on the Software or Services.
- d) DI will lift the Suspension upon Customer's payment of all of the unpaid Subscription Fees due and payable.

### 4) TERMINATION.

- a) See Section 11.e ("Effect of Termination") of the General Terms and Conditions of this Master Agreement.
- b) Customer shall be liable to DI for Subscription Fees due for the remainder of any Subscription Terms (initial or Renewal Terms) in place at the time of termination. The owed Subscription Fees will become immediately due and payable.
- c) If Customer terminates an individual Subscription Service during a Subscription Term, Customer shall be liable to DI for the Subscription Fees for the remainder of the Subscription Term (initial or Renewal Term) in place at the time of termination. The owed Subscription Fees will become immediately due and payable.
- d) If Customer terminates a Subscription Service by not renewing the Subscription Term, and afterwards Customer desires to reinstate the Subscription Service, Customer will have to purchase the Subscription Services for a new, full Subscription Term, at the then-current prices.



## EXHIBIT TO ON-PREMISES SOFTWARE SCHEDULE – ISC EULA

This Exhibit is attached to the On-Premises Software Schedule by reference and sets for the additional terms, conditions and restrictions that are specific to the license of Instrument Manager™.



### END USER LICENSE & SERVICES AGREEMENT

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



## 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.

- 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, MY Community and/or the Customer Web Portal (as specified in the table in in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).
    - 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, MY Community and/or the Customer Web Portal (as specified in the table in in the Exhibit, attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).
    - 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 (e.g. On-Premises or Cloud-Based Solution). 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 (e.g. On-Premises or Cloud-Based Solution). 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 (e.g. On-Premises or Cloud-Based Solution). 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, MY Community and/or Customer Web Portal: Using the MY DI, MY Community and/or Customer Web Portal, as indicated in the Exhibit attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution), 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, MY Community and/or Customer Web Portal will operate without interruption or without errors.
  - b) **Emergency Support.** Emergency Maintenance and Support Services is 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. Emergency Maintenance and Support Services is defined as Critical and/or High Priority Software Errors.
  - 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'. Customer Support Services must be scheduled and is subject to DI's resource



availability and shall be provided subject to a separate, PS 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 which have been identified and trained as the Primary Technical Contacts of the Software. Customer shall identify its designated Primary Technical Contacts in the Exhibit attached to this Schedule by reference, for the specific Software license type (e.g. On-Premises or Cloud-Based Solution).
- 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) **REVISION SUPPORT.** DI will support the current major version plus one additional version of the Software.
- 6) **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.
- 7) **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.
- 8) **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.
- 9) **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.
- 10) **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.
- 11) **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.
- 12) **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);

- 13) **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.



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

This Exhibit is attached to the Maintenance and Support Services Schedule by reference and sets for 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 as part of the Subscription Services in accordance with the terms and conditions set forth herein.
- 2) **TERM.** The Maintenance and Support Services term for each Software license shall be coterminous with the applicable Subscription Term
- 3) **FEES.** Maintenance and Support Services for the Software are included as part of the annual Subscription Fee at DI’s then current list price at the time of initial Subscription Service purchase and/or renewal.
- 4) **RENEWAL:** Unless terminated as provided herein, Maintenance and Support Services shall automatically renew with the renewal of the applicable Subscription Term. Customer will be notified at least forty-five (45) days prior to the upcoming expiration of a Subscription Term and will be provided with a Quote to renew the Subscription Term. Customer must pay the Subscription Fees for the Renewal Term prior to the expiration date of the then-current Subscription Term.
- 5) **TERMINATION.** Maintenance and Support Services shall automatically terminate upon the termination of the applicable Subscription Services.
- 6) **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 <a href="http://www.datainnovations.com">www.datainnovations.com</a> during the hours for the region listed below. |  |  |
|--|--|--|
| Region   | Support Hours                                | Technical Support Contact  |
| North America  | 9:00 am – 8:00 pm EST/EDT<br>Monday – Friday | MY DI, MY Community *<br><a href="mailto:northamerica-support@datainnovations.com">northamerica-support@datainnovations.com</a><br>+1 802 658 1955 |
| <b>Note(s):</b> MY DI, MY Community may be accessed via <a href="http://support.datainnovations.com">support.datainnovations.com</a> .   |  |  |

- 7) **PRIMARY TECHNICAL CONTACT(S).** As of the Effective Date DI acknowledges the individuals set forth on the Notices and Contact Information Schedule are designated as Customer’s Primary Technical Contacts.
- 8) **MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS.** The following items are added as additional sub-items to Section 12 (“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.
- 9) **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.
- 10) **NOT APPLICABLE:** The following provisions set forth in the Maintenance and Support Services Schedule do not apply to EP Evaluator®:
  - a) **Driver Updates – Section 8**
  - b) **New Drivers – Section 9**



## 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 as 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 Master 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 11 ("Termination") of the General Terms and Conditions of this Master Agreement), 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 Master 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 Master 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 Master 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 Master 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 Master 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 fifteen (15) 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 fifteen (15) 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 fifteen (15) 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 Master Agreement.** If this Master Agreement is terminated for any reason, all PS Agreements still in effect as of the date of termination of this Master Agreement ("Open PS Agreements") shall immediately terminate.
- g) **Effect of Termination.** Upon any termination of a PS Agreement, Section 11.e) ("Effect of Termination") of the General Terms and Conditions of this Master Agreement shall be directly applicable to the terminated PS Agreement.



## BUSINESS ASSOCIATE AGREEMENT SCHEDULE

This Schedule sets forth terms and conditions between Customer (the "Covered Entity") and DI the "Business Associate") related to their compliance with HIPAA and HITECH. Each of DI or Customer may be referred to as a "Party" or together the "Parties". This Schedule is attached by reference to the General Terms and Conditions.

### RECITALS:

- A. The purpose of this Business Associate Agreement ("BAA") is to comply with the Standards for Privacy and Security of Individually Identifiable Health Information issued by the Secretary of the U.S. Department of Health and Human Services ("HHS") 45 C.F.R. Part 160 and Part 164 (the "Privacy and Security Regulation") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as amended by Title XIII, The Health Information Technology for Economic and Clinical Health Act ("HITECH"), of the American Recovery and Reinvestment Act.
- B. Business Associate performs services for Covered Entity that may require Business Associate to Use or Disclose Protected Health Information and Business Associate is required to abide by certain requirements set forth in the Privacy and Security Regulation and HITECH.
- C. This BAA sets forth the terms and conditions pursuant to which Protected Health Information that is provided to, or created or received by, the Business Associate from or on behalf of the Covered Entity will be handled and shall supersede and replace any prior Business Associate Agreement between the parties.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

- 1) **DEFINITIONS.** Unless otherwise defined in this BAA, all capitalized terms shall have the meanings provided in the Privacy and Security Regulation, except that Protected Health Information shall refer to Protected Health Information provided to, or created or received by, the Business Associate from or on behalf of the Covered Entity.
- 2) **SERVICES:** Business Associate provides services for the Covered Entity that may involve the Use and Disclosure of Protected Health Information under the Master Agreement. Business Associate may Use and Disclose the Protected Health Information only as necessary to perform the services described in the Master Agreement. Business Associate shall not Use or Disclose Protected Health Information in any manner that would constitute a violation of the Privacy and Security Regulation if so used by Covered Entity. However, Business Associate may Use Protected Health Information (a) for the proper management and administration of Business Associate, (b) to carry out the legal responsibilities of Business Associate, or (c) for Data Aggregation purposes for the Health Care Operations of Covered Entity. Business Associate may Disclose the Protected Health Information received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is Required By Law, or (b) the Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required By Law or for the purpose for which it is Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the Protected Health Information has been breached.
- 3) **RESPONSIBILITIES OF BUSINESS ASSOCIATE:** With regard to its Use and/or Disclosure of Protected Health Information, the Business Associate agrees to do the following:
  - a) Use and/or Disclose the Protected Health Information only as permitted or required by this BAA or as otherwise Required By Law.
  - b) Report to the designated Privacy Officer of the Covered Entity, in writing, any Use and/or Disclosure of the Protected Health Information that is not permitted or required by this BAA, any Breach of Unsecured Protected Health Information of which Business Associate becomes aware, and any Security Incident of which Business Associate becomes aware, within 10 business days of the Business Associate's discovery of the unauthorized Use and/or Disclosure, Breach, or Security Incident. Business Associate shall reasonably cooperate with Covered Entity to comply with applicable mitigation and/or notification obligations under the Privacy and Security Regulation.
  - c) Use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized Use and/or Disclosure of such Protected Health Information. Such security measures shall, at a minimum, include the following:
    - i) Implement HIPAA-compliant administrative, physical and technical safeguards, as defined by 45 C.F.R. § 164.304, that reasonably and appropriately protect the confidentiality, integrity and availability of the Covered Entity's Electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity;
    - ii) Implement disclosure accounting procedures for Protected Health Information and/or, if applicable, any Electronic Health Record; and
    - iii) Ensure that any agent, including a subcontractor, to whom the Business Associate provides Protected Health Information agrees in writing, as required by this BAA, to implement reasonable and appropriate safeguards to protect it.
  - d) Require its agents, including subcontractors, that receive, create, Use or Disclose Protected Health Information under this BAA to agree in writing to adhere to each of the same restrictions and conditions on the Use and/or Disclosure of Protected Health Information that are set forth herein, including the obligation to return or destroy the Protected Health Information as provided under (g) of this section.



- e) Make available all books and records relating to the Use and/or Disclosure of Protected Health Information to the Secretary for purposes of determining the Covered Entity's compliance with the Privacy and Security Regulation, subject to attorney-client and other applicable legal privileges.
  - f) Within 10 business days of receiving a written request from the Covered Entity:
    - i) Make available to the Covered Entity Protected Health Information in a Designated Record Set as required for the Covered Entity to respond to a request by the subject Individual for access to his or her Protected Health Information in compliance with 45 C.F.R. §164.524;
    - ii) Make amendments to Protected Health Information in a Designated Record Set as agreed to by the Covered Entity in compliance with 45 C.F.R. §164.526; and
    - iii) Provide information to the Covered Entity as required for Covered Entity to provide the Individual with an accounting of Disclosures of Protected Health Information in compliance with 45 C.F.R. §164.528.
  - g) Return to the Covered Entity or destroy, as requested by the Covered Entity, within 10 business days of the termination of this BAA, the Protected Health Information in Business Associate's possession and retain no copies or back-up tapes, except that if Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further Use and Disclosure of such Protected Health Information to those purposes that make return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
  - h) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA and assist Covered Entity in any notifications related to such violations as necessary to comply with the Privacy and Security Regulation.
  - i) Comply with applicable provisions of the Privacy and Security Regulation, which are expressly incorporated in this BAA to the extent Required By Law.
  - j) Request, Use and Disclose only the Minimum Necessary Protected Health Information to accomplish the purposes of the request, Use or Disclosure.
- 4) **RESPONSIBILITIES OF THE COVERED ENTITY.** With regard to the Use and/or Disclosure of Protected Health Information by the Business Associate, the Covered Entity hereby agrees:
- a) To inform the Business Associate of any material changes in the form of Notice of Privacy Practices that the Covered Entity provides to Individuals pursuant to 45 C.F.R. §164.520 and as posted on its website;
  - b) To inform the Business Associate of any relevant changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by Individuals whose Protected Health Information may be Used and/or Disclosed by Business Associate under this BAA pursuant to 45 C.F.R. §164.506 or §164.508; and
  - c) To notify the Business Associate, in writing and in a timely manner, of any relevant restrictions on the Use and/or Disclosure of Protected Health Information agreed to by the Covered Entity as provided for in 45 C.F.R. §164.522.
- 5) **WORK FORCE OBLIGATIONS.** Each Party will ensure that all members of its work force, whose services may be used to fulfill obligations under this BAA, are or shall be appropriately informed of the terms of this BAA and are obligated to comply with all provisions of this BAA.
- 6) **TERM AND TERMINATION:**
- a) **Term.** This BAA shall become effective on the Effective Date and shall continue in effect until all requested services and obligations of the parties under the Master Agreement have been met, unless terminated as provided herein or by mutual agreement of the parties.
  - b) **Termination.** As provided for under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate this BAA and the Master Agreement if it determines that the Business Associate has breached a material provision of this BAA. Alternatively, the Covered Entity may: (i) provide the Business Associate with written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this BAA and the Master Agreement. This BAA will automatically terminate without any further action of the parties upon the termination or expiration of the Master Agreement between the parties.
  - c) **Effect of Termination.** Upon termination of this BAA, except as set forth in Section 3(g) above, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.
- 7) **SURVIVAL.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 3(g), 3(h) and 3(i) shall survive the termination of this BAA.
- 8) **AMENDMENT.** This BAA may not be modified or amended, except in writing as agreed to by each party. The Parties agree to negotiate in good faith to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and subsequent additions or amendments related to such laws. If the parties cannot agree on an amendment to this BAA, this BAA may be terminated by either Party upon 30 days written notice to the other party, or upon such shorter notice as may be required by applicable law.



- 9) **NO THIRD PARTY BENEFICIARIES.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
- 10) **NOTICES.** All notices required under this BAA, 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 notices to Customer shall be to the address set forth on the Notices and Contact Information Schedule. All notices to DI shall be to the address noted for DI on the first page of this Master Agreement to the attention of the “Chief Privacy Officer”.
- 11) **INTERPRETATION.** Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy and Security Rule.





**NOTICE AND CONTACT INFORMATION SCHEDULE**

Please print and complete this form and return a signed copy by email to Data Innovations LLC at [DINA-Contracts@datainnovations.com](mailto:DINA-Contracts@datainnovations.com).

**1) General Corporate Information:**

|                             |  |
|-----------------------------|--|
| Customer Name ("Customer"): |  |
| Address:                    |  |
| City:                       |  |
| State:                      |  |
| Zip Code:                   |  |
| Type of Corporation:        |  |

**2) Legal Notice Information:** List the contact information for Legal Notice required under Section 12.h.ii) of the General Terms and Conditions. Check the box if the address is the same as set forth in Section 1.

Same as above:

|            |  |
|------------|--|
| Attention: |  |
| Address:   |  |
| City:      |  |
| State:     |  |
| Zip Code:  |  |

**3) Business Associate Agreement Notice Information:** List the contact information for Notices required under Section 10 the Business Associate Agreement Schedule. Check the box if the address is the same as set forth above.

Same as: Section 1  Section 2:

|            |  |
|------------|--|
| Attention: |  |
| Address:   |  |
| City:      |  |
| State:     |  |
| Zip Code:  |  |

**4) Primary Technical Contact Information:** List the contact information for the three Primary Technical Contacts for Maintenance and Support Services (Section 8 of the Exhibit to Maintenance and Support Services Schedule - On-Premises Software – Subscription License):

| 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:                       |  |