



## bioMérieux Beta Renal Portal Terms of Service

bioMérieux Confidential | vMar2023

These terms and conditions (the "Terms") govern all transactions involving the Portal, as defined herein, between the Parties. Unless agreed to otherwise by the Parties, the Terms take priority over any conflicting terms in another document. By placing an order related to a Sales Quote, Customer agrees to these Terms. All additional or different terms proposed by Customer are rejected, and null and void.

### 1. DEFINITIONS

**1.1 "Authorized Purposes"** means, unless otherwise permitted in an applicable Order Form, (a) for non-Beta Subscriptions, use of the Portal solely for Customer's internal purposes in visualizing stored health information about Customer's patients, and not for the provision of services to any third party; and (b) for Beta Subscriptions, use of the Portal solely for Customer's internal testing and evaluation use, and not for the provision of services to any third party.

**1.2 "Authorized Users"** means Customer's employees, consultants, contractors, and/or agents: (a) who are authorized by Customer to access and use the Portal on Customer's behalf, and (b) whose EHR System accounts have been permitted access to the Portal for such purpose.

**1.3 "Anonymized Data"** means Customer EHR Data that has been processed so as to be rendered de-identified pursuant to HIPAA, and which, without such processing, would otherwise be subject to HIPAA.

**1.4 "Beta Subscription"** means a non-production license granted to Customer with respect to a pre-release version of the Portal for the period specified in the applicable Sales Quote, that is not supported, may contain bugs or errors, and may be subject to additional terms that shall be provided by bioMérieux to Customer.

**1.5 "Portal"** means bioMérieux's hosted platform through which health care providers can visualize certain information from such providers' EHR System

**1.6 "CCPA"** means the California Consumer Privacy Act of 2018, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

**1.7 "Customer EHR Data"** means all Customer data uploaded or otherwise transmitted from Customer's EHR System, and received, stored, and displayed by the Portal.

**1.8 "Customer Information"** means information that relates to Customer in its status as a customer or client of bioMérieux and which bioMérieux collects from or about Customer. Customer Information does not include any Personal Information.

**1.9 "Customer System"** means Customer's computing devices, servers, EHR System(s), mobile devices, and other equipment and software used to access, use, and transfer Customer EHR Data to the Portal.

**1.10 "Data Protection Laws"** means all statutes, regulations, regulatory guidelines, and judicial or administrative holdings or interpretations related to privacy, including but not limited to HIPAA, and any other privacy laws applicable to Personal Information or Customer's access to or processing of Personal Information, including, without limitation, CCPA, and any amendments, regulations, or binding regulatory guidance related thereto.

**1.11 "Documentation"** means the printed or electronic user instructions and help files made available by bioMérieux for use with the Portal, as may be updated from time to time by bioMérieux.

**1.12 "EHR System"** means a system for the storage and display of electronic health records.

**1.13 "HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

**1.14 "Intellectual Property Rights"** means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress, and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.

**1.15 "Personal Information"** means, in addition to any definition under applicable Data Protection Laws, any personal information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to any individual or a household, including protected health information.

**1.16 "Sales Quote"** means the bioMérieux quote provided to the Customer and made a part of the Agreement between the Parties which identifies the Products.

**1.17 "Services"** means the Portal and Support Services.

**1.18 "Subscription Term"** means the period, set forth in Customer's applicable Sales Quote, for which Customer is permitted to access and use the Portal.

**1.19 "User"** means an individual authorized by Customer to access the Portal.

**1.20 "Support Services"** means the implementation, training, support, and/or maintenance services that may be provided by bioMérieux to Portal subscribers, as further described in Customer's Sales Quote (if applicable).

**1.21 "User-Related Data"** means information relating to the access or use of the Portal by a User and/or information relating to Customer or its personnel that is collected during the course of Customer's procurement or use of the Portal.

### 2. ORDER FORMS; LICENSES; RESTRICTIONS

**2.1 Orders.** By placing an order, Customer agrees to these Terms. bioMérieux reserves the right to reject any Sales Quote prior to execution, or any order for the Services (the "Order"), for any reason. bioMérieux's acceptance of a Sales Quote or an Order is established by bioMérieux delivering written acknowledgement of acceptance to Customer. Any Customer purchase order documentation accepted or signed by bioMérieux is solely for Customer's record keeping and shall not, notwithstanding the terms thereof, add to, modify, amend, supersede, or replace this Agreement in whole or in part.

**2.2 Access and Use.** bioMérieux, during the relevant Subscription Term, hereby grants Customer a limited, non-exclusive, non-transferable right to access and use the Portal in accordance with the Documentation in each case solely for Customer's Authorized Purposes. Customer's use of the Portal may be subject to certain limitations as further described in the applicable Sales Quote or Order form. The Portal will be provided as a cloud delivery service, without any transfer or license of the underlying code.

**2.3 Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any Authorized User or third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Portal; (b) modify, translate, or create derivative works based on any element of the Portal or any related Documentation; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Portal; (e) remove any proprietary notices from the Documentation; (f) use the Portal for any purpose other than its intended purpose; (g) interfere with or disrupt the integrity or performance of the Portal; or (i) attempt to gain unauthorized access to the Portal, bioMérieux's related systems or networks, or to the content and data uploaded by other users.

**2.4 Reservation of Rights.** Except as expressly granted in these Terms, there are no other licenses or use rights granted to Customer or any Authorized User, express, implied, or by way of estoppel. All rights not granted in these Terms are reserved by bioMérieux and its licensors or suppliers.

### 3. THIRD PARTY PRODUCTS AND HOSTING

**3.1 Third Party Hosting.** bioMérieux may use the services of one or more third parties to host the Portal and deliver all or part of the Services. bioMérieux will pass through any warranties to the extent that bioMérieux receives any from its then current third-party service provider that it can provide to Customer. As applicable, Customer agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Customer from time to time.



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### 4. ACCOUNTS AND PASSWORDS

**No Circumvention of Security.** Neither Customer nor any Authorized User may circumvent or otherwise interfere with any user authentication or security of the Portal. Customer will immediately notify bioMérieux of any breach, or attempted breach, of security known to Customer. Authorized User access and use shall be in accordance with the Documentation.

### 5. CUSTOMER OBLIGATIONS

**5.1 Customer System.** Customer is responsible for (a) obtaining, deploying, maintaining, and securing the Customer System; (b) contracting with third party ISP, telecommunications, and other service providers to access and use the Portal via the Internet. Except as specifically set forth herein, bioMérieux shall not be responsible for supplying any hardware, software, or other equipment to Customer under these Terms.

**5.2 Acceptable Use.** Customer shall be solely responsible for its actions and the actions of its Authorized Users while using the Portal. Customer acknowledges and agrees: (a) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the Portal; and (b) to comply with all regulations, policies, and procedures of networks connected to the Portal and bioMérieux's service providers. Customer shall be responsible and liable for the completeness, integrity, legality, quality, and accuracy of Customer EHR Data, User-Related Data and other information input or used to access into the bioMérieux Portal. Customer shall be solely responsible for ensuring compliance with applicable laws and regulations in its use of the Portal.

### 6. AVAILABILITY; SECURITY

**6.1 Availability.** Subject to the terms and conditions of these Terms, bioMérieux will use commercially reasonable efforts to make the Portal available with minimal downtime 24 hours a day, 7 days a week; provided, however, that scheduled downtime may occur is not subject to the foregoing. bioMérieux may make changes to the Portal at any time and without notice to Customer.

**6.2 Security; Privacy Policy.** bioMérieux will use commercially reasonable efforts to maintain technical, physical, and organizational measures designed to secure the protection, security and confidentiality of Customer EHR Data from accidental loss and unauthorized access, use, alteration or disclosure; however, bioMérieux cannot guarantee that unauthorized third-parties will never be able to defeat those measures to gain access to the Portal. Notwithstanding the foregoing, each party shall take, and hereby represents that it has taken, reasonable steps to ensure the reliability and security of its systems; and that it will comply with its respective systems, network, and data security policies.

### 7. SUPPORT SERVICES

**Support Services.** bioMérieux shall use commercially reasonable efforts to perform the Support Services as set forth in applicable Sales Quote or Order forms, if any. Support Services may require additional fees and/or terms and conditions that apply to the provision of such Support Services and any such fees or additional terms shall be set forth in the applicable ordering document.

### 8. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

**8.1 Mutual Representations and Warranties.** Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into these Terms and to perform its obligations hereunder; and (b) its acceptance of and performance under these Terms shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

**8.2 Disclaimers.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 8, THE PORTAL AND SUPPORT SERVICES ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE AND RECEIPT OF THE PORTAL AND SUPPORT SERVICES IS AT ITS OWN RISK. BIOMÉRIEUX DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXPRESS WARRANTIES MADE BY BIOMÉRIEUX IN SECTION 8 ARE FOR THE BENEFIT OF CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. ANY SOFTWARE PROVIDED THROUGH THE PORTAL IS PROVIDED AS CLOUD DELIVERY AND NOT LICENSED OR SOLD. NO WARRANTIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER'S BENEFIT DURING THE LICENSE TERM OF ANY BETA LICENSE.

THE PORTAL IS NOT DESIGNED, INTENDED, VALIDATED, OR CLEARED TO BE USED AS A CLINICAL DECISION SUPPORT SYSTEM IN THAT IT DOES NOT PROVIDE PATIENT SPECIFIC ASSESSMENTS OR RECOMMENDATIONS FOR CLINICAL DECISION. CUSTOMER ACCEPTS FULL RESPONSIBILITY FOR ANY AND ALL DECISIONS MADE BY CUSTOMER AND ITS AUTHORIZED USERS AS A RESULT OF THEIR USE OF THE SERVICES.

BIOMÉRIEUX DOES NOT OFFER MEDICAL ADVICE OR ADVICE REGARDING THE OPTIMAL SET OF PROCEDURES, TREATMENTS, ALERTS, OR STEPS NEEDED TO ACHIEVE THE BEST OUTCOMES FOR A PATIENT. ANY CUSTOMER EHR DATA AND DECISIONS MADE OR ACTIONS TAKEN BASED ON INFORMATION ACCESSED THROUGH THE SERVICE ARE THE SOLE RESPONSIBILITY OF CUSTOMER. BIOMÉRIEUX DOES NOT RECOMMEND OR ENDORSE ANY GIVEN PATIENT TREATMENT. THE INFORMATION AVAILABLE ON THE PORTAL DOES NOT CONSTITUTE MEDICAL ADVICE AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR THE INDIVIDUAL PROFESSIONAL JUDGMENT OF ANY PHYSICIAN OR OTHER HEALTH CARE PRACTITIONER REGARDING THE APPROPRIATE COURSE OF ACTION FOR A PARTICULAR PATIENT. THE SERVICE SHOULD BE INDEPENDENTLY REVIEWED WITH APPROPRIATE MEDICAL STAFF IN LIGHT OF THE NEEDS OF ANY PARTICULAR INSTITUTION AND ITS PATIENTS.

BIOMÉRIEUX DOES NOT ENDORSE OR VALIDATE ANY MATERIAL UPLOADED TO THE PORTAL BY CUSTOMER OR CUSTOMIZED WITHIN THE PORTAL BY BIOMÉRIEUX AT THE DIRECTION OF CUSTOMER, INCLUDING BUT NOT LIMITED TO ANY CUSTOMER POLICIES, PROCEDURES, PROTOCOLS, OR OTHER CLINICAL OR NON-CLINICAL GUIDANCE, INSTRUCTIONS OR RESOURCES THAT MAY BE ACCESSED OR USED BY AUTHORIZED USERS OF THE PORTAL. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ANY MATERIAL, INFORMATION, OR DOCUMENTATION PROVIDED TO BIOMÉRIEUX OR UPLOADED TO THE PORTAL BY CUSTOMER OR ANY AUTHORIZED USER OF CUSTOMER.

### 9. INDEMNIFICATION

**9.1 bioMérieux Indemnity.** bioMérieux will indemnify, defend, and hold harmless Customer from and against third party claims, demands, causes of action, or liability arising from a claim that Customer's use of the Services infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right of any third party except to the extent such claim arises in whole or in part from (i) Customer's use of infringing Customer EHR Data; (ii) use of the Portal in combination with any software, hardware, network, or system not supplied by bioMérieux where the alleged infringement relates to such combination, (iii) any modification or alteration of the Portal other than by bioMérieux, (iv) any materials, information, or documentation provided to bioMérieux or uploaded to the Portal by Customer or any Authorized User of Customer; (v) Customer's continued use of the Portal after bioMérieux notifies Customer to discontinue use because of an infringement claim, (vi) Customer's violation of applicable law; and/or (vii) the Customer System. bioMérieux's indemnification obligation hereunder is contingent upon prompt notice of and full control over the defense of any claim.



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**9.2 Customer Indemnity.** Customer shall indemnify, defend, and hold harmless bioMérieux from and against third party claims, demands, causes of action, or liability arising from or related to: (a) Customer's use or alleged use of the Portal in violation of applicable law or other than as permitted under these Terms; (b) any materials, information, or documentation provided to bioMérieux or uploaded to the Portal by Customer or any Authorized User of Customer; or (c) any alleged injury (including death) related to use of the Portal by Customer or any Authorized User of Customer.

### 10. CONFIDENTIALITY

**10.1 Confidential Information.** Each party (the "Receiving Party") hereby understands and acknowledges that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's or its suppliers' business or products (hereinafter referred to as "Confidential Information" of the Disclosing Party). Confidential Information of bioMérieux shall include any and all non-public information regarding features, functionality, and performance of the Portal and the Third-Party Products. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information. Except with respect to Personal Information, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the termination of these Terms or any information that the Receiving Party can document (a) is or becomes generally available to the public; (b) was in its possession or known by it, prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in these Terms shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

**10.2 Privacy.** The parties acknowledge and agree to comply with all applicable Data Protection Laws. Specifically, the parties agree that (a) to the extent Customer EHR Data includes Personal Information that is subject to HIPAA, both parties must comply with all applicable requirements of HIPAA including entering into a Business Associate Agreement in accordance with 45 C.F.R. § 164.504(e), and (b) to the extent that User-Related includes Personal Information that is subject to CCPA, both parties must comply with all applicable requirements of CCPA.

**10.3 Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

### 11. PROPRIETARY RIGHTS

**11.1 Portal.** As between bioMérieux and Customer, all right, title and interest in the Portal and any other bioMérieux materials furnished or made available hereunder, and all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Customer regarding the Portal, including all copyright rights, patent rights, and other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by bioMérieux or bioMérieux's licensors and suppliers, as applicable. Customer hereby does and will irrevocably assign to bioMérieux all evaluations, ideas, feedback, and suggestions made by Customer to bioMérieux regarding the Portal (collectively, "Feedback") and all intellectual property Rights in the Feedback.

**11.2 Customer EHR Data and User-Related Data.** As between bioMérieux and Customer, all right, title and interest in the Customer EHR Data and User-Related Data, belongs to and is retained solely by Customer. By posting, displaying, sharing, or distributing Customer EHR Data and User-Related Data on or through the Portal, Customer hereby grants to bioMérieux a limited, sublicenseable, non-exclusive, royalty-free, worldwide license to reproduce, display, publicly perform, distribute and otherwise use the Customer EHR Data and User-Related Data, and perform all acts with respect to the Customer EHR Data and User-Related Data as may be necessary for bioMérieux to provide the Services to Customer. bioMérieux may modify, copy, translate, or make any derivative works of Customer EHR Data and User-Related Data in connection with its provision of the Portal as required to format such Customer EHR Data and User-Related Data for presentation within the Portal.

**11.3 Anonymized Data.** As between bioMérieux and Customer, all right, title, and interest in the Anonymized Data and all Intellectual Property Rights therein, belong to and are retained solely by bioMérieux. Customer acknowledges that bioMérieux may create or generate Anonymized Data based on Customer EHR Data and information input by other customers into the Portal and Customer agrees that bioMérieux may (a) make such Anonymized Data publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement, and marketing, provided that such data and information does not identify Customer or its Confidential Information.

**11.4 Aggregated Statistics.** Notwithstanding anything else in these Terms or otherwise, bioMérieux and/or its third party providers may monitor Customer's use of the Services and other data and information related to such use, in an aggregate manner, including to compile statistical and performance information related to the Portal and its users and to continually improve the Portal and to develop new services and offerings ("Aggregated Statistics"). As between bioMérieux and Customer, all right, title, and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by bioMérieux. Customer acknowledges that bioMérieux will be compiling Aggregated Statistics based on information input by Customer or other customers into the Portal and Customer agrees that bioMérieux may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement, and marketing, provided that such data and information does not identify Customer or its Confidential Information.

### 12. LIMITATION OF LIABILITY

**12.1 No Consequential Damages.** NEITHER BIOMÉRIEUX NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE, OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, EVEN IF BIOMÉRIEUX OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE PORTAL, ANCILLARY SERVICES, THIRD-PARTY PRODUCTS, SUPPORT SERVICES, AND/OR THE RESULTS THEREOF. BIOMÉRIEUX WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

**12.2 Limits on Liability.** NEITHER BIOMÉRIEUX NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO BIOMÉRIEUX UNDER THESE TERMS DURING THE PERIOD OF SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

**12.3 Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 12 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE.



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### **13. TERM AND TERMINATION**

**13.1 Term.** The term of these Terms commences upon the execution of an applicable Order Form and continues until the expiration or termination of all Subscription Term(s), unless earlier terminated as provided in herein or in an applicable separate agreement between Customer and bioMérieux referencing these Terms.

**13.2 Termination for Cause.** A party may terminate these Terms upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of any provision of these Terms and does not remedy such breach within thirty (30) days after receipt of notice from the other party or such other period as the parties may agree. In no event shall any termination relieve Customer of the obligation to pay any fees payable to bioMérieux for the period prior to the effective date of termination.

**13.3 Effects of Termination.** Upon expiration or termination of these Terms, (a) Customer's use of and access to the Portal and bioMérieux's performance of all Support Services and Ancillary Services shall cease; and (b) all fees and other amounts owed to bioMérieux shall be immediately due and payable by Customer. bioMérieux shall have no obligation to maintain or provide any Customer EHR Data or User-Related Data and may thereafter, unless legally prohibited, delete or retain all Customer EHR Data or User-Related Data in its systems or otherwise in its possession or under its control. In addition, within ten (10) days of the effective date of termination each Receiving Party shall: (a) return to the Disclosing Party, or at the Disclosing Party's option, the Receiving Party shall destroy, all Confidential Information (other than the Customer EHR Data or User-Related Data) then in the Receiving Party's possession or control, including any copies, extracts or portions thereof, and (b) upon request shall certify in writing to Disclosing Party that it has complied with the foregoing. To the extent that Customer EHR Data and User-Related Data incorporate data or information that is subject to HIPAA or CCPA respectively, the BAA and, if applicable, the CCPA Addendum, as agreed to by the Parties and referenced in the Beta Renal Portal Subscription Agreement, shall govern the treatment of such data upon expiration or termination of these Terms. Notwithstanding the foregoing, to the extent any Confidential Information cannot reasonably be returned or destroyed or must be maintained by the Receiving Party in accordance with any reasonable record-keeping policies or legal requirements, the Receiving Party may maintain such information and shall continue to treat such information as confidential in accordance with these Terms for so long as such information is subject to the confidentiality restrictions hereunder and remains in the Receiving Party's possession or control.

**13.4 Survival.** All terms and provisions of this Agreement, including any and all addenda and amendments hereto, which by their nature are intended to survive any termination or expiration of this Agreement, shall so survive.

### **14. MISCELLANEOUS**

**14.1 No Agency or Partnership.** No agency, partnership, joint venture, or employment is created as a result of these Terms or Customer's use of any part of the Portal. Customer does not have any authority whatsoever to bind bioMérieux in any respect. Neither bioMérieux nor any users of the Portal may direct or control the day-to-day activities of the other, or create or assume any obligation on behalf of the other.

**14.2 Publicity.** Neither Party shall publish, reference, or use the other Party's name, trademarks, or disclose the nature of the Services provided hereunder without the express approval of the other Party.

**14.3 General.** Customer shall not assign its rights hereunder, or delegate the performance of any of its duties or obligations hereunder, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of bioMérieux. Any purported assignment in violation of the preceding sentence is null and void. Subject to the foregoing, these Terms shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. There are no third-party beneficiaries to these Terms, except that bioMérieux's licensors and suppliers shall be third party beneficiaries of bioMérieux's rights and Customer's obligations with respect to the Portal use restrictions and limitations, confidentiality, limitations of liability, disclaimers, and indemnity provisions hereunder. Except as otherwise specified in these Terms, these Terms may be amended or supplemented only by a writing that refers explicitly to these Terms and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of these Terms is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Terms will remain in full force. The parties are independent contractors, and nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. These Terms constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. Except for Customer's payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under these Terms when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder. This Agreement will be interpreted according to the laws of the State of Utah without application of conflict of laws principles. The United Nations Convention on the International Sales of Goods will not apply to the transactions contemplated by this Agreement.