

MAESTRIA™: Terms and Conditions (US)

By installing or using MAESTRIA™, the Client hereby fully agrees to be bound by the following Terms and conditions (the "Agreement"). The act of placing an order means full acceptance of Agreement by

1. DEFINITIONS

For all purposes of this Agreement, the following terms shall have the meanings specified below :

"CLARION Lab Analytics" means a MAESTRIA™ Software Optional Module that tracks and compares relevant laboratory and clinical data across departments, processes, regions, and vendors, permitting CLIENT to extract actionable insights via easy-to-use dashboards and may be subject to additional terms.

"CLIENT" means the customer purchasing the MAESTRIA™ Services, MAESTRIA™ Software and/or the MAESTRIA™ Hardware.

"CLIENT's environment" means any informatics system, software, programs, networks, laboratory informatics system or hardware used by the CLIENT or installed in the CLIENT's premises.

"Effective Date" means the date that MAESTRIA™ Software, MAESTRIA™ Hardware or a MAESTRIA™ Service is first made available to CLIENT on a subscription basis, or as otherwise agreed-upon between bioMérieux and Customer.

"Instruments" means the instruments belonging to the CLIENT or being operated by the CLIENT at CLIENT's premises with permission of a third party, with which the MAESTRIA™ Software will communicate according to configuration described in the Offer.

"Lab Optimization Service" means a single eight (8) hour assessment and recommendation project, delivered at a time mutually convenient to CLIENT and bioMérieux consultants.

"LIS" means a laboratory information system, namely, a software-based information system that supports a laboratory's operations in particular but not limited through workflow and data tracking support which includes or enables the processing, storing, and managing of patient data related to laboratory processes and testing.

"MAESTRIA™ Configuration" means the MAESTRIA™ Software, Hardware and Services provided to CLIENT.

"MAESTRIA™ Hardware" means the Personal Computer (PC) provided by bioMérieux on which the MAESTRIA™ Software is installed.

"VM" or "Virtual Machine" means the Virtual Machine platform provided by CLIENT on which the MAESTRIA™ Software is installed.

"MAESTRIA™ Services" means the services provided by bioMérieux to CLIENT in support to the MAESTRIA™ Software and/or MAESTRIA™ Hardware. The MAESTRIA™ Services can consist in separate services work package(s), such as but not limited to : implementation (integration/installation) services ; training services ; professional services and maintenance services.

"MAESTRIA™ Software" means a machine-executable copy of the object code of the MAESTRIA™ microbiology middleware solution and any related user manual, documentation or training materials, in either printed or electronic form, embodying any modifications, enhancements, updates, new releases and/or new versions.

"MAESTRIA™ Software Optional Module" means an optional MAESTRIA™ Software functionality made accessible to CLIENT according to a software configuration as described in the Offer.

"MAESTRIA™ Software Update" means successive editions of the same MAESTRIA™ Software Version issued with minor corrections, adaptations or changes. The MAESTRIA™ Software Update number is indicated as follows *MAESTRIA™ Software Version number. number of MAESTRIA™ Software Update.*

"MAESTRIA™ Software New Version" means the MAESTRIA™ Software Version with major new operational and technical functionalities.

"MAESTRIA™ Software Version" means the combination of the operational and technical functionalities of the MAESTRIA™ Software. The MAESTRIA™ Software Version is indicated as follows: *MAESTRIA™ - Software Version number. number of MAESTRIA™ Software Update.*

"MAESTRIA™ Software License" means the right to use the MAESTRIA™ Software granted to CLIENT as provided under the Agreement.

"MAESTRIA™ Software Documentation" means all manuals detailing the functionalities of the MAESTRIA™ Software as well as user instructions.

"MAESTRIA™ Subscription Fee" means the amount hereof which is to be paid by CLIENT to bioMérieux in consideration of the MAESTRIA™ Software, MAESTRIA™ Services and/or the MAESTRIA™ PC or Virtual Machine Services, as the case may be. The breakdown of MAESTRIA™ Services Fee is set forth in the Offer.

"MAESTRIA™ Virtual Machine Services" means the performance by bioMérieux of the installation and maintenance services of MAESTRIA™ Software on the Client's virtual server.

"Offer" means the commercial offer accepted by the Client describing the financial conditions, the configuration of MAESTRIA™ Software required as well as technical specifications, optional licenses, MAESTRIA™ hardware, MAESTRIA™ Services. The Offer is expressly ruled by the present Agreement.

"Registered User(s)" means the user declared in MAESTRIA™ user management tool to have a login and password to MAESTRIA™ Software. Access to MAESTRIA™ Software is limited to a maximum number of Simultaneous MAESTRIA™ Users.

"Simultaneous MAESTRIA™ User(s)" means the maximum number of concurrent CLIENT's user(s) entitled to benefit from the MAESTRIA™ Software and/or the MAESTRIA™ Services under the Agreement, and by default limited to 1 MAESTRIA™ User.

"Remote Maintenance Services" means the remote assistance for incident resolution and maintenance available through VILINK® and subject to additional terms and conditions.

"TERM" means the duration of time starting from the Effective Date and lasting for the length of time agreed upon between bioMérieux and CLIENT.

"Third Party Instruments" means the Instruments belonging to the CLIENT which are manufactured or sold by entities other than bioMérieux and which CLIENT wishes to connect to MAESTRIA™ Software.

"VILINK®" means the bioMérieux' software solution allowing a secured connection between MAESTRIA™ connected Instruments manufactured or sold by bioMérieux and bioMérieux support center.

2. MAESTRIA™ SOFTWARE LICENSE

a. Concession of rights

In consideration of CLIENT's payment of the applicable subscription fees described in the Offer, bioMérieux hereby grants CLIENT a non-exclusive, non-transferable and non-sub licensable license to install and use MAESTRIA™ Software at one location interoperating with the Instruments according to the configuration and IT environment defined in the Offer, for CLIENT's own internal purposes. This license is granted for the TERM of the subscription.

b. Restrictions

The limited license on MAESTRIA™ Software Subscription granted to CLIENT is subject to the restrictions set forth below:

The MAESTRIA™ Software shall at all times remain the property of bioMérieux and/or bioMérieux' licensors. CLIENT shall have no right, title, or interest in the MAESTRIA™ Software, except as expressly set forth in this Agreement.

In particular, CLIENT shall have no right, and shall not allow any Registered Users or third parties to, on a temporary or permanent basis:

- modify, adapt, translate, convert, or create any derivative work of, the MAESTRIA™ Software, in whole or in part, except as expressly permitted by bioMérieux;
- disassemble, decompile, reverse engineer the MAESTRIA™ Software or otherwise attempt to access to its method of operation or source code;
- sell, rent, lease, loan, license, sublicense, publish, display, distribute, disseminate, assign, or otherwise transfer (whether by sale, exchange, lease, gift, or otherwise) the MAESTRIA™ Software to a third party, in whole or in part, without bioMérieux's prior written consent or except as expressly permitted under the Agreement;
- alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on the MAESTRIA™ Software or its copies;

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- copy, make available for copy, or otherwise reproduce the MAESTRIA™ Software, in whole or in part, except (i) as may be required for its installation into the Instruments' computer memory for the purpose of executing the MAESTRIA™ Software in accordance with the Agreement ; or (ii) to make a reasonable number of copies solely for backup purposes provided that any such permitted copy(ies) shall reproduce all copyright, trade secret, patent, logo, proprietary and/or other legal notices contained in the original copy;

- republish the MAESTRIA™ Software documentation, except as expressly permitted by bioMérieux or by a third-party licensor.

c. Use of MAESTRIA™ Software

CLIENT shall use the MAESTRIA™ Software only on the MAESTRIA™ Hardware or dedicated Virtual Machine.

CLIENT may physically transfer the MAESTRIA™ Software from one MAESTRIA™ Hardware or dedicated Virtual Machine to another, provided that the MAESTRIA™ Software is used on only one MAESTRIA™ environment at a time and that the hardware platform is validated by bioMérieux.

CLIENT may provide access (directly or indirectly) to the MAESTRIA™ Software via internet or network application, except as forbidden by bioMérieux.

CLIENT shall safeguard MAESTRIA™ Software and MAESTRIA™ Hardware from any unauthorized use. CLIENT shall be responsible for all access, use and operation of the MAESTRIA™ Software by its Registered Users, employees, subsidiaries, affiliates, and any third parties. CLIENT shall be held liable for any costs associated with any act or omission thereby that would constitute a breach. CLIENT acknowledges that it is aware of the risks related to the use of Internet network. CLIENT has and shall retain the exclusive responsibility regarding security of its networks, of the MAESTRIA™ Software and hardware, in particular by implementing the proper updated security measures (firewall, antivirus, etc.) as and where necessary.

Without prejudice to the rights granted to CLIENT, CLIENT agrees to not install any third-party's program not approved by bioMérieux on a VM or a MAESTRIA™ Hardware, nor make any modification to the MAESTRIA™ Software without the prior written approval of bioMérieux.

In the event the use of MAESTRIA™ Software requires some hardware upgrades or any other kind of modifications, especially further any change of CLIENT's environment, the costs for such modifications shall be fully borne by CLIENT.

d. Third Party Software

The use of the MAESTRIA™ Software by the CLIENT may include the operation of third-party software (hereinafter the « Third Party Software »).

The terms and conditions for the use of the Third Party Software are governed by the specific manuals and/or licenses of use linked to these Third Party Software (hereinafter the « Third Party Licenses »). In order to enable the CLIENT to comply with the Third Party Licenses, where applicable, bioMérieux makes them available to the CLIENT under the following link : <https://resourcecenter.biomerieux.com/>, in the MAESTRIA directory at the "Service Documentation" tab. The CLIENT hereby warrants to bioMérieux that they will be fully complied with.

In any case, the CLIENT remains exclusively responsible for the use of the Third Party Software, in compliance with the Third Party Licenses. bioMérieux will update the list of Third-Party Licenses as soon as possible in the event of any changes thereto. Should a Third Party Software being substituted to another one, or should a particularly significant change in a Third Party Software occur, bioMérieux will update the list of Third Party Licenses.

However, it is the CLIENT's responsibility to make sure that it is properly informed of such changes and updates.

Notwithstanding the foregoing, the CLIENT is reminded that certain Third Party Software that are not governed by any Third Party Licenses are deemed an integral part of the MAESTRIA™ Software, and their use is then expressly subject to the present Agreement.

Eventually, CLIENT is hereby informed that the use of Third Party Software not provided by bioMérieux may be required to allow the implementation or use of the MAESTRIA™ Software. The CLIENT shall be responsible for acquiring and maintaining such Third-Party Licenses

for as long as necessary. The CLIENT shall further ensure that it has all necessary rights (i) to use the Third Party Software in connection with the use of the MAESTRIA™ Software and (ii) to enable bioMérieux to perform the Maintenance Services.

e. Usage Verification

At bioMérieux's request, but not more frequently than annually, CLIENT will allow bioMérieux to review CLIENT's deployment and use of the MAESTRIA™ Software for compliance with the terms and conditions of this Agreement, at bioMérieux's expenses. Any such reviews shall be scheduled five (5) days in advance, shall be conducted during normal business hours at CLIENT's facilities, and shall not unreasonably interfere with CLIENT's business activities. If CLIENT's use of the MAESTRIA™ Software is found to be greater than contracted for, CLIENT will be invoiced for the additional licenses or license upgrades (based on the applicable units of measure, e.g., servers, server tiers or users) and the unpaid fees shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the fees paid for the subject MAESTRIA™ Software, then CLIENT shall also pay bioMérieux's reasonable costs incurred to carry out the audit.

3. USE OF MAESTRIA™ Hardware

Unless stated otherwise and in particular in the Offer, MAESTRIA™ PC will be owned by CLIENT, provided CLIENT has fully paid any and all costs related to the purchase and installation thereof. In the event of non or partial payment by CLIENT, bioMérieux reserves the right to recover or repossess the MAESTRIA™ PC. Unless stated otherwise in the Offer, ownership in the MAESTRIA PC is transferred to the CLIENT on full payment of any and all costs related to the purchase and installation thereof. In the event of late payment, non-payment or partial payment by CLIENT, bioMérieux reserves the right to recover or repossess the MAESTRIA PC. In this case, bioMérieux may charge compensation for the use of the MAESTRIA PC and may set off such claim with payment already received from CLIENT.

CLIENT agrees not to implement any modification on the MAESTRIA™ Hardware without prior written approval of bioMérieux. In the event the use of MAESTRIA™ Hardware requires some hardware upgrades or any other kind of modifications, including any change to CLIENT's environment, the costs for such modifications shall be fully borne by CLIENT.

bioMérieux shall bear the risks and costs of shipment of the MAESTRIA™ Hardware to CLIENT's premises. The risks of loss or damage to or caused by the MAESTRIA™ Hardware are transferred to CLIENT upon delivery of such MAESTRIA™ Hardware to CLIENT. The CLIENT shall therefore make sure that its insurance policies cover the MAESTRIA™ Hardware once delivered.

bioMérieux recommends a MAESTRIA™ PC life cycle which shall not exceed a period of five years (hereafter "Recommended Use Period"). As soon as the Recommended Use Period is expired, bioMérieux will make its best effort to propose a new MAESTRIA™ Hardware to the CLIENT, based on the current official prices. In any case, if CLIENT decides not to proceed to the substitution of the MAESTRIA™ Hardware after the Recommended Use Period, all the interventions and support operations to the MAESTRIA™ Hardware which Recommended Use Period is expired will be additionally invoiced to CLIENT based on the official current prices.

4. SERVICES

a. Installation / Integration services

Either before or promptly following the execution of this Agreement, CLIENT will appoint a competent employee who shall act as the primary contact person for CLIENT in connection with the implementation and use of the MAESTRIA™ Software .

bioMérieux will assist CLIENT in implementing the MAESTRIA™ Configuration in CLIENT's environment.

Installation shall be carried out within CLIENT's premises.

As soon as the MAESTRIA™ Software and/or PC is installed, CLIENT shall, upon request, sign the MAESTRIA™ acceptance documentation.

b. Training services

In consideration of the payment by the CLIENT of the applicable fee indicated in the Offer, bioMérieux grants the CLIENT the right to have

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the Registered Users attend or participate in the training services workshop(s), distance-learning conference call(s), course(s), and/or simulation(s) indicated in the Offer, if any, and grants such Registered Users the right to receive or access and use the training services materials (“Materials”) that are provided or made available thereof, if any, all subject to the terms and conditions of this Agreement.

Except as expressly represented otherwise, and to the extent not prohibited by law, all training, including Materials, documentation, publications, software programs and other information provided by or on behalf of bioMérieux to CLIENT or Registered Users are furnished on an “As-Is” basis, and bioMérieux shall not be responsible for the training course not meeting the CLIENT’s or Registered User’s objectives.

c. Maintenance services

bioMérieux shall provide maintenance services for MAESTRIA™ Software and MAESTRIA™ Hardware (hereafter “Maintenance Services”), during the Term and subject to the terms and conditions of this Agreement.

bioMérieux expressly reserves the right to correct errors, bugs, and inaccuracies whatsoever on the MAESTRIA™ Software and shall not be held liable for any inconvenience, such as services suspension and/or modification, which might arise out of and/or in connection with these corrections.

bioMérieux may deploy and provide MAESTRIA™ Software Updates. Such updates will be performed according to MAESTRIA™ Configuration.

Updates shall be made available to CLIENT at no additional cost to CLIENT. Concerning such updates, bioMérieux shall notify CLIENT of their release date and of any additional fees as may be applicable.

CLIENT shall install MAESTRIA™ Software Updates as soon as they are made available by bioMérieux, when they are notified as mandatory. CLIENT may decide not to install one non-mandatory update and bioMérieux shall therefore continue to provide Maintenance Services on CLIENT’s existing version. However, CLIENT shall have the obligation to install the next update when released by bioMérieux. If CLIENT fails to do so, bioMérieux will no longer be required to supply further Maintenance Services for the MAESTRIA™ Software version used by CLIENT. In such case, bioMérieux shall be entitled to terminate the Maintenance Services after six (6) months without the obligation to provide any additional notice to CLIENT and without incurring any liability whatsoever.

bioMérieux shall inform CLIENT of MAESTRIA™ Software New Versions release. bioMérieux shall maintain the previous MAESTRIA™ Software Version for three (3) years.

New Versions must be purchased and shall be deemed to be covered by this Agreement.

If CLIENT modifies the MAESTRIA™ Software, bioMérieux shall no longer be required to maintain it.

If CLIENT notifies bioMérieux to increase the number of concurrent users for the MAESTRIA™ Software, or if CLIENT licenses additional MAESTRIA™ Software or procures additional services from bioMérieux, the parties shall update the Offer and the MAESTRIA™ Subscription Fees, including any fees that relate to Maintenance Services.

5. OBLIGATIONS OF CLIENT

CLIENT shall install, implement and use the MAESTRIA™ Software and Server in the CLIENT’s environment under its sole responsibility.

The CLIENT shall, in particular:

- Meet the prerequisites related to installation and localization, as provided by bioMérieux before installation;
- Ensure that the configuration of the MAESTRIA™ Software and Server is compatible with its IT environment (including but not limited to LIS, third parties software, hardware);
- Have access to VILINK® ;
- Comply with the conditions of use of the MAESTRIA™ Software, apply strictly all instructions given by bioMérieux and, in general, comply with the provisions of the Agreement;

- Develop operating measures, implement control points and security mechanisms that are appropriate for backing up and restoring data with no loss, in the event of anomalies in the use of the MAESTRIA™ Software and Server; and
- appoint a project manager, among its personnel, to be bioMérieux’s contact person.

As a consequence, CLIENT shall be solely responsible for:

- the protection and back up of any saved data on the MAESTRIA™ Software and the MAESTRIA™ Server;
- the results obtained by using the MAESTRIA™ Software and the MAESTRIA™ Server, and all use made of such results;
- the implementation of Antivirus (AV) compatible with MAESTRIA™ Software and/or the operating system and manage AV updates,
- the installation and management of critical patches for MAESTRIA™ Software and/or the operating system.

a. Third Party Instruments

The MAESTRIA™ Software and the MAESTRIA™ Hardware provides the technical means to connect Third Party Instruments. In as far as bioMérieux provides for the development of and testing against the connection of Third Party Instruments, the connection is developed and tested against connection specifications issued by the manufacturer of such Third Party Instrument as provided by Customer. Customer must conduct qualification testing and validate the connection of any Third Party Instrument as well as any devices delivered by bioMérieux before using it in routine operation. bioMérieux provides a tool to manage the mapping between the organisms known to the Third Party Instrument(s) and those known from MAESTRIA™. It is Customer’s responsibility to undertake all actions necessary to set-up and maintain the mapping codes to achieve reliable results. MAESTRIA™ manages only in-vitro diagnostic (IVD) results. Other types of results (RUO results, QC controls) will not be considered by MAESTRIA™. Setting an Instrument connected to MAESTRIA™ to create message types other than IVD may result in them being filtered out and may achieve unreliable results. Customer takes full responsibility to ensure any Instrument is set to send out messages in the adequate format. bioMérieux’ support of the connection to Third Party Instruments is limited to the messages that have been received into MAESTRIA™ and reported to the LIS. Customer will ensure to receive adequate support for the Third Party Instrument and its connection to MAESTRIA™. bioMérieux takes no responsibility if messages are not sent or sent out with inadequate format (RUO results, QC control) by the Third Party Instrument to MAESTRIA™.

6. INDEMNIFICATION

a. CLIENT’s Indemnification

Without prejudice to the terms and conditions related to the MAESTRIA™ Virtual Machine Services, as required in the Offer if applicable, the CLIENT has and shall retain sole responsibility, regarding any statements, questions, other communications, topics, topic areas, industry areas, structured discussions, or any information, items, materials, or other content posted or uploaded on MAESTRIA™ Software by CLIENT, CLIENT’s employees and/or any other third parties, and/or regarding their use, uploading on, display or review on, or printing, copying, or downloading.

CLIENT shall indemnify and hold harmless bioMérieux from and against any and all damages that arise out of /or result from any third party claims, suits, proceedings or demands based on any cause other than those for which bioMérieux is liable pursuant to the Agreement.

b. bioMérieux’ Indemnification

On its side, bioMérieux shall defend any third-party claim against CLIENT in case MAESTRIA™ Software infringes a copyright, trade secret, or current patent. bioMérieux shall pay the damages and costs awarded by a competent court as a final decision concerning such an infringement.

The triggering of bioMérieux’s responsibility is subject to (i) prompt written notification of the claim by the CLIENT to bioMérieux, (ii)

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bioMérieux's sole control of the defense and settlement negotiations, and (iii) CLIENT's assistance (at bioMérieux's expense).

Where the MAESTRIA™ Software is held to be infringing or where bioMérieux believes it may be infringing, bioMérieux may, at its exclusive discretion and at its own expense, (i) obtain for CLIENT the right to continue using MAESTRIA™ Software in a non-infringing way, (ii) replace it with a non-infringing substitute of similar functionality, or (iii) modify it to make it non infringing, or make any other decision needed to avoid any infringement of a third party's right related to the MAESTRIA™ Software.

Notwithstanding the foregoing, bioMérieux shall have no obligation whatsoever to CLIENT with respect to infringement claims based on:

- (1) MAESTRIA™ Software containing any of CLIENT's contributions, trademarks or logos, board(s) or any board(s) Content and/or Actions,
- (2) actions permitted or performed by CLIENT, or
- (3) MAESTRIA™ Software used in combination with any product not supplied by bioMérieux; or modified; or use of any obsolete/not updated version of MAESTRIA™ Software .

7. CONFIDENTIALITY

Each Party agrees that all material and non public information, of any nature whatsoever, furnished by or related to the other Party and all copies, extracts, reproductions and translations thereof will be treated as Confidential Information. The terms and conditions of this Agreement shall be deemed Confidential Information of each Party hereunder. In this regard, receiving Party agrees to maintain and have maintained the Confidential Information in confidence and shall take at least the same precautions to avoid disclosure of the Confidential Information as those it would take with its own confidential information, but in no event less than reasonable care. Receiving Party shall not use the Confidential Information for any purpose other than the implementation of this Agreement.

bioMérieux specifically undertakes to take all necessary measures to ensure the confidentiality and security of any Confidential Information pertaining to CLIENT to which it may have access in the context of the provision of the services described in the Offer.

Similarly, the CLIENT specifically commits to take all necessary measures to ensure the confidentiality and security of any Confidential Information pertaining to bioMérieux, its projects, programs and products, and in particular relating to the MAESTRIA™ Software, and not to disclose it to anyone.

The confidentiality obligations in this Agreement shall be effective for the Term of the license granted to Client and for five (5) years thereafter. As further provided in Section 10 below, upon termination of this Agreement, all licenses granted hereunder by bioMérieux to CLIENT shall immediately and permanently cease.

8. PERSONAL DATA PROTECTION

CLIENT shall be responsible at all times for any Personal Data (as such term is defined under the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, the 'GDPR' or as the equivalent or corresponding term is defined in the applicable data privacy laws or regulations in CLIENT's local jurisdiction) contained in the MAESTRIA™ Hardware or accessed by the MAESTRIA™ Software. To the extent that any Personal Data is accessed from the MAESTRIA™ Hardware as part of Remote Maintenance Services enabled by VILINK®, additional relevant terms shall apply.

Where applicable, CLIENT acknowledges and understands that, as between CLIENT and bioMérieux, CLIENT shall remain in control of any data collected as part of CLARION Lab Analytics. CLIENT shall therefore be responsible for any use, processing, or retention of such data, including compliance with all applicable personal data privacy regulations.

9. PAYMENT

CLIENT will pay bioMérieux within 30 calendar days from the date where bioMérieux sends the invoice with the fees stated in the Offer. Payment shall be made in accordance with the banking information mentioned on the invoices.

10. TERM AND TERMINATION

a. Term

i) MAESTRIA™ Software

The right of use granted under this Agreement will remain in effect according to Section 2.a). Thereafter this Agreement shall automatically renew for further consecutive periods of the TERM, unless terminated in accordance with Section 11.b below.

ii) MAESTRIA™ Maintenance Services

The Maintenance Services shall enter into force as of the Effective Date and shall remain effective for the TERM, on a *pro rata* basis, unless and until terminated in accordance with Section 11.b. below. The MAESTRIA™ Maintenance Services will be renewable for successive periods of the TERM, unless otherwise stated by one of the Parties at least ninety (90) days prior to the expiry of the applicable term. Maintenance Services fees shall be due in advance of any renewal.

b. Termination

This Agreement may be terminated (i) by either party giving the other party three (3) months' advance written notice, (ii) by mutual consent of bioMérieux and CLIENT, (iii) by one of the Parties, if the other is in breach of the Agreement and fails to cure such breach within thirty (30) days following receipt of a written notice by the non-breaching Party. Upon any termination of this Agreement, CLIENT shall immediately cease the use of the MAESTRIA™ Software and shall certify in writing to bioMérieux within thirty (30) days after termination that CLIENT has destroyed or returned to bioMérieux such MAESTRIA™ Software and all copies thereof. Termination of this Agreement shall not limit either Party from seeking any remedies available to it, including injunctive relief, nor shall release the CLIENT from its obligation to pay all fees that have accrued or have become payable by CLIENT hereunder at the effective termination date.

11. WARRANTIES

a. Generally :

CLIENT shall ensure that CLIENT environment will be compatible with bioMérieux MAESTRIA™ Software and Instruments and its network rightly configured, as required by bioMérieux to ensure successful installation and remote access using VILINK®. In no event shall bioMérieux bear any responsibility as to (i) the connection of the MAESTRIA™ Software and/or Server with CLIENT's environment or (ii) the compatibility with CLIENT's software or instruments not provided by bioMérieux.

Subject to Sections 11 b., c. and d. below, bioMérieux warrants to CLIENT that the MAESTRIA™ Software, MAESTRIA™ Server and Services shall:

- (i) be in compliance with (a) the provisions of this Agreement, and (b) with all applicable norms, standards, laws and regulations ;
- (ii) be able to perform the functions and purposes for which they are intended as stated in the Software Documentation;
- (iii) be merchantable, safe and fit for their intended use; and
- (v) be free of any viruses, including without limitation in design, workmanship or operating; and be free of any defects in title, whereby title means the ownership of the MAESTRIA™ Software by bioMérieux under the terms of this Agreement.

Notwithstanding the foregoing, this warranty will not apply to the extent that the MAESTRIA™ Software does not conform to and/or functions in accordance with the applicable written technical documentation as a result of a defect arising from (i) any act or omission of CLIENT, (ii) any corporation, joint stock company or any other entity or organization of any kind (other than bioMérieux or any person under the express direction of bioMérieux) making any revisions or modifications to the MAESTRIA™ Software after its provision to CLIENT, (iii) the malfunction of any CLIENT-supplied or CLIENT-authorized third-party software or equipment, (iv) CLIENT operation of the MAESTRIA™ Software other than in accordance with applicable documentation or design, or on hardware not recommended, supplied or approved by bioMérieux, or (v) the occurrence of any Force Majeure Event such as, but not limited to, outbreak affecting bioMérieux's personnel, services providers or

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consultants, fire, electrical current variation, flood and defect in the installation environment of the MAESTRIA™ Software. For the purpose of this Agreement, "Force Majeure Event" means any act, event or cause, except in relation to obligations to make payments under this Agreement, beyond the reasonable control of the party affected by that force majeure including, without limitation, any act of God or any public enemy, fire, flood, explosion, landslide, epidemic, breakdown of or damage to plant, equipment or facilities, inability to obtain or unavailability of or damage to materials, ingredients or supplies, strikes, labor disputes, war, sabotage, riot, insurrection, civil commotion, national emergency and martial law, expropriation, restraint, prohibition, embargo, decree or order of any government, governmental authority or court.

CLIENT must report in writing any breach of the foregoing warranties to bioMérieux during the warranty period hereafter described. bioMérieux's sole obligation, for any such breach of warranty shall be, at bioMérieux's sole discretion, (i) to replace the defective media and to provide a workaround for reproducible errors that may have caused a breach of the warranty, within a reasonable time considering the severity of the error and its effect on CLIENT or, (ii) to refund the fees paid for the nonconforming Software upon return of such Software to bioMérieux and termination of the related license hereunder.

b. MAESTRIA™ Software

Except in case of subscription by CLIENT to MAESTRIA™ Virtual Machine Services, bioMérieux warrants that the MAESTRIA™ Software will be in accordance with the descriptions and specifications in the documentation accompanying such MAESTRIA™ Software for a period of ninety (90) days from the documented date of delivery of the MAESTRIA™ Software by CLIENT. bioMérieux further warrants that the MAESTRIA™ Software is free from any known viruses at the date of manufacture. CLIENT shall take all necessary precautions thereafter. During this warranty period, bioMérieux agrees to provide CLIENT with a technical support for the use of the MAESTRIA™ Software, by correcting any deficiency of the MAESTRIA™ Software, exclusive of any redesigning of the MAESTRIA™ Software.

c. Disk

bioMérieux warrants that the disk(s) on which the MAESTRIA™ Software is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the documented date of delivery.

d. MAESTRIA™ PC

bioMérieux warrants that the MAESTRIA™ Hardware will conform to the configuration described in the associated documentation for a period of one (1) year from the documented date of delivery.

e. Claims

bioMérieux will evaluate warranty claims upon receipt of written notification.

Firstly, bioMérieux will make a remote diagnosis and if possible, will correct the defect. Then, if needed, onsite evaluations will be initiated within three (3) business days, during working days, excluding bioMérieux's public holidays. The CLIENT will provide access to bioMérieux, in a timely manner, to any technical support, facilities, hardware, software or information in the CLIENT's possession necessary for bioMérieux to complete such work.

Then again, if the repair cannot be made on the CLIENT's premises, the non-operational part of the MAESTRIA™ Software shall be either replaced or repaired in bioMérieux premises, upon bioMérieux's sole discretion. In any case, the shipment of the MAESTRIA™ Software by the CLIENT to bioMérieux may only be made upon bioMérieux's written approval.

bioMérieux will carry out the correction or replacement at no additional cost for the CLIENT and as soon as practicable. The costs of shipment of the MAESTRIA™ Software will be borne by bioMérieux.

At the end of the warranty period as defined above, the CLIENT shall maintain the MAESTRIA™ Software at its own costs and expenses and may sign a dedicated maintenance agreement with bioMérieux.

CLIENT shall inform bioMérieux of all information or requests that relate to the safety of the MAESTRIA™ Software or MAESTRIA™ Hardware. In the event of a recall of any MAESTRIA™ Software or MAESTRIA™ Hardware by any governmental agency or authority of competent jurisdiction, or if a recall is deemed advisable by bioMérieux,

such recall shall be promptly implemented and administered by CLIENT in a manner which is appropriate and reasonable under the circumstances and in conformity with accepted trade practices.

f. Exclusion

IT IS HEREBY EXPRESSLY STATED THAT BIOMÉRIEUX MAKES AND CLIENT RECEIVES NO ADDITIONAL EXPRESS OR IMPLIED WARRANTIES. BIOMÉRIEUX HEREBY EXPRESSLY DISCLAIM ANY AND ALL OTHER CONDITIONS, LIABILITIES, WARRANTIES, OR OTHER TERMS OF ANY KIND OR NATURE CONCERNING THE MAESTRIA™ SOFTWARE, MAESTRIA™ SERVICES AND MAESTRIA™ SERVER (INCLUDING WITH REGARD TO INFRINGEMENT, MERCHANTABILITY, QUALITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE OR CLIENT'S PURPOSE). IN PARTICULAR, BIOMÉRIEUX DOES NOT WARRANT THAT THE MAESTRIA™ SOFTWARE AND MAESTRIA™ SERVER WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. THIS SECTION CONTAINS THE SOLE AND EXCLUSIVE REMEDIES OF CLIENT AND ITS EMPLOYEES WITH RESPECT TO ANY CLAIM RELATED TO THE MAESTRIA™ SOFTWARE AND TO THE MAESTRIA™ SERVER.

12. LIABILITY

In any case, bioMérieux's liability arising out of any cause of action under this Agreement shall be limited to the price paid by the CLIENT for the impacted software, hardware or service.

NEITHER BIOMÉRIEUX NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE MAESTRIA™ SOFTWARE, MAESTRIA™ SERVICES AND MAESTRIA™ SERVER SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGE FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE MAESTRIA™ SOFTWARE AND MAESTRIA™ SERVER EVEN IF BIOMÉRIEUX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

Furthermore, in any case, bioMérieux shall not be liable for any difficulties, dysfunctions, incidents, failings, accidents or harmful events of any nature arising out of the following cases:

- failure by the CLIENT to comply with the user documentation and/or installation instructions given by bioMérieux;
- failure to communicate a duly completed pre-visit document or the communication of an erroneous, incomplete and/or non-conforming pre-visit document;
- failure to communicate Instructions or the communication of erroneous, incomplete and/or non-conforming Instructions;
- negligence or bad handling by the Registered Users leading to a partial or total dysfunction of the Remote Maintenance Services;
- the connection /disconnection, addition or removal of peripheral devices without prior consultation of bioMérieux leading to a partial or total dysfunction of the Remote Maintenance Services;
- performance, stability and/or connectivity issues of any nature associated with interactions between VILINK® and the Instrument, including use of the Internet;
- any incidents arising as a consequence of a third party exploiting security defects in the Instrument (including attacks or virus software, whether or not they lead to a partial or total dysfunction); and
- modification or moving of the CLIENT hardware without consulting bioMérieux in advance, in writing.

13. GENERAL

The CLIENT shall not assign or transfer the Agreement or any of its rights and obligations hereunder, or any Order covered hereunder, to any other party, including to an affiliate, without bioMérieux's prior written consent. Any change in the ownership or control of the CLIENT shall be deemed an assignment, which requires bioMérieux's prior written consent.

bioMérieux may be free to transfer the Agreement or any Order covered herein to any of its affiliates, provided that the rights and obligations of the CLIENT are not modified by this transfer.

MAESTRIA™: Terms and Conditions (US)

Customer authorizes bioMérieux to use Customer's name and logo in any routine list of bioMérieux clients, as a reference, or in any advertising or press release.

Participant may publish any summaries, conclusions, or other results derived from the information obtained from its use of MAESTRIA; provided, however, that prior to any such publication, Participant shall provide bioMérieux with a copy of any data, findings, article, abstract, manuscript, poster, presentation or other information intended for publication, at least thirty (30) days prior to submission for publication so that bioMérieux may review the proposed publication for the purpose of determining correct usage of bioMérieux trademarks, verifying that bioMérieux confidential information is not disclosed, and the publication is not in violation of any applicable law or rule.

14. GOVERNING LAW

The Agreement shall be governed by the laws of Delaware, without regard to conflict of law principles.