

CLARION SOFTWARE AS A SERVICE TERMS

These Software as a Service Terms (the “Terms”) govern all transactions between Customer and bioMérieux, Inc. involving the Product. By executing the bioMérieux Sales Quote (such executed document referred to herein as the “Order”), or accepting delivery of Product, Customer agrees to the Terms in full. If there is any discrepancy or conflict between the Terms and the Order, the Order shall govern and control. The Order, which is hereby incorporated by reference, and the Terms (collectively, the “Agreement”) comprise the entire agreement between the parties regarding the Product and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral, and shall not be supplemented or explained by any evidence of trade usage or course of dealing. All Customer terms and conditions on any Customer documentation or contract are hereby objected to and rejected and shall be of no force and effect or deemed to be binding on bioMérieux in whole or in part. This Agreement will become effective when the Order is executed by authorized representatives of both Parties (the “Effective Date”).

Definition of Terms.

“**Aggregated Data**” means data, including data definitions, structures, or analyses about such data, that may include elements of Customer Data, instrument, and/or usage data and external data sources that has been reformatted, transformed, and/or consolidated to create anonymous (e.g., de-identified), collated data sets that do not identify and are not personally attributable to Customer or any individual, including but not limited to a patient or employee of Customer.

“**bioMérieux Proprietary Items**” means, collectively, the Service, Product, Aggregated Data, and Documentation, the visual expressions, screen formats, report formats, and other design features of the Service and Product, all ideas, methods, algorithms, models, formulae, and concepts used in developing and/or incorporated into the Service, Product, or Documentation, all future modifications, revisions, updates, refinements, improvements, and enhancements of the Service, Product, or Documentation, all derivative works (as such term is used in U.S. copyright laws) based upon any of the foregoing, including deliverables, work product, and all copies of the foregoing.

“**Confidential Information**” means all confidential or proprietary information disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) in connection with this Agreement, unless it is (a) already known by the Receiving Party without obligation of confidentiality; (b) independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information; (c) publicly known without breach of this Agreement; or (d) lawfully received from a third party without obligation of confidentiality. Without limiting the generality of the foregoing, Confidential Information shall include: (a) Customer Data and non-public information, documentation, and materials, which may be disclosed or made available from any source or in any form relating to the Customer’s business, financial information, patients, employees, programs, documentation, techniques, trade secrets, and systems, (b) bioMérieux Proprietary Items and (c) all work flows and data structures created or provided by bioMérieux pursuant to this Agreement. Confidential Information shall include the terms and pricing in this Agreement, but not the fact that this Agreement has been signed, the identity of the Parties, or the identity of the Service or Modules.

“**Customer Data**” means Patient Data maintained in a Customer Source System that is transmitted to the Product or the Service, or that is otherwise accessed by bioMérieux, in connection with bioMérieux’s provision of the Service.

“**Customer Source System**” means a Customer controlled database or data source that is connected to the Product as designated on an Order.

“**Documentation**” means bioMérieux’s standard user guides, manuals and/or electronic user guides relating to the Service, including on-line help, as updated and amended from time to time.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the rules and regulations issued thereunder.

“**Modules**” means the Service version ordered by Customer in the Order that allows for the analysis of Customer Data and applicable reports as described in the Order.

“**Order**” means bioMérieux’s standard order form executed by both Parties that references this Agreement, or an order in another form that is executed by both Parties and references this Agreement.

“**Patient Data**” means information relating to a patient of Customer.

“**Product**” means bioMérieux’s proprietary software, technology, tools, logic, reports, workflows, algorithms, predictive models, database schemes, database, analytics, hardware, and technology infrastructure supporting the Service and third-party software included with the Product, but excluding any separately licensed Third Party Components (as defined herein), as ordered under the terms of this Agreement.

“Publish” means to make information available through paper, electronic, audio or visual means in a manner intended to make such information accessible, in whole or in part, to the general public regardless of whether such access is made freely available or restricted.

“Service” means the Product and Modules in a hosted environment provided and maintained by bioMérieux (or appointed third party) to which Customer is being granted access under this Agreement as further outlined in the Order. Commonly referred to as bioMérieux Clarion and formerly known as Agilist.

“Site(s)” means the authorized location(s) where the Service are provided as identified in the Order.

“Term” means the duration of Customer’s right to receive, access, and use the Service set forth in the Order and shall automatically renew for a term of twelve (12) months, unless one Party provides the other Party at least ninety (90) days written notice of its intent to not renew the Term.

“User(s)” means any individual who is an employee or contractor of Customer who is authorized to access the reports generated through a given Module delivered through the Service up to the number of Users identified in the Order.

Rights and Obligations.

Implementation. Customer will identify and make its Customer Source Systems readily available and accessible to bioMérieux within thirty (30) days of execution of this Agreement so bioMérieux can: (a) access Customer Data from the Customer Source Systems; (b) load the relevant Customer Data on the Product; and (c) make the relevant reports available through the applicable Module. Once completed, bioMérieux will make the Service generally available to Customer (the “Go Live Date”). The Service shall be deemed accepted by Customer upon the earlier of the following: (i) notification by Customer that the Service is accepted or (ii) five days following the Go Live Date. At all times, Customer agrees: (a) to provide bioMérieux with access to the Customer Source Systems so bioMérieux can extract the relevant Customer Data and establish a means of regularly extracting such Customer Data on an ongoing basis, including installing any connectors provided by bioMérieux; (b) to make reasonably available both Customer subject matter experts and Customer Source System subject matter experts; and (c) to make available in a timely manner, all technical documentation, business process information, and other critical documents that are necessary to aid in the implementation of the Service. Customer is responsible for providing all reasonably requested assistance to bioMérieux in a timely manner to ensure bioMérieux is able to meet the time frame set forth in the kickoff meeting.

Access. bioMérieux will provide to Customer the necessary passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures as may be necessary to allow Customer and its Users to access the Service at the Site (the “Access Protocols”). All Users must use and follow the Access Protocols to access the Service. Any access outside of the Access Protocols by Customer or Users is prohibited. Subject to the terms and conditions contained in this Agreement, bioMérieux grants to Customer a non-exclusive, non-transferable, revocable right to: (a) permit Users to access the features and functions of the Service through the applicable Module solely for Customer’s internal business purposes at the Site; (b) permit Customer’s designated administrative users to access the features and functions of the Service, solely for Customer’s internal business purposes to set access rights for Users.

bioMérieux Obligations. On the Go Live Date, bioMérieux shall make available to Customer on a non-exclusive, revocable, and non-transferable basis during the Term the Service at the Site for up to the number of Users set forth in the Order. In addition, bioMérieux (itself or through third party vendors (e.g. Google)) will: (a) Host, operate, maintain, and provide basic support for the Service as necessary to make the Service available in accordance with the Order; and (b) specify the procedures by which Customer may establish and obtain access to and use the features and functions of the Service, including, without limitation, providing the Access Protocols. The Service includes a secure, scalable, and efficient processing infrastructure to host Customer Data for analytics. The Infrastructure is maintained and managed by bioMérieux and a third party.

Customer Obligations. Customer shall: (a) connect to and use the Service in accordance with this Agreement, the Documentation, and all applicable laws and regulations; (b) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and notify bioMérieux promptly of any such unauthorized access or use; (c) be responsible for all user acts and omissions; (d) make available in a timely manner at no charge to bioMérieux all facilities, databases and equipment, programs, data, files, documentation, test data, or other information and resources required by bioMérieux for the performance of the Service; (e) make all Customer Source Systems available to bioMérieux; (f) be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer; (g) be responsible for the accuracy, quality, integrity, and legality of Customer Data and the means by which such data was acquired, including but not limited to, ensuring that such Customer Data was obtained and is provided or made available to bioMérieux in accordance with all applicable laws, rules, and regulations, including HIPAA; and (h) reasonably cooperate with bioMérieux as necessary for bioMérieux to perform its obligations. Customer shall reimburse bioMérieux for any additional efforts or costs it incurs as a result of Customer’s failure to perform its obligations.

Restrictions. Customer shall not (and shall not permit any User to): (a) sell, resell, lease, rent, license, sublicense, distribute, transfer, or otherwise make available the Service, including on a time-sharing, SaaS, service bureau, or other similar basis, to any third party other than Users or otherwise use the Service for a facility other than the Site; (b) use the Service to store or transmit malicious code, infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (c) use or access the Service in any way that threatens the integrity, performance, or availability of the Service or any data therein; (d) attempt to gain unauthorized access to the Service, Product, or the data stored or processed therein; (e) load, or permit the loading, of Customer Data in violation of any applicable, law, rule, or contract; (f) remove, modify or obscure any product or service identifier, copyright, trademark or other proprietary rights notice or other notices, instructions, disclaimers or legends; (g) modify or create derivative works of the underlying Product (or third party software embodied therein); (h) decompile, disassemble, or reverse engineer the Service, in whole or in part or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats, data structures or other aspects of the Service or Modules; or (i) access, use, or copy any portion of the Product or Service in order to build a competitive product or to benchmark with any third party product or service. bioMérieux may restrict or prohibit access to Customer Data if bioMérieux reasonably suspects Customer is breaching its obligations under this Section. No rights are assigned or granted to Customer other than as expressly set forth herein.

Prohibited Uses. Customer understands and acknowledges that the Service 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. Accordingly, Customer shall not use information obtained or generated through its use of the Service for patient care or for diagnostic purposes.

Third Party Code. The Product may contain or be provided with components subject to the terms and conditions of “open source” software licenses (“Open Source Software”) or other third-party software. bioMérieux shall provide a list of the Open Source Software to Customer upon Customer’s written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification, or reverse engineering.

Support and Service Levels. Unless otherwise stated in the Order, Module pricing above includes five (5) hours, per year, of support service and/or customizations, enhancements and support to deploy/maintain the Service. Any requests for additional support services, including but not limited to incremental data channels for new data analysis, additional licenses, and/or professional services fees will be billed on a time and materials basis. bioMérieux will use commercially reasonable efforts to provide telephone support Monday through Friday, 9AM EST to 5:30PM EST, excluding holidays. Requests outside of the normal support hours will be responded to as soon as possible. Custom reports outside of the defined Modules or beyond the 5-hour customization allowance will be billed at \$275/hour in minimum five-hour increments. Where support services require travel to Customer’s site, travel and other expenses shall be subject to reimbursement by Customer. Failure to maintain a secure channel for remote support (e.g., VILINK) may result in additional support service fees.

Training: Training on the use of the Service will be provided to the number of Users listed above at a time agreed by the Parties.

Change Control & Project Risks: Any change to the project scope such as requests for additional hardware, user licenses, new analyses, or professional services including training shall be made via a change order request in writing signed by the Parties. Minor project delays can be expected in most project plans, however excessive delays can be caused by one or more of the following: (1) Delays in establishing remote support and data collection (completion of the analytics project cannot be completed without this step); (2) Delays in deploying a virtual machine and connecting to the LAN for the integration engine installation; (3) Delays in providing the appropriate data feeds to the integration engine for the Module(s) selected; or (4) Delays in Customer validation. Extended or open-ended delays beyond fifteen (15) business days will result in the Product deployment moving to a “Hold” status and the temporary removal of bioMérieux resources for the duration of the delay. Resumption of activities after the 15+ day delay could incur additional service costs to complete installation of the Service. bioMérieux is not responsible for delays beyond its reasonable control.

Data.

Data Ownership. All Customer Data shall be considered proprietary to Customer. bioMérieux will only use Customer Data as authorized under this Agreement.

Customer Data License Grant. Customer hereby grants bioMérieux a worldwide, perpetual, irrevocable, fully paid-up, royalty free, non-exclusive right and license to use Customer Data to create Aggregated Data for its use to facilitate the provision of the Service to Customer and for research, development, and continuous improvement of bioMérieux’s products, software, and services.

Data Safeguards. bioMérieux shall maintain reasonable and appropriate data safeguards and procedures designed to prevent the unauthorized use or disclosure of Customer Data as required under applicable laws (“Data Safeguards”). During the Term, bioMérieux will maintain physical, administrative, and technical security measures to ensure the availability, integrity, and confidentiality of Customer Data in accordance with its standard data security policies.

End of Term. Upon the termination or expiration of the Agreement, Customer acknowledges and agrees that bioMérieux has no obligation to return to Customer, or retain, any Customer Data, or Aggregated Data.

Protected Health Information. If Customer is a "covered entity" or a "business associate" and includes "protected health information" in Customer Data, as those terms are defined in 45 CFR § 160.103, the business associate agreement ("BAA") attached to this Agreement as Schedule A and incorporated herein by reference will govern each Party's respective obligations regarding such protected health information. The BAA will not govern, and bioMérieux has no obligations under this Agreement or the BAA with respect to, any Patient Data that Customer creates, receives, maintains, or transmits outside of the Service, including through the use of any applications, databases, or systems other than the Customer Source System.

Data Publication. Customer shall retain the right to publish summaries, conclusions, or other results derived from the information or Customer Data derived or obtained from the Service; provided, however, that prior to any such publication, Customer 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's confidential information is not disclosed, and verifying that the publication is not in violation of any applicable law or rule pertaining to bioMérieux.

Payments.

Fees and Expenses. Customer shall pay bioMérieux, without offset or deduction, the fees and expenses as determined under the Orders and this Agreement (e.g., the Installation Fee, the Module fees based on number of Users, etc.). bioMérieux reserves the right to increase the fees each year, but must provide notification of such increases at least thirty (30) days in advance. Unless otherwise provided in an Order, all fees shall be due and payable within thirty (30) calendar days after an invoice is issued by bioMérieux. Whenever any support services are provided by bioMérieux at a Customer location or any other location requested by Customer other than one of bioMérieux's locations, Customer shall reimburse bioMérieux for reasonable travel, lodging, meal, and related expenses incurred by bioMérieux representatives in providing such services.

Recalculation of Fees. The fees set forth in each Order are based on the size of the Customer as of the Effective Date. Customer must notify bioMérieux within thirty (30) days of any event that would change the size of the Customer (e.g., acquisition of a third party). Upon notice, bioMérieux will recalculate the fee owed by the Customer based on its list prices at the time of the notice and will invoice Customer for the balance owed. Customer will pay the invoiced amount within thirty (30) days of its receipt of the new invoice. Any delay by bioMérieux to invoice Customer for the amount owed shall not waive its right to recover such amount.

Taxes. The fees and other amounts payable by Customer to bioMérieux do not include any taxes of any jurisdiction that may be assessed or imposed upon the Service, Product, Documentation, or otherwise, including sales, use, excise, value added, personal property, export, import, and withholding taxes, excluding only taxes based upon bioMérieux's net income. Customer shall directly pay any such taxes assessed. Customer shall promptly reimburse bioMérieux for any taxes payable or collectable by bioMérieux (other than taxes based upon bioMérieux's net income). If Customer has provided bioMérieux with proof of its tax-exempt status, then, in the event that Customer's tax-exempt status should become altered, Customer shall be obligated to notify bioMérieux immediately of any such modification and Customer shall become liable for all taxes as set forth above. In the event Customer fails to notify bioMérieux of any such change, Customer shall be liable for payment of any tax related penalties or interest assessed against bioMérieux or Customer as a result of such Customer failure.

Payment Terms. All amounts payable by Customer for the Service shall be invoiced by bioMérieux with the initial invoice for Service being sent following the earlier of (1) thirty (30) days following Customer's execution of the Order or (2) Customer's receipt of credentials to sign into and use the Service. Service will be billed quarterly unless otherwise mutually agreed. All fees shall be invoiced in advance upon execution of the Order and are payable in advance. All expenses shall be payable as incurred. All invoices shall be sent to Customer's address designated on this Agreement and are due and payable within thirty (30) calendar days after being issued by bioMérieux. If any Customer payment is more than thirty (30) days past due, interest at the rate of twelve percent (12%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue, unless the non-payment is subject to a Good Faith Dispute. "Good Faith Dispute" means a good faith dispute by Customer of certain amounts invoiced under this Agreement. A Good Faith Dispute will be deemed to exist only if (a) Customer has given written notice of the dispute to bioMérieux promptly after receiving the invoice and (b) the notice explains Customer's position in reasonable detail. A Good Faith Dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice have been disputed. All fees and other amounts paid by Customer under this Agreement are non-refundable.

Suspension. In the event that Customer's account is more than thirty (30) days overdue, bioMérieux shall have the right, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Customer's use of the Service, without further notice to Customer, until Customer has paid the full balance owed, plus any interest due.

Warranties and Limitations.

Performance Warranties. The Service shall perform as described in the Documentation as of the Effective Date. Customer will timely notify bioMérieux of any known non-conformance to the specifications outlined in the Documentation. bioMérieux' only obligation under this warranty, and Customer's sole and exclusive remedy, is for bioMérieux to correct any failure to so perform, or if such correction is not possible in a commercially reasonable timeframe, refund the fees paid for the specific non-conforming service during the periods of non-conformance.

Customer Warranty. Customer represents and warrants that Customer has all necessary consents and rights to use and provide the Customer Data to bioMérieux and Customer is not violating any existing agreements or laws and regulations by providing bioMérieux with Customer Data.

Federal and State Health Care Program Participation. Each Party represents that: (a) it has not been, nor is it about to be, excluded, debarred, or suspended from participating in any state or federal health care program; (b) it has not arranged or contracted (by employment or otherwise) with any personnel who the Party knows or should know is excluded from participation in any state or federal health care program; and (c) no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), as amended, has occurred or is pending or threatened against the Party or its personnel (collectively "*Adverse Action*"). Upon learning of an Adverse Action, the Party subject to the Adverse Action shall immediately provide notice to the other Party. The occurrence of an Adverse Action is a material breach of this Agreement.

Exclusion for Unauthorized Actions and Results of Use. Neither bioMérieux nor its supplier, partners, and vendors shall have any liability under any provision of this Agreement with respect to any performance problem, delay, or other matter to the extent attributable to any unauthorized or improper use or modification of the bioMérieux Proprietary Items, Modules, any unauthorized combination with other services, deliverables, products, software, hardware, or technology, or any act or omission by Customer, its affiliates, other users, representatives, or contractors. Customer is solely responsible for the results obtained from the use of the bioMérieux Proprietary Items. BIOMÉRIEUX DOES NOT OFFER MEDICAL ADVICE OR ADVICE REGARDING THE OPTIMAL SET OF PROCEDURES, ALERTS, OR STEPS NEEDED TO ACHIEVE THE BEST OUTCOMES FOR A PATIENT. ANY CUSTOMER 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 SERVICE AND CUSTOMER DATA DO 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.

Disclaimer. EXCEPT AS EXPRESSLY STATED ABOVE IN THIS SECTION (Warranties and Limitations), THE SERVICE, PRODUCT, THIRD PARTY COMPONENTS, AND DOCUMENTATION ARE PROVIDED "AS IS" AND NEITHER BIOMÉRIEUX NOR ITS VENDORS, SUPPLIERS, OR PARTNERS MAKES ANY REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT. BIOMÉRIEUX MAKES NO REPRESENTATIONS OR WARRANTIES, NOR SHALL BIOMÉRIEUX HAVE ANY LIABILITY WITH RESPECT TO, ANY THIRD PARTY DATA, THIRD PARTY COMPONENTS, THIRD PARTY PRODUCTS, OR THIRD PARTY SERVICES.

Damage Limitation. IN NO EVENT WILL EITHER PARTY (OR THEIR SUPPLIERS, PARTNERS, OR VENDORS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF REVENUE, SAVINGS, OR DATA) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE USE OF ANY BIOMÉRIEUX PROPRIETARY ITEMS, THIRD PARTY COMPONENTS, OR MODULES BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **Except for a third party infringement claim under Section 8 (Indemnification), each Party's (including its Suppliers, Partners, or Vendors) total liability to the other Party (or their suppliers, partners or vendors) under this Agreement and all Orders shall under no circumstances exceed the fees actually paid by the Customer to bioMérieux: (a) under the applicable Order in the twelve months prior to the claim being made, or (b) under this Agreement in the twelve months prior to the claim being made if such claim does not relate to a specific Order.**

Other Limitations. The warranties made by bioMérieux in this Agreement, and the obligations of bioMérieux under this Agreement, run only to Customer and not to any third party. Under no circumstances shall any Customer affiliate, Customer patient, student, contractor, or user, or any other third party be considered a third-party beneficiary of this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim. Customer and bioMérieux have freely and openly negotiated this Agreement, including the pricing, with the knowledge that the liability is to be limited in accordance with the provisions of this Agreement.

Third Party Components. The bioMérieux Proprietary Items may contain or use code and/or components of a third party (the “*Third Party Components*”) that require Customer to enter into a separate agreement with such third party (the “*Third Party Components License*”). Customer hereby consents to the use of the Third-Party Components and agrees to comply with the terms and conditions set forth in the Third Party Components License. Except as otherwise set forth in the Third Party Components License, the Third Party Components are provided “as is,” and without representation or warranty of any kind. Customer hereby agrees to use the Third-Party Components in accordance with the terms and conditions of the applicable Third-Party Components License, and agrees to indemnify, defend and hold harmless BioMérieux from all claims, losses, damages, expenses, or actions arising from its breach of any of the terms and conditions of such Third Party Components License.

Confidentiality.

All Confidential Information of a Disclosing Party in the possession of the Receiving Party, whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality and prevent the unauthorized use or disclosure of the Confidential Information. The Receiving Party will not use or disclose any Confidential Information except as expressly authorized by this Agreement and will protect the Disclosing Party’s Confidential Information using the same degree of care that it uses with respect to its own confidential information, but in no event with safeguards less than a reasonable level of care under similar circumstances. Notwithstanding the foregoing, the Receiving Party will not be in violation of this Section (Confidentiality) with regard to a disclosure that is in response to a valid order or requirement by a court or other governmental body or otherwise required by law, provided the Receiving Party gives the Disclosing Party prior written notice of such disclosure in order to permit the Disclosing Party to seek an appropriate protective order. Information that is disclosed pursuant to a valid court or governmental order shall not lose its status as Confidential Information.

Ownership of bioMérieux Proprietary Items.

Ownership and License Grants. All bioMérieux Proprietary Items and Modules provided to or accessed by Customer under this Agreement are being made available on a strictly confidential and limited use basis in accordance with this Agreement and have great commercial value to bioMérieux (or its partners or suppliers). This Agreement provides a license and is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any bioMérieux Proprietary Items or Modules are transferred from bioMérieux to Customer under this Agreement. All bioMérieux Proprietary Items and related intellectual property shall remain the sole and exclusive property of bioMérieux. bioMérieux, on behalf of itself and its vendors, partners, and suppliers, reserves all rights not expressly granted by this Agreement.

Feedback. Customer may provide bioMérieux with feedback, comments, and recommendations regarding the functionality and performance of the bioMérieux Proprietary Items and Modules, including, without limitation, identifying potential errors and improvements (collectively, the “Feedback”). bioMérieux (and its partners and suppliers) shall have the unrestricted right to use the Feedback in its sole discretion, including to improve or enhance the Product and other bioMérieux (or its partners’ and suppliers’) products, and, accordingly, bioMérieux (and its partners and suppliers) shall have a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback without restriction.

Indemnification.

bioMérieux shall defend, indemnify, and hold Customer harmless against all third party intellectual property infringement suits brought against Customer, insofar as such suit directly arises out of Customer’s use of the Product or Service, only as expressly authorized under this Agreement, provided bioMérieux shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from (1) the combination, operation, or use of the bioMérieux Proprietary Items with products, services, deliverables, materials, technologies, business methods, or processes not furnished by bioMérieux; (2) modifications which were not made by bioMérieux; (3) Customer’s breach of this Agreement; or (4) Third Party Components, Customer-created Patient Care Frameworks and Customer Modifications. bioMérieux’s indemnification obligation hereunder is contingent upon prompt notice of and full control over the defense and/or settlement of any claim. Upon the occurrence of any claim for which indemnification is or may be due under this Section (Indemnification), or in the event that bioMérieux believes that such a claim is likely, bioMérieux may, at its sole option (i) modify the bioMérieux Proprietary Item so that it becomes non-infringing, or substitute functionally similar services, Products, deliverables, or documentation; (ii) obtain a license to the applicable third-party intellectual property; or (iii) terminate this Agreement (or the applicable Orders) on written notice to Customer and refund to Customer any pre-paid fees for Services not provided. The obligations set forth in this Section (Indemnification) shall constitute bioMérieux’s entire liability and Customer’s sole remedy for any infringement or misappropriation.

Termination.

Either Party may terminate this Agreement immediately on giving notice in writing to the other Party if the other Party: (a) commits a material breach (including any non-payment of fees due by Customer other than fees subject to a Good Faith Dispute) and, in the case of a material breach capable of being cured, failed to cure that breach within sixty (60) days after the receipt of a request in writing to cure such breach; (b) files for bankruptcy; (c) becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (d) makes an assignment for the benefit of all or substantially all of its creditors; or (e) enters into an agreement for the cancellation, extension, or readjustment of substantially all of its obligations.

Upon any termination or expiration of this Agreement, Customer shall: (a) cease use of the Services; (b) return and discontinue all access and use of all the Confidential Information of bioMérieux then in Customer's possession or control; and (c) certify in writing that all copies of the Confidential Information of bioMérieux have been permanently deleted. Customer is expressly prohibited from retaining any Confidential Information of bioMérieux past the Term of this Agreement. Customer shall remain liable for all payments due to bioMérieux with respect to the period ending on the date of termination. For any termination other than a termination for good cause by Customer in accordance with this Section (Termination), the balance of all remaining subscription fees relating to the then current Term will be due and payable. The provisions of Sections 4 (Payments), 5 (Warranties and Limitations), 6 (Confidentiality), 7 (Ownership of bioMérieux Proprietary Items), 8 (Indemnification), 9 (Termination), and 10 (Other Provisions) shall survive any termination or expiration of this Agreement.

Other Provisions.

Compliance with Laws. Each Party shall comply with all applicable federal, state, and local laws and regulations in connection with their business, operations, and obligations under this Agreement.

Notice. All notices, consents, and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the first business day after being sent by a reputable overnight delivery service. Either Party may change its address for notices by giving written notice of the new address to the other Party.

Parties in Interest. This Agreement shall bind, benefit and be enforceable by and against bioMérieux and Customer and, to the extent permitted hereby, their respective successors and assigns. Neither Party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the other Party's prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, bioMérieux may assign this Agreement or of any bioMérieux rights under this Agreement to: (a) any bioMérieux successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and (b) any person or entity to which bioMérieux transfers any of its rights in the bioMérieux Proprietary Items.

Export Laws and Use Outside of the United States. Customer shall comply with the export related laws and regulations. Customer shall not export or re-export directly or indirectly (including via remote access) any bioMérieux Proprietary Items (or parts thereof) to any applicable jurisdiction or entity prohibited by law or to which a license is required without first obtaining a license from the applicable regulatory authority. Customer agrees to indemnify, defend and hold harmless bioMérieux (and its partners and suppliers) from and against any and all losses they may suffer in any way arising out of or related to Customer's breach of this Section.

Relationship. The relationship between the Parties under this Agreement is that of independent contractors and not partners, joint venturers or agents.

Entire Understanding. This Agreement, which includes and incorporates Orders, attachments, and any other schedules, exhibits and addenda attached to it, states the entire understanding between the Parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. In the event of any conflict between these Terms and Conditions and an Order, the Order shall govern.

Modification and Waiver. This Agreement may not be modified or amended without written agreement of the Parties. No waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of both Parties and such waiver shall not be construed as a waiver of any subsequent breach of this Agreement.

Severability. If any provision of this Agreement is declared unenforceable, the other provisions herein will remain in full force and effect and this Agreement will be amended in order to effect, to the maximum extent allowable by law, the original intent of such provision.

Right to Seek Injunctive Relief. The Parties acknowledge and agree that either Party may seek injunctive relief relating to a breach of this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Governing Law. This Agreement will be interpreted according to the laws of the State of North Carolina without application of conflict of laws principles. Provided, however, that the terms of any applicable law now or hereafter enacted that is based on or similar to the Uniform Computer Information Transactions Act drafted by the National Conference Of Commissioners On Uniform State Laws shall not apply.

Force Majeure. Except with respect to Customer's payment obligations, neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies, disruption of the Service due to Internet connection impairments, or any other cause which could not have been prevented by the non-performing Party with reasonable care.

Use of Customer's Name. 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.

Government End-Users. Customer acknowledges and agrees that the Service, Documentation, and Product (including any Third-Party Components included therein) is a commercial product, which was developed at private expense. All government end users only have the rights set forth herein

Additional Terms for Third Party Components (Corepoint Integration Engine Software EULA): The following terms apply to the use of the Corepoint Integration Engine:

1. The term "Corepoint Integration Engine" means the software provide by bioMérieux to Customer for the collection of Patient Data from specific Customer Source Systems and the transmission of such Patient Data in a de-identified form ("Customer Data") to bioMérieux for processing in the Product.
2. The Corepoint Integration Engine is licensed to Customer, as integrated into the Service, and for its internal use only solely:
 - a. To process HL7 messages and data flowing into or out of the Customer Source Systems to the Product;
 - b. For communication via TCP/IP with no more than five applications or sockets at each End User Site; and
 - c. With no use for independent data flows that do not directly involve the Service.
3. Customer shall not (and shall not permit any User to): (a) make the Corepoint Integration Engine available to any third party or use the Corepoint Integration Engine for any use outside of the license in Section 2 above; (b) attempt to gain unauthorized access to the Corepoint Integration Engine; (c) remove, modify, or obscure any product or service identifier, copyright, trademark, or other proprietary rights notice or other notices, instructions, disclaimers, or legends; (d) copy, modify, or create derivative works of the Corepoint Integration Engine; or (e) decompile, disassemble, or reverse engineer the Corepoint Integration Engine, in whole or in part or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats, data structures, or other aspects of the Corepoint Integration Engine. No rights are assigned or granted to Customer other than as expressly set forth herein.
4. Upon termination or expiration of the Agreement, Customer must destroy all copies of the Corepoint Integration Engine in its possession.
5. Corepoint Health, LLC is a third-party beneficiary of the terms of the Disclaimer and Damage Limitation contained in Section 5 of the Agreement.

Schedule A – BUSINESS ASSOCIATE AGREEMENT

If Customer is a “covered entity” or a “business associate” and includes “protected health information” in Customer Data, as those terms are defined in 45 CFR § 160.103, the Agreement incorporates the terms of this Business Associate Agreement (“BAA”).

I. DEFINITIONS

Except as otherwise noted in this BAA, any and all capitalized terms in this BAA shall have the meanings ascribed to those terms in the HIPAA Rules, and if not defined by the HIPAA Rules, such terms shall have the definitions set forth in the Agreement.

1. Customer means the entity that is a party to the Agreement, provided that such entity falls within the definition of the term “covered entity,” or “business associate” set forth at 45 C.F.R. § 160.103.
2. Disclose means any release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
3. HIPAA Rules means the implementing regulations of HIPAA set forth at 45 C.F.R. Parts 160 and 164, Subpart A, C, D and E.
4. Security Rule means the Security Standards for the Protection of Electronic Protected Health Information set forth at 45 C.F.R. Parts 160 and 164, Subparts A and C.
5. Privacy Rule means the requirements for the Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164, Subparts A and E.
6. Protected Health Information or PHI shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 and shall include Electronic Protected Health Information (“ePHI”), except limited to the PHI included in Customer Data that bioMérieux receives, transmits, or maintains on behalf of Customer through bioMérieux’s provision of the Service.

II. BUSINESS ASSOCIATE OBLIGATIONS

1. Permitted Uses and Disclosures. bioMérieux expressly agrees that any and all Uses or Disclosures of PHI by bioMérieux will be done in accordance with the terms of this BAA, applicable provisions of the HIPAA Rules, or as Required By Law. bioMérieux may:
 2. Use and Disclose PHI to provide the Service and perform its obligations under the Agreement.
 3. Use PHI to create de-identified information in accordance with 45 C.F.R. § 164.514, and use such-de-identified information for any lawful purpose.
 4. Use PHI to provide Data Aggregation services relating to the health care operations of the covered entity.
 5. Use PHI as necessary for the proper management and administration of bioMérieux or to carry out its legal responsibilities.
 6. Disclose PHI as necessary for the proper management and administration of bioMérieux or to carry out its legal responsibilities, provided that as to any such Disclosure, the following requirements are met:
 7. The Disclosure is Required by Law; or
 8. bioMérieux obtains reasonable assurances through a written agreement with the other agents or parties to whom PHI is disclosed that PHI will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the recipient, and the recipient notifies bioMérieux of any instances of which it is aware in which the confidentiality of the information has been breached.
 9. Compliance with HIPAA. To the extent that bioMérieux is to carry out any of Customer’s obligations under the Privacy Rule, bioMérieux shall comply with the applicable requirements of the Privacy Rule that apply to Customer in the performance of such obligations.
10. Availability of Books and Records. bioMérieux shall cooperate with and make available to the Secretary its internal practices, books, and records relating to the Use and Disclosure of PHI for purposes of determining the Parties’ compliance with HIPAA. Nothing in this section waives any applicable privilege or protection, including with respect to trade secrets, confidential commercial information, and information subject to attorney-client privilege.
11. Subcontractors. bioMérieux agrees to ensure that any subcontractors or agents to whom bioMérieux provides PHI agree in writing to restrictions and conditions substantially similar to those that apply to bioMérieux with respect to such PHI through this BAA.

12. Impermissible Uses and Disclosures.
 - a. bio Mérieux shall promptly report to Customer any Use or Disclosure of Customer's PHI of which bioMérieux is aware and which is not in compliance with the terms of this BAA.
 - b. bioMérieux shall promptly report to Customer any Security Incident of which it becomes aware. Notwithstanding the foregoing, the Parties acknowledge and agree that bioMérieux shall not be required to report attempted but unsuccessful Security Incidents that do not result in actual unauthorized access, Use, or Disclosure of Protected Health Information, and that this BAA constitutes notice to Customer that such unsuccessful Security Incidents (such as broadcast attacks on bioMérieux's firewall, port scans, unsuccessful log-on attempts, or denial of service attacks) may occur periodically.
 - c. bioMérieux shall, without unreasonable delay, and in any event no more than ten (10) days following discovery, notify Customer of a Breach of Unsecured Protected Health Information (a "Breach") pursuant to 45 C.F.R. § 164.410. The notification to Customer shall include, to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by to have been, accessed, acquired, used, or disclosed during the Breach. bioMérieux shall provide Customer with such additional information as Customer may reasonably request as necessary to make the notifications that may be required under 45 C.F.R. § 164.404(c) promptly after the information becomes available.
13. Safeguards. bioMérieux will implement reasonable administrative, technical, and physical safeguards designed to prevent the Use or Disclosure of PHI other than as permitted in this BAA.
14. Designated Record Sets. The Parties agree that the Service shall not include the receipt, creation, maintenance, or support of Designated Record Sets. Customer shall not provide any Designated Record Set to bioMérieux, and bioMérieux shall not consider any data Customer makes available to it to be a Designated Record Set. In the event that the Parties amend this BAA to permit the Service to include the receipt, creation, maintenance, or support of Designated Record Set, to the extent bioMérieux maintains a Designated Record Set, bioMérieux agrees to: (i) upon written request from Customer, make such PHI available as required for Customer to meet its obligations under 45 C.F.R. § 164.524 and (ii) upon written request from Customer, make such PHI available for amendment and incorporate and amendments to PHI as required for Customer to meet its obligations under 45 C.F.R. § 164.526. bioMérieux will not respond directly to Individual requests for access or amendments to such information.
15. Accounting of Disclosures. bioMérieux agrees to document Disclosures of PHI if required by HIPAA and requested in writing by Customer. bioMérieux further agrees to provide access to such documentation, after a written request from Customer, as necessary for Customer to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528. bioMérieux will not respond directly to Individual requests for such accountings of Disclosures.

III. CUSTOMER OBLIGATIONS

1. Permissions and Notices. Customer represents, warrants, and covenants that it has obtained and will continue to obtain all necessary authorizations, consents, releases, and permissions to permit bioMérieux to Use and Disclose PHI pursuant to this BAA and in order to provide the Service in compliance with all applicable laws, regulations, and other governmental requirements and that it has provided, and will continue to provide, appropriate notice to Individuals to permit bioMérieux to Use and Disclose PHI pursuant to this BAA and in order to provide the Service in compliance with all applicable laws, regulations, and other governmental requirements. Customer shall notify bioMérieux of any changes in, or revocation of the authorization, consent, release, or permission by an Individual to Use or Disclose their PHI, to the extent that such changes may affect bioMérieux's Use or Disclosure of PHI.
2. Compliance with HIPAA. Customer shall comply with all of its obligations under HIPAA.
3. Instructions. Customer will not request or cause bioMérieux to make a Use or Disclosure of PHI or take other actions in a manner that does not comply with HIPAA, any other law, or this BAA.
4. Notice of Privacy Practices. Customer shall notify bioMérieux of any limitations in the notice of privacy practices of Customer under 45 CFR 164.520, to the extent that such limitation may affect bioMérieux's Use or Disclosure of PHI.
5. Restrictions on PHI Use and Disclosure. Customer shall notify bioMérieux of any restrictions on the Use or Disclosure of PHI that Customer has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect bioMérieux's Use or Disclosure of PHI.

IV. TERM AND TERMINATION

1. The term of this BAA shall begin as of the Effective Date and shall terminate upon the termination or expiration of the Agreement.
2. Upon either Party's knowledge of a material breach by the other Party to this Agreement, such Party shall provide written notice to the breaching Party stating the nature of the breach and providing an opportunity to cure the breach within 60 business days. Upon the expiration of such 60-day cure period, the non-breaching Party may terminate this BAA.
3. Upon termination, bioMérieux will return or destroy all PHI that bioMérieux still maintains on behalf of Customer and retain no copies of such PHI, to the extent feasible. If such return or destruction is infeasible, bioMérieux shall extend the protections of this BAA to PHI that bioMérieux still maintains on behalf of Customer and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible.

V. MISCELLANEOUS

1. Third Party Beneficiaries. Nothing express or implied in this BAA conveys or is intended to convey any rights, remedies, obligations, or liabilities to any party other than Customer and bioMérieux or their respective successors or assigns.
2. Amendment. This BAA may be amended or modified only in a writing signed by the Parties. In addition, in the event a Party believes in good faith that any provision of this BAA fails to comply with the then-current requirements of HIPAA, such Party shall notify the other Party in writing. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of HIPAA.
3. Independent Contractor Status. None of the provisions of this BAA are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this BAA and any other agreements between the Parties evidencing their business relationship.
4. Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
5. Conflict. The Parties agree that, in the event of a conflict between the provisions of this BAA and the Agreement, the provisions of this BAA will control to the extent necessary for the Parties to comply with HIPAA. The provisions of this BAA will be interpreted to permit compliance by the Parties with HIPAA.
6. Survival. In the event that any provision of this BAA is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BAA will remain in full force and effect.
7. Interpretation. In the event of an inconsistency between the provisions of this BAA and mandatory provisions of the HIPAA Rules, this BAA shall be construed in a manner that permits both parties to comply with HIPAA.