DATA INNOVATIONS LLC
AGREEMENT FOR LAB GPS™ (SUBSCRIPTION)

This agreement for the provision of Lab GPS™ and related maintenance and support on a subscription services basis, is by and between Customer and the applicable Data Innovations entity specified below based on the region Customer is located in ("DI"). Each of DI or Customer may be referred to as a "Party" or together the "Parties".

Region	DI Entity	Address
North America	Data Innovations LLC	463 Mountain View Drive, Suite 305, Colchester, VT 05446

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

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

SCHEDULES AND EXHIBITS TO AGREEMENT
Cloud-Based Solution Schedule
• Exhibit to Cloud-Based Solution Schedule; Lab GPS™
Maintenance and Support Services Terms and Conditions Schedule
• Exhibit to Maintenance and Support Services Terms and Conditions Schedule; Cloud-Based Solution
○ Appendix to Exhibit to Maintenance and Support Services Terms and Conditions Schedule; Cloud-Based Solution; Lab GPS™
Notice and Contact Information Schedule

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

GENERAL TERMS AND CONDITIONS

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

1) **DEFINITIONS.**

a) **"Acceptable Use Policy"** means the acceptable use terms and conditions set forth in Part B of the Cloud-Based Solution Schedule.

b) **"Additional Software"** means third-party vendor software, licensed directly by Customer through its own suppliers and not sold or distributed by DI, whether or not it was recommended for use in connection with installation and Use of the Software.

c) **"Affiliate(s)"** means any company controlling, controlled by or under common control with Customer.

d) "**Aggregated and Statistical Data**" means the aggregated and statistical data derived from the operation of DI's Lab GPS™ Software, including, without limitation, the usage history, statistics, telemetry, number of records in the Lab GPS™ Software, the number and types of transactions processed using the Lab GPS™ Software and the performance results for the Lab GPS™ Software.

e) **"APIs"** mean any application programming interfaces.

f) **"Applicable Taxes"** means all value-added, sales, use, import, duties, customs or other taxes applicable to the Software licensed to Customer and/or Services performed, under this Agreement, except for any taxes based upon DI's net income.

g) **"ARRA"** means Title XIII of the American Recovery and Reinvestment Act of 2009.

h) "**Authorized User**" means the employees and authorized agents of Customer granted the right to access the Cloud Platform and Use the Subscription Services.

i) **"Bank Fees"** means any form of payment fees (including wire transfer fees, bank fees, and credit card fees) assessed by Customer's A/P processor or bank, or DI's processor or bank, to DI related to payments made by Customer to DI hereunder.

j) **"Billable Expenses"** means all actual, out-of-pocket expenses incurred by DI while delivering the Software and/or performing the Services under this Agreement, as further described in the Professional Services Schedule.

k) **"Bundled Software"** means software licensed by DI from a third party to be distributed to Customer with the Software that has its own separate install process.

l) **"CCPA"** means the California Consumer Privacy Act of 2018.

m) **"Reserved"**.

n) **"Claims and Losses"** means any and all third-party claims, demands, liabilities, actions, suits, judgments, decrees, proceedings, (including reasonable attorneys' fees incurred in connection therewith), losses, damages, and expenses.

o) **"Cloud-Based Solution"** means a combined reference to the Software located in the cloud and the related Maintenance and Support Services that are provided and licensed together to the Customer as Subscription Services.

p) **"Cloud Platform"** means the proprietary computer software applications, tools, APIs, connectors, programs, networks and equipment used to make the Subscription Services, and individual Software, available to Customer on an internet-hosted platform.

q) **"Computer"** means an electronic device, owned by Customer that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

r) **"Reserved"**.

s) **"Confidential Information"** means all non-public data or information regarding the Parties' business or technical operations including, but not limited to, (i) all designs, models, documentation, reports, data, specifications, technical process, any device, technique, or compilation of information, formula, source code, object code, flow charts, file record layouts, databases, inventions, technical data or information know-how, patents, and Trade Secrets (as defined by the Uniform Trade Secret Act), improvements, concepts and discoveries, whether or not patentable or copyrightable, relating to the Software and Services, (ii) information with respect to either Party's existing or contemplated products, product development, services, marketing plans, suppliers, business data or information, partner relationships, business opportunities, finances (including, without limitation, revenues, expenses, taxes, and contracts), operations, pricing and, customers or personnel, processes, techniques or know-how, sales data, internal performance results, validation reports, or any information or data developed pursuant to the performance of the Services contemplated hereunder, (iii) any other information that is specifically designated by a Party as confidential or proprietary, (iv) information that, due to its character or nature, a reasonable person would treat as confidential, and (v) the terms and conditions of this Agreement. DI hereby designates the DI Property, including any permitted copies, as DI's Confidential Information. Customer Data, including permitted copies, shall be deemed "Customer Confidential Information". Confidential Information shall not include information that (A) is in or enters the public domain without breach of this

Agreement by the Receiving Party, (B) was demonstrably in the possession of the Receiving Party prior to first receiving it from the Disclosing Party without restrictions on disclosure, (C) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information, or (D) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public.

t) **"Critical Priority Software Error"** means a Software Error that renders the Software inoperable and causes a significant, time-dependent stoppage of Customer's business operations.

u) **"Customer Data"** means all Customer data entered into, or coming in from an outside source, and captured by, the Software, including if applicable any Protected Health Information, if either are applicable, forming part of such data. Customer Data shall include Affiliate data.

v) **"Customer Web Portal"** means the DI web portal used by customers outside of North America for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a Knowledgebase of known issues and resolutions, for troubleshooting assistance and to update contact information.

w) **"DI Property"** means the Software, Cloud Platform, Aggregated and Statistical Data, Feedback, and DI's Confidential Information, including any future derivative works, enhancements or modifications thereto.

x) **"Delivery"** means the date upon which DI has delivered the Software to a third-party shipper addressed to Customer or when DI has made the Software electronically available to Customer.

y) **"Reserved"**.

z) **"Disclosing Party"** means the Party providing Confidential Information to the Receiving Party.

aa) **"Reserved"**.

bb) **"Disputed Fee(s)"** means an invoiced Fee that is the subject of a good faith dispute between the Parties.

cc) **"Dispute(s)"** mean any and all disputes, controversies, differences or claims arising from or related to this Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Agreement.

dd) **"Dispute Notice"** means written notice given by one Party to the other Party setting forth the details of a Dispute.

ee) **"Documentation"** means all guides, related explanatory written materials, manuals, files or on-line help, provided to Customer, for the Software, Cloud Platform and any modifications thereto.

ff) **"Driver"** means the software developed by DI to connect laboratory devices and information systems or Additional Software to the Software.

gg) **"Driver Update"** means updates to Drivers to correct defects, improve Software operation, add features, or provide functional corrections to the Driver that DI chooses to develop solely at its own discretion.

hh) **"Due Date"** means thirty (30) days from the date of invoice on which all amounts billed by DI will be due and payable.

ii) **"Embedded Software"** means software licensed by DI from a third party to be distributed to Customer with the Software that is automatically installed with the Software.

jj) **"Emergency Maintenance and Support Services"** is defined as Critical and/or High Priority Software Errors.

kk) **"End of Life or EoL"** means Software that has reached EoM and EoS and for which there is no successor Software. End of Life for a Software version is when DI will no longer provide Maintenance and Support Services for that Software version.

ll) **"End of Maintenance or EoM"** defines Software or a specific Software version for which DI will no longer provide Updates.

mm) **"End of Sale or EoS"** defines Software and Software specific versions that DI will no longer license or distribute.

nn) **"Export Laws"** means the collective reference to the United States Export Administration Act or any other export laws, restrictions or regulations that apply to the access and Use of the Software and Services.

oo) **"Feedback"** means all ideas, suggestions, improvements, reports, corrections and other contributions that Customer provides to DI, or otherwise makes with respect to the Software, Cloud Platform, and Services.

pp) **"Fees"** means a reference to any or all of the fees due under this Agreement including the fees for the Software, Professional Services, Maintenance and Support Services, Subscription Services, Renewals, Bank Fees, and any Applicable Taxes.

qq) **"Force Majeure"** means any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected Party, including, without limitation, acts of God, acts

of terrorism, acts of nature or of a public enemy, acts of a federal government or any state or political subdivision thereof, internet brownouts, fires, floods, explosions, wars, pandemics, or other catastrophes; freight embargoes; or delays of a supplier or subcontractor due to such causes**.**

rr) **"Reserved"**.

ss) **"Hardware"** means any third-party hardware purchased from DI by Customer.

tt) **"High Priority Software Error"** means a Software Error that causes the Software to fail resulting in significant revenue or operational impact on Customer's business, although certain functions of Customer's business remain in operation.

uu) **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996.

vv) **"Identity Provider" or "IdP"** means a compatible third-party online service or website that authenticates users on the Internet by means of publicly available APIs, such as Google, LinkedIn or Facebook.

ww) **"Intellectual Property Rights"** means all patents, improvements, concepts and discoveries (whether patentable or not), copyrights, models, designs, trademarks, trade secret rights, service marks, trade names, brand names, trade dress, and other proprietary rights or applications thereof which pertain to the Software, Cloud Platform and Services whether registered or not, including any future release, update, modifications, new version, release, compilation, and translation of the DI Property and Services.

xx) **"Internal Resolution"** means the resolution of a Dispute by the assigned representatives of each Party.

yy) **"Low Priority Software Error"** means a Software Error incident opened when Customer has general Software questions or needs that do not impact day-to-day functionality.

zz) **"Maintenance and Support Services"** means DI's standard technical support and maintenance services to diagnose and address a Software Error when the Software has been properly installed, if applicable, and is being Used to perform in accordance with the specifications set forth in the applicable Documentation. Maintenance and Support Services do not include training of Customer's personnel, consulting, or other available Professional Services.

aaa) **"Maintenance and Support Services Fees"** means all fees for the performance of Maintenance and Support Services, including all actual Billable Expenses.

bbb) **"Major Release"** means a release with significant new or improved functionality within the same Software bearing the same name that DI in its sole discretion determines to release as a new Major Release.

ccc) **"Malware"** means unauthorized programming (code, scripts, active content, and other software) that is designed to, disable, erase, or otherwise harm, impede disrupt or deny Customer's Use of the Software or Services, gather information that leads to loss of privacy or exploitation, or gain unauthorized access to system resources or the Software, or that otherwise exhibits abusive behavior, including computer viruses, worms, trojan horses, spyware, dishonest adware, scareware, crimeware, most rootkits, or other malicious or unwanted software or programs.

ddd) "**Mediation**" means the attempt to settle a Dispute that cannot be settled by Internal Resolution through the use of third-party mediation.

eee) **"Mediator"** means an independent third party trained as a mediator to act fairly and impartially, who has been nominated by the Parties to oversee Mediation.

fff) **"Medium Priority Software Error"** means a Software Error that causes a feature of the Software to fail resulting in a non-critical situation which allows the Customer's business to remain in operation. A Medium Priority incident may include issues only impacting a single user or issues where the business impact under a Critical Priority or High Priority is resolved, but there is ongoing research needed to determine the root cause of the failure.

ggg) **"Modification"** means any change to the terms and conditions of this Agreement including any of its Schedules, applicable to Customer and affecting the Subscription Services.

hhh) **"My DI Community"** means the DI web portal used by customers located within North America, for logging Maintenance and Support Services Software Errors, for viewing the status of outstanding Software Errors incidents, for downloading Drivers and Documentation, for accessing a knowledgebase of known issues and resolutions, for troubleshooting assistance, and to update contact information.

iii) **"Non-Compliance"** means any Use of the Subscription Services or of any IdP by Customer or any of its Authorized Users' that (i) does not comply with applicable law or with the Acceptable Use Policy; (ii) subjects DI to liability to any third party; (iii) or infringes or is alleged to infringe any third-party intellectual property rights.

jjj) **"Reserved"**.

kkk) **"Open-Source Software"** means software distributed to Customer with the Software that is automatically installed with the Software that meets the definition of "Open-Source" as set forth at https://opensource.org/osd.

lll) **"Period of Performance"** means the total amount of time during which a Professional Services project shall be performed.

mmm) **"Reserved"**.

nnn) **"Personally Identifiable Information** means any data that could potentially be used to identify a particular person (e.g. full name, Social Security number, driver's license number, bank account number, passport number, and email address), including Protected Health Information. For purposes of clarity, Customer's login information, such as business email addresses, is not deemed Personally Identifiable Information.

ooo) **"Privacy Regulations"** means HIPAA, ARRA, and/or CCPA as applicable to Customer and DI.

ppp) **"Professional Services"** means training, implementation, installation, and/or consulting services provided by DI to Customer pursuant to a separate agreement.

qqq) **"Reserved"**.

rrr) "**Prohibited Content**" means any Customer Data that DI reasonably believes violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of this Agreement, including the Acceptable Use Policy and any Personally Identifiable Information.

sss) **"Reserved"**.

ttt) **"Reserved"**.

uuu) "**Protected Health Information**" means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium that is protected under an applicable Privacy Regulation.

vvv) **"Reserved"**.

www) **"Reserved"**.

xxx) **"Quote"** means the specific proposal prepared by DI and provided to Customer, setting forth the details of the Software and Services the Customer is purchasing.

yyy) **"Receiving Party"** means the Party receiving the Confidential Information of the Disclosing Party.

zzz) **"Renewal Fees"** means the fees charged by DI to Customer to renew Maintenance and Support Services and/or Subscription Services for an additional set term.

aaaa) **"Renewal Notice"** means the written notice provided by DI to Customer with the terms and conditions, including the applicable Fees, for renewing of Maintenance and Support Services and/or for renewing Subscription Services.

bbbb) "**Renewal Term**" means any renewal term of a Maintenance and Support Services Term or a Subscription Term.

cccc) **"Requested Enhancement"** means new functionality or enhancements to existing functionality of the Software.

dddd) **"Reserved"**.

eeee) **"Services"** means a reference to any of the Maintenance and Support Services, and/or Subscription Services provided under this Agreement.

ffff) **"Software"** means (i) all application(s), (ii) Documentation, (iii) Drivers (iv) Driver Updates, (v) Requested Enhancements, and all (vi) Updates, licensed by DI to Customer pursuant to this Agreement.

gggg) **"Software Error"** means a failure of the Software, licensed hereunder to Customer, when properly, installed, if applicable, and being Used to perform in accordance with the specifications set forth in the applicable Documentation.

hhhh) **"Software Fees"** means all fees for the Software licensed by Customer under this Agreement.

iiii) **"Reserved"**.

jjjj) **"Reserved"**.

kkkk) **"Reserved"**.

llll) **"Subscription Fees"** means the fees due for Subscription Services.

mmmm) **"Subscription Services"** means the license of Software and the provision of related Maintenance and Support Services to Customer on a subscription term basis.

nnnn) **"Subscription Services Start Date"** shall have the meaning set forth in the applicable Schedule.

oooo) **"Subscription Term**" means the term of Subscription Services, as set forth in the applicable Schedule or Quote.

pppp) **"Support Hours"** mean the hours Maintenance and Support Services are available, as set forth in Maintenance and Support Services Schedule.

qqqq) **"Supported Version"** is a version of Software that has not reached the state of EoS, or EoM.

rrrr) **"Reserved"**.

ssss) **"Third-Party Software"** means a collective reference to Bundled Software, Embedded Software, or Open-Source Software.

tttt) **"Update(s)"** means a Software Error correction, bug fix, modification, enhancement, improvement, new feature, functional corrections, upgrade, modified version, addition, Driver Updates, Requested Enhancements or other new releases, generally made available to purchasers of Maintenance and

Support Services at no additional charge. Updates shall not include any major modifications, options or future products, Driver Updates or Requested Enhancements, that DI, in its sole discretion, determines to license separately and charge a separate license fee.

uuuu) **"Use", "Used," or "Using"** means to access, install, download, execute, display or otherwise benefit from using the functionality of the Software in accordance with the Documentation.

vvvv) **"Reserved"**.

2) **CONSTRUCTION.** Quotes, Statements of Work, or other written agreements entered into by Customer and DI after the Effective Date ("Addenda"), will be subject to this Agreement. The provisions of the various Addenda and Schedules will, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. In the event of a conflict between the terms and conditions of these General Terms and Conditions, a Schedule, Exhibit, or Addenda, the conflict will be resolved by giving precedence in the following order: (i) the General Terms and Conditions, (ii) the Schedule, (iii) the Exhibit, and then (iii) the Addenda, unless explicitly stated otherwise in the Schedule, Exhibit, or Addenda, and in that case the conflicting terms and conditions in such Schedule, Exhibit or Addenda will apply only to that Schedule, Exhibit or Addenda.

3) **AFFILIATES.**

a) DI grants Customer the following rights related to its Affiliates, subject to the terms and conditions of this Agreement.   Affiliate may, pursuant to a purchase order issued directly by the Affiliate to DI or a SOW entered into between Affiliate and DI:

    i) connect to, access and Use the Software licensed by the Customer and installed at the Customer's site, and/or

    ii) license Software and purchase Services and/or Hardware for:

        (1) connection to the Software at Customer's site, or

        (2) installation at the Affiliate's site.

b) Prior to an Affiliate's i) connection, access and Use or ii) license and/or purchase, Customer agrees that it shall require each of its Affiliates to comply with the terms, conditions and restrictions contained in this Agreement, including, but not limited to, the use restrictions and confidentiality obligations, and that Customer remains responsible for all of the actions of the Affiliates, including a breach by Affiliate, and the actions of the Affiliates shall be deemed the actions of Customer.

c) In the event of termination of this Agreement, all "**Effects of Termination**", as set forth in Section 12.e, that apply to Customer, shall apply in the same manner to each Affiliate.

4) **SOFTWARE AND SERVICES.** DI shall provide Customer the Software and Services, pursuant to the terms and conditions contained in this Agreement. DI's performance is dependent on Customer carrying out its obligations as set forth in this Agreement and Customer acknowledges that the Fees take into account these obligations. DI shall not be responsible for any delay in the performance of, or an inability to perform, any of its obligations contained in this Agreement that result from any failure or delay by Customer in the performance of its obligations contained in this Agreement.

5) **FEES, PAYMENT, AND TAXES.**

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

Region	DI Entity	Currency
North America	Data Innovations LLC	US Dollar

b) DI shall invoice Customer for all Fees, Billable Expenses and Applicable Taxes due hereunder, and unless otherwise specified in an applicable Quote, or Schedule, all amounts billed will be due and payable on the Due Date, except for a Disputed Fee.

c) A Quote will be deemed to have been accepted and agreed to by Customer, either by Customer i) signing and returning an executed copy of the Quote to DI; or ii) submitting a purchase order to DI for the Software or Services detailed on the Quote, provided the purchase order specifically references the Quote number, and the value on the purchase order matches the value on the Quote.

d) Customer authorizes DI to charge a Customer provided credit card, in the amount indicated on a Quote if it is less than or equal to $25,000. DI does not accept credit card payments for amounts greater than $25,000. A receipt for a payment by credit card will be provided to Customer by DI.

e) All discounts, if any, provided under this Agreement are intended to comply with the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, Customer must fully and accurately reflect in cost reports or other submissions to federal healthcare programs all discounts provided under this Agreement and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, must make available information provided to Customer by DI concerning the discounts.

f) To the extent that DI is charged any Bank Fees, Customer agrees to reimburse DI for such payment at cost.

g) Except for a Disputed Fee, any payments not received by DI by the Due Date will be considered past due, and to the extent legally permissible, interest will accrue at the rate of twelve percent (12%) per year from the Due Date until all outstanding payments are paid.

h) In the event of a Disputed Fee, Customer shall pay the undisputed amount and notify DI of the Disputed Fee in writing within ten (10) business days of the invoice date. Customer shall not be required to pay interest on any reasonable and documented Disputed Fees. If the Parties are unable to resolve the dispute themselves, the Parties agree to submit this Dispute to resolution pursuant to Section 13.o) ("**Disputes**").

i) If Customer is not subject to any or all Applicable Taxes, then Customer is responsible for submitting the applicable documentation to DI. If this document is not provided prior to Delivery of the Software or completion of the Services, Applicable Taxes will be calculated and included on the Customer's invoice.

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

7) INTELLECTUAL PROPERTY. The Parties acknowledge and agree that:

a) DI, or its licensors, own all exclusive right, title, and interest in and to the Intellectual Property Rights in the DI Property. Customer shall not take any action inconsistent with such title and ownership. All title rights and Intellectual Property Rights may be protected by applicable copyright or other intellectual property laws and treaties.

b) This Agreement is not a sale of the DI Property, and Customer does not acquire any ownership rights or title or any Intellectual Property Rights in the DI Property. Customer acquires only the restricted right to Use the DI Property subject to the license grants herein.

c) DI may utilize all Feedback without any obligation to Customer.

d) Customer shall notify DI of any unauthorized access to the DI Property and all infringements, limitations, illegal use, or misuse of the Intellectual Property Rights that come to Customer's attention.

e) Customer will not remove, alter, or obscure any copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indicia of ownership contained on or in the DI Property or any portion thereof and Customer will reproduce all such notices on all copies permitted to be made by Customer under this Agreement.

f) Customer agrees not to use trademarks or other business names of DI for any purpose or to take any actions which are harmful to or inconsistent with the rights of DI in its trademarks, service marks, and trade names.

g) The Software (i) was developed at private expense and is the proprietary information of DI or its licensors; (ii) was not developed with government funds; (iii) is a trade secret of DI or its licensors, for all purposes of the Freedom of Information Act; (iv) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication, or disclosure of the Software is subject to the restrictions set forth by DI and the restrictions set forth in subparagraph c(1) and c(2) of Commercial Computer Software - Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Furthermore, if the Software is being licensed to U.S. Government end users, the Software and related Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211 through 12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation is licensed (A) only as Commercial Items and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

h) Customer owns all exclusive right, title and interest, including Intellectual Property Rights in the Customer Data. DI shall not take any action inconsistent with such title and ownership. DI hereby agrees to assign any such right to Customer.

i) Customer grants to DI during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Customer Data, solely as necessary to perform the Services and as otherwise may be agreed in writing by the Customer.

8) CONFIDENTIAL INFORMATION.

a) **Confidentiality.** Each Party shall maintain the Confidential Information of the other Party in strict confidence until such time as the Confidential Information falls under one of the exceptions listed in Section 1.s) (A) – (D) ("**Confidential Information**") above. Each Party shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information, using the same protective precautions as such Party uses to protect its own Confidential Information. Each Party shall use the Confidential Information of the other Party only during the term of this Agreement and as expressly permitted herein, and shall not disclose such Confidential Information to any other person or third party without prior written consent of the Disclosing Party, except to its employees and independent contractors who are subject to written use and disclosure restrictions at least as protective as those set forth herein and only as is reasonably required in connection with the exercise of its rights and obligations under this

Agreement. Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to a valid order or requirement of a court or government agency, provided that the Receiving Party gives prompt notice to the Disclosing Party upon receiving the order or learning of the requirement so that it may seek a protective order or other appropriate remedy. Any such disclosure by the Receiving Party of the Confidential Information of the Disclosing Party, shall not be deemed a breach of this Agreement and shall, in no way, be deemed to change, affect, or diminish the confidential status of such Confidential Information. Customer acknowledges and agrees that it will not permit any third party, nor any employee, representative, or agent thereof, that develops, markets, or licenses computer programs with functionality similar to the functionality of the Software to have access to DI's Confidential Information, which includes the Software.

b) **Privacy Regulations.** The Parties agree to abide by the terms and conditions of the applicable Privacy Regulations and agree to enter into the necessary separate privacy and security agreements to facilitate compliance with the Privacy Regulations.

9) GENERAL WARRANTIES AND DISCLAIMERS.

a) **Customer Warranty.** Customer represents and warrants that, prior to uploading any Customer Data into the Software, it owns or has obtained all necessary consents, licenses, approvals, and rights in the Customer Data necessary so that the use of such Customer Data by DI to provide Services to Customer does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.

b) **DI Warranties.**

   i) DI warrants that it owns, or has the right to, license the Software.

   ii) DI Software and Services warranties are set forth in the applicable Schedules.

c) **Hardware Warranty.** Any Hardware purchased from DI is covered by the manufacturer's warranty. Hardware warranty coverage begins on the date of DI's initial purchase from the manufacturer.

d) **Mutual Warranty.**

   i) The Parties each have the power and the authority to enter into and perform this Agreement.

   ii) The Parties warrant that they shall comply with all applicable laws and regulations governing the provision, access and Use of the Software and Services.

e) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND DI MAKES NO WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, OR SERVICES. DI EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED AND EXPRESS WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DI DOES NOT REPRESENT NOR WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, MALWARE FREE, OR THAT CUSTOMER WILL BE ABLE TO ACCESS AND USE OR OPERATE THE SOFTWARE WITHOUT PROBLEMS OR INTERRUPTIONS. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PROVIDED THE SOFTWARE IS PERFORMING SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION, CUSTOMER IS RESPONSIBLE FOR THE RESULTS TO BE ACHIEVED FROM USING THE SOFTWARE AND RECEIVING THE SERVICES.

10) INDEMNIFICATION

a) **By Customer.**

   i) Customer will defend, indemnify, and hold DI harmless from all Claims and Losses associated with a claim asserted against DI, arising out of (i) an Affiliate's breach of any obligation under this Agreement; or (ii) bodily injury (including death) or damage to property or persons, which may be sustained by any third party, that occurs in connection with Customer's, or its Affiliate's, operation of its business, to the extent that such injury or damage is caused in whole or in part by the willful misconduct, grossly negligent acts, errors, or omissions of Customer or its Affiliate; or (iii) DI's use of the Customer Data; or (iv) any Prohibited Content; or (v) any Non-Compliance by Customer or its Authorized Users with the Acceptable Use Policy.

b) **By DI.**

   i) DI agrees to defend, indemnify, and hold Customer harmless from and against any Claims and Losses brought against Customer alleging that the Software furnished and Used within the scope of this Agreement infringes or misappropriates a U.S. patent, copyright, trademark or trade secret of a third party, and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) use of the Software outside the scope of the Documentation, (ii) a modification of the Software by anyone other than DI or its authorized agent; (iii) the incorporation into the Software of any feature or information or Customer Data provided by or requested by Customer; (iv) a combination of the Software with any third-party software or equipment not specified in the Documentation, where such combination is the cause of such infringement; or (v) the use of a version of the Software other than the then-current version made available to Customer, if the infringement would have been avoided by use of the then-current version and Customer has been made aware of this fact by DI. In the event the Software are held or are believed by DI to infringe, DI will, at its sole option and expense,

choose to (a) modify the infringing Software so that they are non-infringing; (b) replace the infringing Software with non-infringing Software which are functionally equivalent; (c) obtain a license for Customer to continue to use the Software as provided hereunder at no cost to Customer; or if none of (a), (b), or (c) is commercially reasonable, then (d) DI will do the following:

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

THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF DI AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RECOURSE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY'S RIGHTS BY THE SOFTWARE.

    ii) DI will defend, indemnify, and hold the Customer harmless from all Claims and Losses associated with a claim asserted against Customer, arising out of bodily injury (including death) or damage to real or tangible property (excluding any claims for lost data or intellectual property) or persons that occurs in connection with the performance by DI of its obligations under this Agreement, to the extent that such injury or damage is caused in whole or in part by the willful misconduct, grossly negligent acts, errors, or omissions of DI.

c) **Indemnification Procedure.** The indemnification obligations of a Party under this section are conditioned upon the indemnified Party: (a) giving prompt written notice of the claim to the indemnifying Party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying Party; and (c) providing reasonable cooperation to the indemnifying Party and, at the request and expense of the indemnifying Party, assistance in the defense or settlement of the claim. The indemnifying Party shall not enter into any defense or settlement strategy, a settlement or compromise that includes an admission or finding of fault or liability on the part of the indemnified Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

11) **LIMITATION OF LIABILITY.** EXCEPT AS REQUIRED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR CONTENT, BUSINESS INTERRUPTIONS, LOSS OF INCOME, LOSS OF GOOD WILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, DAMAGES DUE TO FORCE MAJEURE, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, OR SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, AND (D) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. DI SHALL NOT BE LIABLE FOR (A) DISTURBANCES AND FAILURE OF INTERNET CONNECTIONS, OR (B) CUSTOMER'S DATA INPUT IN THE SOFTWARE, OR DI'S USE OF CUSTOMER DATA. A Party's total aggregate liability for any damages arising out of or related to this Agreement, for any and all causes whatsoever, and the other Party's maximum remedy, regardless of the form of action, whether in contract, tort, or otherwise, will not exceed the Fees paid by Customer hereunder, for the portion of the Software, or Services that is the subject of the action, for the six (6) months immediately preceding the breach for which the damages are claimed. The existence of one or more claims will not enlarge this limit. Customer acknowledges that the pricing set forth herein reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy is specified in this Agreement.

12) **TERMINATION.**

    a) **Without Cause.** Customer may terminate this Agreement without cause upon sixty (60) days written notice to DI.

    b) **Termination of all Subscription Services**. If Customer is only licensing Subscription Services from DI under this Agreement, this Agreement will automatically terminate at such time as Customer has terminated, or Customer has allowed to expire without renewal, all Subscription Services.

    c) **Termination for Bankruptcy.** This Agreement will terminate automatically if all or a substantial portion of either Party's assets are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or a Party is adjudged bankrupt.

    d) **Termination with Cause**.

        i) This Agreement may be terminated immediately if either Party violates the confidentiality obligations or the license grants and restrictions set forth herein; or

        ii) This Agreement may be terminated upon written notice upon the material breach by the other Party of its obligations (including nonpayment of Fees or Billable Expenses), when such breach has not been cured within thirty (30) days after the breaching Party has received written notice thereof.

    e) **Effects of Termination**. Upon any termination of this Agreement:

        i) DI shall cease performing the Services and except for termination by DI for the uncured material

breach of Customer pursuant to Section 12.d) ("**Termination with Cause**") above, all fully paid Software licenses shall remain in effect. In case of termination by DI pursuant to Section 12.d) above, all licenses granted herein, if any, shall immediately terminate, and Customer shall immediately cease using any delivered Software and Customer shall promptly return all Software to DI.

ii) The Receiving Party agrees to immediately cease using the Confidential Information of the Disclosing Party and each Party shall promptly return to the Disclosing Party or destroy all Confidential Information of the other Party that it may have in its possession or control together with all copies thereof (including erasing such Confidential Information from all memory or data storage apparatus) and certify to the Disclosing Party such destruction / return within ten (10) days of such termination. Notwithstanding the foregoing, if the Receiving Party determines that returning or destroying the Confidential Information is infeasible, the Receiving Party shall provide to the Disclosing Party notification of the conditions that make return or destruction infeasible. The Receiving Party shall extend the protections of this Agreement to such Confidential Information and limit further uses and disclosures of such Confidential Information to those purposes that make return or destruction infeasible, for so long as the Receiving Party maintains such Confidential Information.

iii) Except for Disputed Fees, any applicable Fees and Billable Expenses owed by Customer shall become immediately due and payable regardless of any payment terms to the contrary.

f) **Survival.** The provisions of this Agreement and the related obligations of the Parties, which by their nature should survive termination or expiration, shall survive and remain in full force and effect, but this shall not imply or create any continued right to use the Software after termination of this Agreement and all if such termination is for Customer's material breach.

13) **GENERAL TERMS.**

a) **Third-Party Software.**

i) <u>Open-Source Software and Bundled Software</u>: Open-Source Software and Bundled Software are licensed for use by Customer, directly by the third-party vendors of such software, and DI makes no representation or warranty of any kind regarding such software and shall have no liability associated with its use. Customer is to look to the license agreements of such software vendors for terms and conditions of use, warranties and liabilities.

ii) <u>Embedded Software</u>: Embedded Software is licensed for Use by Customer subject to terms and conditions set forth in this Agreement for the Software.

b) **Professional Judgment.** The Software is provided as an aid in the practice of healthcare and is not intended as a substitute for professional judgment. Customer acknowledges and agrees that DI is not engaged in the practice of medicine and that DI shall not be responsible for any medical practice management and patient care decisions made using the Software and Services. The Customer is responsible for the supervision, management, and control of its use of the Software including, but not limited to, ensuring that proper controls are in place to validate content input into the Software, and the data and results obtained through its use. Customer acknowledges that all processes, forms, and reports contained within the Software or Services may be subject to errors and are not a substitute for the exercise of professional judgment.

c) **Subcontracting**. DI may (i) assign and reassign personnel as it deems appropriate in its discretion to perform the Services and (ii) subcontract the performance of Services, provided DI remains liable for the Services to the same extent as if such Services had been performed by DI's employees.

d) **Audit Right**. During normal business hours and at any time during which the Software and/or Services are being utilized, DI, or its authorized representative or licensors, shall have the right, upon reasonable notice, either remotely or at Customer's premises, to audit and inspect Customer's Use of the Software or Services, in order to verify compliance with the terms of this Agreement. If Customer is found to not be in substantial compliance with its obligations, Customer shall pay the reasonable expenses incurred by DI associated with such audit and will promptly take measures to come into compliance.

e) **Force Majeure.** Except with regard to payments due DI, neither Party shall be liable for any delays or failures in its performance due to an event of Force Majeure.

f) **Hiring.** During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall hire any employee of the other without prior written approval. The foregoing notwithstanding, neither Party will be deemed to have breached this section by (a) hiring personnel responding to non-targeted job postings or (b) hiring personnel of the other Party that have been terminated or notified of pending termination by the other Party.

g) **Publicity.** Customer agrees that DI may publicize the fact that Customer is a user of the Software and Services in a mutually agreed upon initial press release. Thereafter, DI may use Customer name in a list of other Service customers.

h) **Export.** Customer agrees that the Software will not be shipped, transferred, or exported into any country in any manner prohibited by the Export Laws. Nor will Customer allow the Software or Services to be accessed and Used in in any manner prohibited by the Export Laws. In addition, if the Software is identified as export controlled items under the Export Laws, Customer represents and warrants that Customer is not

a citizen, or otherwise located within, an embargoed nation and that Customer is not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if Customer fails to comply with the terms of this Agreement.

i) **Notices.**

    i) <u>General</u>. Notwithstanding the foregoing, all general correspondence regarding the basic, day-to-day performance and general operations under this Agreement, including notices that relate to changes/updates to the Notice and Contact Information Schedule, Updates, the availability or interoperability of the Software or Services or Modifications, may be made by email, or by DI through its website and/or via the My DI Community, or Customer Web Portal.

    ii) <u>Legal</u>. All legal notices required under this Agreement, shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested. All legal notices to Customer shall be to the address noted for Customer on the Notice and Contact Information Schedule this Agreement. All legal notices to DI shall be to the address noted for DI on the first page of this Agreement to the attention of the "Office of President and Chief Executive Officer".

j) **Equitable Relief**. The Parties agree that any breach of a Party's confidentiality obligations or a breach of the license grant and restrictions set forth in this Agreement, may result in irreparable injury to the other Party for which there is no adequate remedy at law. Therefore, notwithstanding the Disputes section set forth herein, in the event of any breach or threatened breach of such obligations, the non-breaching Party will be entitled to seek immediate and/or permanent injunctive relief as well as equitable relief in addition to its other available legal remedies.

k) **Assignment.** Neither Party may assign (whether by operation of law or otherwise), sublicense, share, pledge, rent, or transfer any of its rights under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party shall have the right, without acquiring consent from the other Party, to assign its rights and obligations hereunder upon change of control, or by sale of assets, reorganization, merger, consolidation, or otherwise, provided such assignment: a) is not to a direct competitor of the other Party; (b) does not interfere with a Party's performance obligations under this Agreement; (c) does not change the scope of the Services and the intent contemplated by the Parties under this Agreement; or (d) is not pursuant to bankruptcy proceeding. Further, any assignment by Customer: (x) must include the assignment of all the Software and all other software or Hardware bundled or pre-installed with the Software, including all copies, Updates, and prior versions, to such person or entity; (y) must not retain any copies of the Software, including backups and copies stored on a Computer; and (z) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which Customer legally licensed the Software. Any assignment or transfer in violation of the above is void. This Agreement will be binding on the Parties, their successors, and permitted assigns.

l) **Entire Agreement.** This Agreement, together with all Schedules, Exhibits, and Quotes, constitutes and contains the entire understanding and agreement of the Parties with respect to the subject matter herein and, supersedes all prior representations, proposals, discussions, undertakings, communications, agreements, advertisements, and understandings, whether oral or written, between the Parties. Any "click-through" or "shrink-wrap" terms and conditions delivered with the Software or any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, confirmation or other document furnished by Customer (whether in hard copy, electronic form, or by reference) that are different from or in addition to those set forth herein are hereby expressly rejected and shall not be binding on the Parties, even if signed and returned, unless both Parties hereto expressly agree, in an instrument separate from and in addition to the purchase order, acknowledgement, or confirmation, to be bound by such separate or additional terms and conditions. Additionally, DI shall not be bound by any terms or conditions of Customer or any third party that Customer utilizes for its business activities (including but not limited to vendor registrations, security/privacy reviews, or for purchase order and payment related processes) sent to DI electronically, including links to a website, application, or "click to approve" or "click to acknowledge" pages that are different from or in addition to those set forth herein, and such terms are hereby expressly rejected and shall not be binding on the Parties.

m) **Amendment.** This Agreement may only be modified, altered, or amended by written agreement signed by an authorized officer of both Parties.

n) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws indicated below for the applicate DI entity Customer is contracting with:

Region	DI Entity	Governing Law
North America	Data Innovations LLC	the State of Vermont

without regard to conflicts of laws principles of any jurisdiction. The Parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

o) **Disputes.** Any Disputes, shall be settled or resolved in the following manner:

i) <u>Internal Resolution.</u> The Parties shall first engage in Internal Resolution. To initiate Internal Resolution, a Party must provide the other Party with a Dispute Notice. Upon receipt of the Dispute Notice, the Parties shall designate representatives to confer or meet with each other within a reasonable period of time (as agreed upon by the Parties) to discuss and attempt to resolve the Dispute.

ii) <u>Mediation.</u> If the Dispute cannot be settled internally by Internal Resolution, then the Parties will attempt to settle their Disputes by Mediation. The Parties will nominate a Mediator who will act fairly and with complete impartiality towards the Parties. The language of any Mediation shall be English.

iii) <u>Relief</u>. The Parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, without breach of this Agreement.

iv) <u>Court of Competent Jurisdiction</u>. In the event Mediation fails to resolve a Dispute, then any Party who engaged in good faith in the Mediation process may pursue its rights under this Agreement in any court of competent jurisdiction in the location indicated below for the applicate DI entity Customer is contracting with:

Region	DI Entity	Venue
North America	Data Innovations LLC	United States

p) **Language.** The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement and the Schedules.

q) **Section Headings.** Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

r) **No Waiver.** No failure or delay by either Party in exercising any right hereunder will operate as a waiver thereof.

s) **Relationship of the Parties.** The Parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship between DI and Customer.

t) **Third-Party Beneficiaries.** Except as expressly set forth in this Agreement, this Agreement is not intended to create and does not create enforceable obligations for the benefit of any third party.

u) **Severability.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and in full force and effect.

CLOUD-BASED SOLUTION SCHEDULE

All Software licensed to Customer as part of a Cloud-Based Solution, is provided pursuant to the General Terms and Conditions, this Schedule and any Exhibit or Appendix attached by reference.

PART A – STANDARD TERMS AND CONDITIONS

1) **DEFINITIONS.** The following definitions are added to this Agreement for the purpose of providing the Subscription Services:

   a) **"Access and Use Terms and Conditions"** means the terms and conditions set forth in Section 3 below, under which DI grants Customer a license to access and Use the Software and the Subscription Services.

   b) "**Affected Subscription Services**" means a Subscription Services that is materially and adversely affected by a Modification.

   c) "**Critical Threat**" Use of the Subscription Services or of any IdP by Customer or any of its Authorized Users that poses an imminent threat to (i) the security or integrity of any Customer Data or the data of any other DI customer, or (ii) the availability of the Cloud Platform to Customer or any other DI customer.

   d) **"Customer Identifying Information"** means any information identifying the legal Customer entity, such as Customer's legal name or address. Customer Identifying Information shall be deemed to be "Customer Data".

   e) "**Login Notice**" means an email to Customer containing a link for log in access to the Cloud Platform and Software that is initiated upon payment of the applicable Subscription Services Fees.

   f) "**Modification Notice**" means a notice provided by DI to Customer of any Modification(s) to this Agreement, applicable to Customer and affecting the Subscription Services.

   g) "**Operating Hours**" means the hours the Cloud Platform will be available, as set forth in Part C - Service Level Agreement.

   h) "**Scheduled Maintenance**" means the application of any Updates or performance of other maintenance activities related to the Cloud Platform and/or Software.

   i) **"Security Measures"** means DI's current technical and organizational security measures designed to meet the following objectives: (i) ensure the security and' confidentiality of Customer Data in the custody and under the control of DI; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; and (iii) protect against unauthorized access to or use of such Customer Data.

   j) **"Service Level Agreement"** means the service level terms and conditions for the Cloud Platform and Software, as set forth in Part C.

   k) **"Service Level Warranty"** means the service level warranty, as set forth in Part C ("Service Level Agreement").

   l) **"Uptime"** means the uptime availability for the Cloud Platform and Software, as set forth in Part C.

2) **FEES.**

   a) Customer must pay the Subscription Fees, set forth on the applicable Quote, prior to the start of any initial Subscription Term or a Renewal Term.

   b) DI will invoice Customer annually for the Subscription Fees due for each calendar year of the then-current Subscription Term ("Calendar Year Portion").

   c) Customers will be notified in advance of an upcoming expiration of a Subscription Term and will be provided with a Quote for the Subscription Fees due for the Renewal Term.

3) **ACCESS AND USE TERMS AND CONDITIONS**

   a) **License**. Subject to Customer's compliance with the terms of this Agreement:

   i) Access and Use. DI grants to Customer, for the current Subscription Services Term, a non-exclusive, non-transferable, non-sublicensable, revocable, license to receive the Subscription Services, and access and Use, and permits its Authorized Users to access and Use, the Software, in accordance with the Documentation, only as allowed herein solely for Customer's internal business purposes.

   ii) Subscription Start Date. The date DI provides the Login Notice to Customer shall be deemed the Subscription Services Start Date.

   iii) Reproduction. DI grants Customer the right to reproduce the Documentation, as necessary, for Customer's internal business purposes, in its ordinary course of business. Any copies of the Documentation that Customer makes must contain the same titles, trademarks, copyright notices, legends and other proprietary notices that appear on or in the Documentation.

   b) **No Modification**. Customer shall not, and shall not permit any third party to, (i) remove or alter any copyright notices on and all copies of the Software (ii) modify, adapt, alter or translate (excluding any language translation features that are part of the Software, and default project data files) the Software or (iii) reverse engineer, decompile, disassemble, create derivative works of any part of the Software, attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software including, without limitation, any such mechanism used to restrict or control the functionality of the Software; or otherwise attempt to discover the source code or the underlying ideas, algorithms,

structure or organization form of the Software, except to the extent Customer may be expressly permitted to decompile under applicable law. DI reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.

c) **Run Time Components**. To the extent that the Software includes run time or other components licensed by DI from third parties, Customer shall not create any software program that links, embeds or makes direct function calls to such components.

d) **Transfer**. Customer may not, share, rent, lease, lend, sublicense, assign, distribute, sell or transfer Customer's license/rights under this Agreement for any purpose, including but not limited to commercial time-sharing, or for service bureau use.

e) **Updates**. Customer agrees that by Using an Update, Customer voluntarily terminates Customer's right to Use any previous version of the Software and will transfer all data to the new Update.

4) **CUSTOMER GENERAL RESPONSIBILITIES.**

a) **Acceptable Use Policy**. Customer shall comply with and will ensure that its Authorized Users comply with the Acceptable Use Policy.

b) **Software and Hardware**. The procurement, compatibility, operation, security, support and maintenance of Customer's hardware and software (that are not the Software) used to receive the Subscription Services are the responsibility of Customer.

c) **Internet Access and Connectivity**. Customer will be solely responsible for obtaining, maintaining and paying for all equipment and third-party services (e.g., Internet access and email service) required for Customer to obtain and maintain connectivity and access between Customer's network, its hardware, and the Subscription Services.

d) **Login Credentials and Account Keys**. Any login credentials and private keys generated by the Software are for Customer's internal use only and Customer will not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose Customer login credentials and private keys to an Authorized User.

e) **Passwords**. Customer will be solely responsible for safeguarding and maintaining the confidentiality of Authorized User names and passwords, administering name and password information for its Authorized Users, restricting Software passwords to Authorized Users only, maintaining single Authorized User passwords, and making Authorized User accounts inactive when employment is terminated. Customer agrees to add or inactivate Authorized Users, reset passwords and manage its account only through the Software or notify DI in the event an Authorized User's employment has been terminated and the aforementioned steps cannot be performed.

f) **Authorized Users**. Customer shall implement reasonable controls to ensure that the Subscription Services are accessed and Used only by Authorized Users. Customer is responsible for all activities that occur under Customer's log ins to the Software, regardless of whether the activities are authorized by Customer or undertaken by Customer or an Authorized User, and DI is not responsible for unauthorized access to Customer's installation of the Software. Customer will be deemed to have taken any action that Customer permits, assists or facilitates any person or entity to take related to this Agreement. Customer is responsible for Authorized Users Use of the Software. Customer will ensure that all Authorized Users comply with Customer obligations under this Agreement. If Customer becomes aware of any violation of Customer obligations under this Agreement caused by an Authorized User, Customer will immediately suspend access to the Subscription Services and the Software by such Authorized User.

g) **Customer Data**. Customer will ensure that Customer Data, and Customer and Authorized User's use of Customer Data or Use of the Software will not violate any applicable law. Customer is solely responsible for the occurrence, quality, integrity and content and use of Customer Data. Customer is responsible for any transmission of Customer Data Customer or its Authorized Users, send, receive, post, access, or store via the Cloud Platform and Software.

h) **Customer Security and Backup**. Customer is solely responsible for properly configuring and using the Software and otherwise taking appropriate action to secure, protect and backup Customer Data in a manner that will provide appropriate security and protection, which might include use of encryption to protect Customer Data from unauthorized access, and routinely archiving Customer Data.

i) **Prohibited Content**. If DI reasonably believes any of Customer Data is Prohibited Content, DI will notify Customer of the Prohibited Content and may request that such content be removed from the Software or access to it be disabled. If Customer does not remove or disable access to the Prohibited Content within two (2) business days of notice, DI shall remove or disable access to the Prohibited Content or suspend access to the Software to the extent it is not able to remove or disable access to the Prohibited Content. Notwithstanding the foregoing, DI may remove or disable access to any Prohibited Content without prior notice in connection with illegal content, where the content may disrupt or threaten Use of the Software in accordance with applicable law or any judicial, regulatory or other governmental order or request.

5) **THIRD PARTY SOFTWARE OR SERVICES.**

a) **IdPs**. The Cloud Platform may include functionality that enables Customer, at Customer's option, to connect with certain IdP services or sites, via public facing APIs provided and controlled by the IdP. Any authentication information transmitted to or accessed by the Cloud Platform from an IdP is considered

Customer's Confidential Information under this Agreement and, to the extent within DI's possession or under DI's control, shall be protected as such pursuant to the terms of this Agreement. If an IdP modifies its APIs or equivalents so that they no longer interoperate with the Cloud Platform or imposes requirements on interoperability that are unreasonable for DI, and if, after applying reasonable efforts, DI is unable to overcome such modifications or requirements then, upon reasonable notice to Customer, DI may cease or suspend its provision of interoperability between the Cloud Platform and the affected IdP services or sites without liability to Customer. Except for DI's obligations to protect authentication credentials obtained by the Cloud Platform from an IdP, DI has no responsibility for the acquisition, development, implementation, operation, support, maintenance, or security of any IdP.

6) **MODIFICATION(S).** DI will provide Customer with a Modification Notice, applicable to Customer and affecting Customer's current Subscription Services. If Customer does not wish to accept such Modification, then Customer may terminate Customer's subscription for the Affected Subscription Service by providing DI notice in accordance with the following:

   a) If the Modification Notice states that the Modification(s) will become effective upon commencement of the next Renewal Term, then Customer may notify DI, in writing, of its determination not to renew the Affected Subscription Services, upon the earlier of (a) thirty (30) days prior to commencement of the next Renewal Term or (b) within five (5) business days after receipt of the Modification Notice, if such Modification Notice is received by Customer within the thirty (30) day period, prior to the date of the next Renewal Term.

   b) If the Modification Notice states that the Modification(s) will become effective during the then current Subscription Services Term, then Customer may notify DI in writing, of its determination to terminate Customer's subscription for the Affected Subscription Services, at any time within the thirty (30) day period immediately following the date of the Modification Notice. Customer's termination will become effective on the later to occur of (a) the date on which Customer delivers the termination notice, or (b) the date on which the applicable Modifications become effective. If Customer terminates any Affected Subscription Services pursuant to this section, then Customer will be entitled to a pro-rata refund of any prepaid Subscription Services Fees for the terminated Affected Subscription Service for the unused portion of the current Subscription Services Term. For clarification, Subscription Services Fees do not include any activation fees, installation fees, Professional Services Fees, or other expenses incurred in connection with the Affected Subscription Services.

   c) If Customer does not terminate the Affected Subscription Service as specified in the preceding sections, then Customer will be bound by the Modification(s) beginning upon the date on which the Modification Notice states they become effective.

7) **WARRANTIES.**

   a) DI warrants that for as long as Customer has a valid Subscription Services Term in effect for the Software, the Software, when properly Used in accordance with the applicable Documentation, will substantially perform in accordance with the Documentation provided with the Software. Customer's exclusive remedy under the limited warranty set forth herein and the sole obligation of DI for breach of this warranty shall be for DI to use commercially reasonable efforts to correct any reproducible error of the Software to conform to the Documentation, at no additional charge.

   b) DI warrants that it shall use, reasonable efforts, using applicable current industry practices, to ensure that the Cloud Platform and the Software, in the form provided by DI to Customer under this Agreement, do not contain any Malware.

8) **SUBSCRIPTION SERVICES TERM**.

   a) <u>Initial Term</u>. The initial Subscription Services Term shall be set forth in the applicable Quote. A Login Notice will be initiated to Customer upon payment of the applicable Subscription Services Fees. The date DI provides the Login Notice shall be deemed the Subscription Services Start Date.

   b) <u>Renewals</u>.

      i) Customers will be provided with a Renewal Notice in advance of an upcoming expiration of a Subscription Services Term. Customer must pay the Renewal Fees for the Renewal Term prior to the expiration date of the then-current Subscription Services Term.

      ii) Customer will have the option to discontinue its Subscription Services by providing notification to DI at least thirty (30) days in advance of the expiration date of the current Subscription Services Term.

      iii) Customer must pay the Renewal Fees prior to the expiration of the then-current Subscription Services Term.

      iv) DI may increase its charges for the Subscription Services Fees for each successive term. Any such increase shall be set out in the Renewal Notice for the Subscription Services Term for which the increase is to be in effect.

      v) Upon renewal of Subscription Services, Customer will be subject to DI's then-current Subscription Services terms and conditions in effect on the date of DI's Renewal Notice to Customer, and as provided to Customer by DI.

9) **SUSPENSION AND TERMINATION**

   a) **Suspension for Critical Threats.** If DI determines that Customer's or any of its Authorized Users' Use of the Subscription Services pose a Critical Threat, the DI will immediately attempt to contact Customer to

resolve the Critical Threat. If DI is unable to immediately contact Customer, or if DI contacts Customer but Customer is unable to immediately remediate the Critical Threat, then DI, acting reasonably in the circumstances then known to DI, may suspend Customer's and its Authorized Users' Use of the Cloud Platform until the Critical Threat is resolved and DI is able to restore the Subscription Services to Customer.

b) **Suspension or Termination for Non-Compliance.** If DI determines that Customer's or any of its Authorized Users are in Non-Compliance, and if Customer has not remediated the Non-Compliance within five (5) days of notification by DI, then DI may suspend Customer's and its Authorized Users' Use of the Cloud Platform until the Non-Compliance is resolved and DI is able to restore the Subscription Services for Customer. If DI determines that the Non-Compliance is incapable of cure, then DI may immediately terminate its provision of Subscription Services to Customer.

c) **Suspension or Termination for Non-Payment.** DI, at is sole discretion, reserves the right to suspend, or terminate Customer's Subscription Services if the Fees due for the current Calendar Year Portion or Renewal Term, are not paid prior to start of such Calendar Year or Renewal Term.

d) **Termination for Convenience.** The Parties acknowledge and agree that each Subscription Services Term is priced as a minimum term and may not be terminated for convenience.

e) **Termination for Material Breach.** Subscription Services may be terminated immediately upon written notice by either Party upon the material breach by the other Party of its obligations under this Agreement (including nonpayment of any applicable Fees), which breach has not been cured within thirty (30) days after the breaching Party has received written notice thereof.

f) **Termination for a Modification.** Customer may terminate the Subscription Services, related to a Modification Notice, as set forth in Section 6 ("**Modifications**") above.

g) **Termination of this Agreement.** If this Agreement is terminated in whole, for any reason, all licenses to Subscription Services shall terminate as of the termination date.

h) **Effect of Termination.** Upon termination of Subscription Services:

   i) DI shall cease providing, and Customer shall immediately cease using, the Subscription Services and all related licenses granted to Customer shall immediately terminate.

   ii) Customer shall be liable to DI for Subscription Fees due for the remainder of any Subscription Terms (initial or Renewal Terms) in place at the time of termination. The owed Subscription Fees will become immediately due and payable.

   iii) If Customer terminates a Subscription Service by not renewing the Subscription Term, and afterwards Customer desires to reinstate the Subscription Service, Customer will have to purchase a new Subscription Service for a new, full Subscription Term, at the then-current prices.

   iv) The provision of Section 12.e) ("**Effect of Termination**") of the General Terms and Conditions shall go into effect, as applicable.

PART B - ACCEPTABLE USE POLICY

This Acceptable Use Policy ("**AUP**") applies to Use of DI's Subscription Services, access to the Cloud Platform, Software and to all other services and products offered by DI and accessible from the Cloud Platform (collectively referred to herein as the "**DI Services**").

1) **USE OF THE DI SERVICES.**

   a) Customer may not:

      i) Attempt to gain unauthorized access to, or interfere or attempt to interfere with or compromise, in any manner, with the functionality or proper working of the DI Services.

      ii) Upload to the DI Services, or Use the DI Services, to store or transmit material in violation of any third-party privacy or data protection rights.

      iii) Upload to the DI Services or Use the DI Services to store or transmit any Malware.

      iv) Upload to the DI Services or Use the DI Services to store, transmit or process any Personally Identifiable Information, or any other regulated data or information in violation of any applicable law or regulations.

      v) Interfere with or disrupt the integrity or performance of the DI Services or third-party data stored or processed with the DI Services.

      vi) Attempt to gain unauthorized access to the DI Services or their related systems or networks, including through denial of service, fuzzing or similar attacks.

      vii) Attempt to probe, scan, penetrate or test the vulnerability of the DI Services, or to circumvent, avoid or breach DI's security or authentication measures, whether by passive or intrusive techniques or by social engineering.

      viii) Attempt to reverse engineer any of DI's technology (including the Cloud Platform and Software), including as a means to find vulnerabilities to avoid DI's current Security Measures.

2) **SHARED RESOURCES.** Customer agrees that DI may quarantine or delete any Customer Data stored on the Cloud Platform or in the Software if DI reasonably believes that the Customer Data is infected with any Malware or is otherwise corrupted and has the potential to infect or corrupt the Cloud Platform and/or Software or other

customer's data that is stored or accessed via the Cloud Platform and Software.

3) ABUSE.

    a) Customer may not Use the DI Services to engage in, foster, or promote illegal, abusive or irresponsible behavior, including:

        i) Unauthorized access to, or Use of the DI Services, including any unauthorized attempt to probe, scan or test the vulnerability of the DI Services to breach security or authentication measures.

        ii) Monitoring data or traffic with the DI Services without the express authorization of DI.

        iii) Interference with service to any user of the DI Services.

        iv) Use of a DI Service account without the appropriate authorization.

        v) Collecting or using email addresses, screen names or other identifiers without the consent of the person identified (including, phishing, internet scamming, password robbery, spidering, and harvesting).

        vi) Collecting or using information without the consent of the owner of the information.

        vii) Use of the DI Services to distribute software that covertly gathers information about a user or covertly transmits information about the user.

        viii) Use of the DI Services to commit fraud.

        ix) Any conduct that is likely to result in retaliation against the DI Services or DI's employees, officers or other agents, including engaging in behavior that results in any server used to provide the DI Services being the target of a denial of service ("**DoS**").

        x) Use of the DI Services to facilitate competition with DI including through establishment of accounts that do not fairly represent their purpose, or for benchmarking purposes not authorized by DI.

4) OFFENSIVE CONTENT.

    a) Customer may not publish, transmit or store on the Cloud Platform of Software, or Use any DI Services, to enable, control or provide access to any content or links to any content that DI reasonably believes:

        i) Is obscene.

        ii) Contains harassing content or hate speech, or is violent, incites violence, or threatens violence.

        iii) Is unfair or deceptive under the consumer protection laws of any jurisdiction.

        iv) Is defamatory or violates a person's privacy.

        v) Creates a risk to a person's safety or health, creates a risk to public safety or health, is contrary to applicable law, or interferes with an investigation by law enforcement.

        vi) Improperly exposes trade secrets or other confidential or proprietary information of another person or entity.

        vii) Is intended to assist others in defeating technical copyright protections.

        viii) Infringes on another person or entity's copyright, trade or service mark, patent or other property rights, or violates any privacy right.

        ix) Is illegal or solicits conduct that is illegal under laws applicable to Customer or to DI.

        x) Is otherwise malicious, fraudulent, or may result in retaliation against DI by offended viewers or recipients.

5) OTHER. Customer will not be entitled to any credit or other compensation for any interruption of the DI Services resulting from AUP violations.

PART C – SERVICE LEVEL AGREEMENT

1) The Service Level Warranty provided in this Schedule shall not apply to any services other than bandwidth and facility services and shall not apply to performance issues (i) caused by factors outside of DI's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third-party equipment.

2) For purposes of this Service Level Agreement, the term "**Uptime**" shall mean all Operating Hours except for time devoted to Scheduled Maintenance and to any time during which connectivity to the Cloud Platform or Software is lost due to the factors described in Section 1 above.

3) The Cloud Platform and Software will operate on a twenty-four hour per day, seven-day per week basis (the "**Operating Hours**").

4) From time to time, DI may, at its sole discretion, decide to perform Scheduled Maintenance to the Cloud Platform and/or Software, which may result in interruptions in access to the Software by Customer during the Operating Hours. DI will notify the Customer when Scheduled Maintenance will occur.

5) Subject to the limitations set forth in Sections 1, 2, 3, and 4 of this Part C ("Service Level Agreement"), DI warrants and represents that it will use commercially reasonable efforts to provide ninety-five (95%) Uptime of the Cloud Platform and Software, in any calendar quarter during the Subscription Services Term (the "**Service Level Warranty**").

6) In the event of a breach of the Service Level Warranty, as the sole remedy for such breach DI shall credit to

Customer's account a pro-rata portion of the Subscription Services Fees, pre-paid by Customer, for the unavailable Subscription Services during the period of such breach.

7) Customer must exercise its right to a refund under Section 6 above by written notice, subject to the terms of Section 13.h.ii) ("**Legal Notices**") of the General Terms and Conditions, delivered to DI not later than thirty (30) days after the close of the calendar quarter in which the breach occurred.

8) Notwithstanding the foregoing, Customer agrees that any failure of the Cloud Platform and/or Software to meet the Uptime warranty set forth in this Schedule that is not directly caused by DI, but is caused by something outside of DI's control, shall not be deemed a breach of the Service Level Warranty (e.g. Customer's internet service goes down, downtime is caused by DI's third-party platform vendor, failure of video streaming service, etc.).

EXHIBIT TO CLOUD-BASED SOLUTION SCHEDULE - LAB GPS™

This Exhibit is attached to the Cloud-Based Solution Schedule by reference and sets forth the additional terms, conditions and restrictions that are specific to the provision of access and Use of Lab GPS™.

1) **LAB GPS™.** Lab GPS is a software developed and owned by Data Innovations and is sublicensed to Customer by DI as a Cloud-Based Solution.

2) **AUTHORIZED USERS.**

   a) The number of Authorized Users who may concurrently access and Use the Software shall not exceed the number of Authorized Users specified in the applicable Quote.

   b) Authorized User seats cannot be shared by more than one (1) individual, but Customer may replace and re-assign the seat to a new Authorized User.

3) **AGGREGATED AND STATISTICAL INFORMATION.**

   a) DI may utilize all Aggregated and Statistical Information, without obligation to Customer, for purposes of internal analytical purposes related to the operation, of the Software or its supporting processes and systems and the provision of the Subscription Services, including the (i) monitoring, managing, enhancement or undertaking of internal research for technological development of the Software or Subscription Services, (ii) detection of security incidents, and to protect against malicious, deceptive, fraudulent or illegal activity; and (iii) identification of errors that impair existing functionality. DI may make information derived from its analysis of the Aggregated and Statistical Information publicly available on an aggregated and anonymized basis, provided that DI's use of the Aggregated and Statistical Information does not contain any Personally Identifiable Information nor will it disclose any Customer Identifying Information. For the sake of clarity such aggregated and anonymized data is not Confidential Information of Customer.

   b) Customer acknowledges and agrees that to provide Customer and other DI customers with comprehensive comparative and benchmark data, DI reserves the perpetual right to aggregate data including Customer Data, without any obligation to Customer, and disclose Aggregated and Statistical Information from all DI customers in its database. Customer Data will not be attributed to Customer.

4) **INFORMATION SECURITY.** DI will implement and maintain commercially reasonable technical and organizational Security Measures. A copy of DI's current Security Measures may be found at http://www.datainnovations.com/terms-and-conditions. Customer is solely responsible for the consequences of Customer's decision not to adopt updates or best practices that DI makes available to Customer.

5) **EFFECT OF TERMINATION.** The following provision is added as an additional subsection to Section 9.h) ("**Effect of Termination**") of Part A ("**Standard Terms and Conditions**") of the Cloud-Based Solution Schedule: Customer Data stored on the Cloud Platform and in the Software will be permanently deleted.

MAINTENANCE AND SUPPORT SERVICES SCHEDULE

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

DI will provide the Maintenance and Support Services set forth in this Schedule, and any related Exhibits, for the current Major Release and the previous Major Release of a Supported Version of the Software for which Customer has a valid license to Use and for which Customer is current on all Maintenance and Support Services Fees.

1) **MAINTENANCE AND SUPPORT SERVICES PRIORITY LEVELS.** Upon request for Maintenance and Support Services where the issues being experienced by the Customer are identified as a Software Error, Customer and DI will mutually agree on the severity level of the Software Error. DI will respond to issues with the Software according to the following schedule:

a) **Critical Priority Software Error:**

   i) Critical Priority Software Errors must be reported via telephone.

   ii) DI will acknowledge Critical Priority Software Errors within one (1) hour of the initial contact via telephone and commence working towards a resolution at that time.

b) **High Priority** Software Errors**:**

   i) High Priority Software Errors must be reported via telephone.

   ii) DI will acknowledge High Priority Software Errors within four (4) hours of the initial contact via telephone and commence working towards a resolution at that time.

c) **Medium Priority** Software Errors**:**

   i) Medium Priority Software Errors may be reported via telephone, email, or through the My DI Community, and/or the Customer Web Portal (as specified in the table in the Exhibit, attached to this Schedule by reference, for the specific Software license type.

   ii) DI will acknowledge Medium Priority Software Errors within twenty-four (24) hours of the initial contact.

d) **Low Priority** Software Errors**:**

   i) Low Priority Software Errors may be reported via telephone, email, or through the My DI Community, and/or the Customer Web Portal (as specified in the table in the Exhibit, attached to this Schedule by reference, for the specific Software license type.

   ii) DI will acknowledge Low Priority Software Errors within forty-eight (48) hours of the initial contact.

2) **OBTAINING SUPPORT.** A customer requesting that DI provide Maintenance and Support Services for the Software shall contact DI during the times and in the manner set forth in the Exhibit, attached to this Schedule by reference, for the specific Software license type. Customer shall provide DI with (a) an accurate description of the Software Error; (b) the steps necessary to reproduce the Software Error; (c) if required, the data being processed at the time of the Software Error and associated log files; and (d) the severity of the Software Error, including the circumstances that lead to the Software Error.

a) **During Support Hours.** Customer may log requests for Maintenance and Support Services in the following manner:

   i) <u>Telephone:</u> Customer may log Maintenance and Support Services requests by calling the telephone number provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type. All Critical Priority and High Priority Software Errors must be logged via telephone.

   ii) <u>E-mail:</u> Customer may log Maintenance and Support Services requests by sending e-mails to the appropriate DI regional support center via the email address provided in the Exhibit, attached to this Schedule by reference, for the specific Software license type. All Critical and High Priority Software Errors must be logged via telephone. E-mail is reserved for Medium and Low Priority Software Errors.

   iii) <u>My DI Community, and/or Customer Web Portal:</u> Using the My DI Community, and/or Customer Web Portal, as indicated in the Exhibit attached to this Schedule by reference, for the specific Software license type, Customers can log Medium and Low Priority Issues, view the status of outstanding issues, download Drivers, (for Instrument Manager™ only) Documentation, and access a Knowledgebase of known issues and resolutions, for troubleshooting assistance and update contact information. DI does not warrant My DI Community, and/or Customer Web Portal will operate without interruption or without errors.

b) **Emergency Support.** Emergency Maintenance and Support Services are available 24x7x365. An Emergency Maintenance and Support Services request may be submitted for a live Software system where all or a portion of the system has become non-operative and is affecting a critical laboratory function.

c) **Non-Emergency Support After Hours.** Customers requesting that DI provide non-Emergency Maintenance and Support Services outside of Support Hours may purchase Professional Services for "Custom Support Services". Custom Support Services must be scheduled and are subject to DI's resource availability and shall be provided subject to a separate agreement entered into between the Parties.

3) **CUSTOMER RESPONSIBILITIES.**

a) **Remote Access.** In order to assist DI in meeting the commitments above, Customer agrees to provide an

approved remote method to the devices running the Software with connectivity to the Software and access that permits connectivity and administration using Software's administration tools accessing the database engine.

b) **Diagnostics Data.** In the event DI requests any data dumps, logs, or any other documentation from Customer to resolve a reported Software Error, such information shall be forwarded by overnight courier at Customer's expense or through electronic means such as e-mail, remote access, or FTP.

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

4) **HARDWARE PLATFORM / INFRASTRUCTURE.** Customer is responsible for the maintenance of its hardware platform and technical infrastructure. This infrastructure includes but is not limited to a reliable backup solution, networking components, Malware protection, and security software applications (i.e. firewalls).

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

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

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

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

9) **NO LIABILITY FOR INACCURATE DIAGNOSTICS.** DI will attempt to provide accurate advice and information to Customer's employees requesting telephone or web-based, e-mail support with respect to the Software; however, the Parties acknowledge that DI cannot guarantee that such advice and information will be error free and accurate in all instances as such advice and information is dependent upon Customer's presentation and interpretation of the support needed as well as complete disclosure of the circumstances leading up to the request and, as such, DI will not be liable to Customer for any damages sustained by Customer as a result of incorrect or inaccurate advice by DI unless such damages were directly caused by the gross negligence or willful misconduct of DI.

10) **INSTALLATION OF ADDITIONAL SOFTWARE AND UPDATES.** Customer should not install any version, update, or upgrade of any Additional Software, on a shared platform with the Software, unless Customer understands the impact and necessity of the Additional Software version, update, or upgrade with the Software. Customer must understand and assume the risk to the Software for the application of Additional Software versions, updates, or upgrade.

11) **MAINTENANCE AND SUPPORT SERVICES EXCLUSIONS.** DI will not be obligated to provide Maintenance and Support Services if: (a) Customer fails to provide DI all information, technical assistance, and access to the computing device on which the Software is installed and any other equipment and personnel necessary to assist DI; (b) the Software is not Used in accordance with the applicable Documentation; (c) any Software Error malfunction or defect reported by Customer is found by DI to be due to a cause other than the Software or Updates as delivered by DI; (d) Customer has not installed the Updates in a timely manner (see the Updates and Driver Updates sections above); or (e) the Software Error, malfunction, or defect cannot be reproduced. If any such non-Software error, malfunction, or defect may reasonably be corrected by DI, DI may correct it at Customer's request, subject to resource availability, for reasonable service charges, agreed to by Customer and DI. Examples of non-Software Errors, malfunctions, defects, associated materials, or services outside the scope of Maintenance and Support Services include but are not limited to the following:

a) Troubleshooting of Customer's computer hardware, operating system, system monitoring software, Malware software, or network;

b) Database management including but not limited to database backups, database archiving, database disk utilization monitoring, database patching, database upgrades;

c) Set up of Customer-provided equipment;

d) Troubleshooting Additional Software;

e) Troubleshooting Additional Software issues;

f) Data modification caused by Customer error or host computer system error;

g) Customer-requested modifications to the Documentation;

h) Customer account management (e.g. password resets).

12) **MAINTENANCE AND SUPPORT SERVICES WARRANTY AND DISCLAIMER**: DI warrants that Maintenance and Support Services will be performed with reasonable skill and care by competent and trained personnel, and in accordance with applicable and reasonable industry standards and practices. As Customer's exclusive remedy and DI's sole obligation for breach of this warranty, DI shall use commercially reasonable efforts to correct

defective Maintenance and Support Services at no additional charge to Customer, provided that Customer gives DI specific written notice of the defective Maintenance and Support Services within thirty (30) days after the Maintenance and Support Services are performed.

13) **NOTIFICATIONS REGARDING EOS, EOM AND EOL:**

a) Communications related to Software may be frequent. DI suggests that Customer subscribe to the appropriate email notifications at E-mail Updates | Data Innovations.

b) EoS - DI policy is to provide a minimum 12-month notification for an End of Sale event, whenever possible.

c) EoM - DI policy is to provide a minimum 12-month notification, whenever possible, when Customer is required to act in response to an End of Maintenance event to avoid degradation of the normal Use of the Software or a specific Software version.

d) EoL - DI policy is to provide a minimum of 24 months notification prior to an End of Life event for Software. It is DI's policy to provide a minimum of 12 months' notification prior to an End of Life event for a specific Software version whenever possible. Maintenance and Support Services for Software and specific Software versions will be provided based on the published End of Life dates.

EXHIBIT TO MAINTENANCE AND SUPPORT SERVICES SCHEDULE
CLOUD- BASED SOLUTION

This Exhibit is attached to the Maintenance and Support Services Schedule by reference and sets forth the additional terms, conditions and restrictions that are specific to the provision of Maintenance and Support Services for Software licensed to Customer as part of a Cloud-Based Solution.

1) **GENERAL.** Provided Customer is current on all applicable Fees, Customer shall receive Maintenance and Support Services for the Software as part of the Subscription Services in accordance with the terms and conditions set forth herein.

2) **TERM.** The Maintenance and Support Services term for each Software license shall be coterminous with the applicable Subscription Term

3) **FEES.** Maintenance and Support Services for the Software are included as part of the annual Subscription Fee at DI's then current list price at the time of initial Subscription Service purchase and/or renewal.

4) **RENEWAL:** Unless terminated as provided herein, Maintenance and Support Services shall automatically renew with the renewal of the applicable Subscription Term. Customer will be notified at least forty-five (45) days prior to the upcoming expiration of a Subscription Term and will be provided with a Quote to renew the Subscription Term. Customer must pay the Subscription Fees for the Renewal Term prior to the expiration date of the then-current Subscription Term.

5) **TERMINATION.** Maintenance and Support Services shall automatically terminate upon the termination of the applicable Subscription Services.

6) **BROWSERS**. The Cloud-Based Solution has been validated for operation on a variety of browsers. Minimum specifications can be provided, upon request, per version of Software.

Appendix to Exhibit to Maintenance and Support Services – Cloud-Based Solution

Lab GPS

This Appendix is attached to the Exhibit to Maintenance and Support Services Schedule – Cloud-Based Solution by reference and sets forth the additional terms, conditions, and restrictions that are specific to the provision of Maintenance and Support Services for Lab GPS.

1) **NON-EMERGENCY MAINTENANCE AND SUPPORT SERVICES.** The following table sets forth the times and manner in which Customer may request non-Emergency Support Maintenance and Support Services:

Non-Emergency Support is available Monday through Friday, excluding holidays published on www.datainnovations.com during the hours for the region listed below.		
Region	**Support Hours**	**Technical Support Contact**
North America	9:00 am – 5:00 pm EST/EDT Monday – Friday	My DI Community* northamerica-support@datainnovations.com +1 802 658 1955
Note(s): * My DI Community may be accessed via support.datainnovations.com.		

2) **PRIMARY TECHNICAL CONTACT(S).** As of the Effective Date, Customer designates the individuals set forth on the Notice and Contact Information Schedule as the Primary Technical Contacts.

3) **NOT AVAILABLE:** The following support levels and types, set forth in the Maintenance and Support Services Schedule are not available for Lab GPS:

   a) **Priority Levels - Critical Priority Software Error - Section 1.a)**

   b) **Priority Levels – High Priority Software Error – Section 1.b)**

   c) **Emergency Support – Section 2.b)**

   d) **Non-Emergency Support After Hours– Section 2.c)**

4) **NOT APPLICABLE:** The following provisions set forth in the Maintenance and Support Services Schedule do not apply to Lab GPS:

   a) **Customer Responsibilities:**

      i) Remote Access – Section 3.a)

      ii) Diagnostic Data – Section 3.b)

   b) **Hardware Platform / Infrastructure – Section 4**

   c) **Updates – Section 5**

   d) **Driver Updates – Section 7**

   e) **New Drivers – Section 8**

   f) **Installation of Additional Software and Updates – Section 10**

NOTICE AND CONTACT INFORMATION SCHEDULE

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

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

Attention to:	

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

☐ **Lab GPS™**

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