

Morgan Scientific, Inc. End User License Agreement (EULA)

Effective Date: March 15, 2022. This update supersedes the previous versions of the document. To verify you have the latest version of this document, visit <https://www.morgansci.com/legal/end-user-license-agreement/>.

THIS END USER LICENSE AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU ("YOU") AND MORGAN SCIENTIFIC, INC., A MASSACHUSETTS CORPORATION WITH ITS PRINCIPAL PLACE OF BUSINESS AT 151 ESSEX ST, 8TH FLR, HAVERHILL, MA 01832 ("MSI"), COLLECTIVELY THE "PARTIES." THE TERMS AND CONDITIONS UNDER WHICH YOU MAY USE THE LICENSED MATERIALS ARE SET FORTH IN THIS END USER LICENSE AGREEMENT ("EULA"). THIS DOCUMENT ALSO MAKES REFERENCE TO ONE OR MORE ADDITIONAL DOCUMENTS WHICH ARE INCORPORATED INTO THIS DOCUMENT BY REFERENCE ("SUPPLEMENTAL TERMS") (COLLECTIVELY WITH THIS DOCUMENT, THE "AGREEMENT"). THE AGREEMENT WILL BECOME EFFECTIVE ON THE DATE YOU ACCEPT THE TERMS OF THIS AGREEMENT (THE "EFFECTIVE DATE").

BY INSTALLING, CONFIGURING, AND/OR USING THE SOFTWARE (DEFINED BELOW) IN ANY WAY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY OR INDIVIDUAL IDENTIFIED AS THE CUSTOMER ("CUSTOMER") TO THIS AGREEMENT, AND ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY THE TERMS OF AND BECOME A PARTY TO THIS AGREEMENT WITH MSI. MSI DOES NOT AGREE TO ANY OTHER TERMS, INCLUDING WITHOUT LIMITATION ANY TERMS ON YOUR PURCHASE ORDERS OR INVOICES. IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN AGREEMENT WITH MSI REGARDING THE SOFTWARE ("SEPARATE AGREEMENT") SIGNED BY BOTH YOU AND MSI THAT EXPRESSLY STATES THAT IT GOVERNS YOUR USE OF THE MSI PRODUCTS AND THERE IS A CONFLICT BETWEEN THE PROVISIONS OF SUCH A WRITTEN AGREEMENT AND THIS AGREEMENT, THE ORDER OF PRECEDENCE SHALL BE (1) THE SEPARATE SIGNED AGREEMENT, AND (2) THIS AGREEMENT.

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, THEN MSI IS UNWILLING TO LICENSE THE LICENSED MATERIALS TO YOU, IN WHICH CASE YOU MAY NOT DOWNLOAD, INSTALL OR USE ANY OF THE LICENSED MATERIALS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT INITIATE USE OF THE PRODUCT. BY SELECTING "I ACCEPT," "OK," "CONTINUE," "YES," "NEXT" OR BY INSTALLING OR USING THE LICENSED MATERIALS IN ANY WAY, YOU ARE INDICATING YOUR COMPLETE UNDERSTANDING AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE PRODUCT.

YOU ACKNOWLEDGE AND AGREE THAT MSI HAS MADE THE CURRENT VERSION OF THIS AGREEMENT, INCLUDING THE TERMS AND CONDITIONS OF THE DOCUMENTS THAT ARE INCORPORATED IN THIS AGREEMENT BY REFERENCE, AVAILABLE TO YOU ON MSI'S WEBSITE. YOU ACKNOWLEDGE AND AGREE THAT, OTHER THAN THE ORDER FORM YOU ENTER INTO

WITH MSI, MSI MAY REVISE AND UPDATE THE TERMS AND CONDITIONS OF THE AGREEMENT FROM TIME TO TIME, INCLUDING TERMS AND CONDITIONS AND OTHER DOCUMENTS THAT ARE INCORPORATED IN THE AGREEMENT BY REFERENCE. MSI WILL MAKE SUCH REVISED AND UPDATED VERSIONS OF THE AGREEMENT AVAILABLE ON MSI'S WEBSITE, OR OTHERWISE PROVIDE YOU NOTICE OF THEM, AND YOUR CONTINUED USE OF THE SOFTWARE SHALL REPRESENT YOUR ACCEPTANCE OF AND AGREEMENT TO THE THEN-CURRENT TERMS AND CONDITIONS OF THE AGREEMENT. YOU AGREE THAT YOU WILL FREQUENTLY CHECK THE MSI WEBSITE FOR ANY REVISIONS AND UPDATES TO THE AGREEMENT.

1. Interpretation

- 1.1. Definitions. In this Agreement, the following capitalized terms shall have the following meanings set out below:

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with You or MSI (as applicable); where 'control' refers to ownership of more than fifty percent (50%) of voting securities.

"Delivery" means, (i) in the case of Software, when the Software is made available by MSI for End User to electronically download; (ii) in the case of Services, when the Services are rendered.

"Device" means each electronic device including without limitation (a) a physical device such as a computer, handheld device, workstation, console, server, or any other electronic device; (b) a virtual machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device on which MSI Software operates or is installed.

"Documentation" means, collectively, the official product operation instructions, release notes and user manuals or technical specifications, technical bulletins, or similar, provided by MSI for the Software, in electronic or written form.

"EMR Interface" means software code or scripts that allow communication or data sharing between MSI Software and Your electronic medical record system(s).

"Evaluation Products" means (i) Software released for purposes of testing and evaluation prior to such Software being made commercially available; or (ii) certain Products and related Documentation that MSI elects to make available to End User on a temporary basis for non-commercial use solely for internal evaluation purposes.

"Invoice" means the relevant MSI quotation, order and/or invoice.

"Item #" or "Item Number" is equivalent to stock keeping unit.

"Laws" means, collectively, all international and national laws, treaties, statutes, ordinances, regulations, and other types of government authority.

"Licensed Materials" means any MSI Software and Documentation licensed by MSI to You hereunder.

"MSI Hardware" means the pulmonary function testing hardware devices directly distributed by MSI.

"MSI Products" means the MSI Licensed Materials, Services, or MSI Hardware.

"Open Source Software" means third party software that MSI distributes with the Software or utilizes in development of the Software pursuant to (i) an open source license, including (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Microsoft Public License (Ms-PL), or any other license approved as an

open source license by the Open Source Initiative, and any derivative of the foregoing licenses; or (ii) any other license that requires, as a condition of use, modification, distribution and/or otherwise making available of such software, that the software or other software combined and/or distributed with it be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“Order Form” means MSI’s standard order form, statement of work (“SOW”), signed Quote, Customer purchase order, or similar ordering document that (i) incorporates the terms of this Agreement and sets forth Products and Services ordered by Customer and any associated fees and (ii) has been agreed upon by manual or electronic signatures or agreed through other electronic means or, generally, submitted with clear intent and accepted by MSI.

“Party” or “Parties” means, individually each party hereto, and collectively all the parties to this Agreement.

“PFT Hardware” means the pulmonary function testing hardware devices, generally, with which MSI Software communicates directly or for which MSI Software can import and manage clinical diagnostic data.

“Products” means the MSI Products and/or the Third-Party Products sold or distributed by MSI.

“Professional Services” means the installation, configuration, training, and other services that MSI may provide to an End User pursuant to a SOW.

“Quote” or “Quotation” means an MSI sales quotation which sets out Products and Services by SKU, and/or Professional Services and which may include corresponding Product descriptions and details of the applicable Services.

“Reseller” means an authorized reseller or distributor of MSI.

“Services” means Support or other services MSI may provide pursuant to this Agreement.

“SKU-based Service” means a standardized short-term commercial service offered by MSI to End Users under a product stock keeping unit (SKU) without a separate statement of work, relating to the MSI Software and its installation, configuration, operation, implementation, training, testing and/or tuning, all as further described in MSI brochures, Documentation, Quotations or Estimates. Delivery of any SKU-based Services purchased is to be as mutually agreed upon by MSI and You, via Order Form, or other mutually acceptable means of purchase.

“Software” means machine-readable computer software programs licensed by MSI to You hereunder including any software provided to You for use on a subscription or term basis, and all applicable Updates to any of the foregoing, and any original works of authorship fixed in any tangible medium of expression, now known or later developed, that are created by MSI under this Agreement for You or at Your direction, including without limitation routines, protocols, tools, code, interface extensions, and scripts, reports, and all copyrights and proprietary rights relating thereto. The term “Software” shall exclude Open-Source Software.

“Support” means those technical support and maintenance services for the Software made available by MSI under this Agreement.

“Third Party Products” means any products You may use alongside or in conjunction with MSI Products and which are not MSI-manufactured Products.

“Updates” means with respect to Licensed Materials any MSI-approved periodic patches, bug-fixes, workarounds, error corrections, enhancements, and additions

and other modifications thereto, or revised versions thereof, which may be made available from time to time.

“User” or “End User” means an individual authorized by You to use the Software and Documentation, for whom You have purchased a license or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors.

- 1.2. Use of the singular includes the plural (and vice versa) and use of any gender includes the other genders. General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms “including”, “include”, “in particular” or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.
- 1.3. Context. Unless otherwise defined herein, the capitalized terms used in this Agreement shall be defined in the context in which they are used. This Agreement relates to and governs Your use of MSI Products and MSI Software. Except as the context otherwise requires, references herein to this “Agreement” shall mean collectively this Agreement, each Order Form accepted in writing by MSI from You, and any applicable exhibits. All Order Forms shall be governed by, subject to, and construed in accordance with this Agreement. In the event of a conflict between the provisions of this Agreement and any Order Form, the provisions of this Agreement shall control, except to the extent that any such Order Form specifically provides that such Order Form is intended to supersede the applicable provisions of this Agreement.

2. Grant of License

- 2.1. Software License. Subject to the terms and conditions of this Agreement and in accordance with the applicable Documentation and the License Type, License Model and quantities of licenses purchased and paid for by You, MSI hereby grants You (as applicable) (i) a non-exclusive, non-transferable, non-sublicensable license (except as set forth within this Agreement) to use the Software, and (ii) a limited right to maintain one (1) backup, unmodified copy of the Software for archival purposes.
- 2.2. Registration. In order to use the Products, You may be required to input a registration number, product authorization key or otherwise register Your Products with MSI to obtain the necessary license key or license file. You may be required by MSI to provide any or all of the following as condition of using MSI Software: Your address, phone number, primary e-mail address, e-mail addresses of Your Users, PFT Hardware serial numbers, and/or other reasonable, usual, and/or customary business information that may be required by MSI to conduct its own business operations, provide You with Support, and for MSI to satisfy its regulatory requirements.
- 2.3. Ownership. You may own the Devices upon which the Licensed Materials are stored, used, or installed, but MSI retains all title, copyright, and other intellectual proprietary rights in, and ownership of, the Licensed Materials.
- 2.4. License Grant Limitations. Users shall use and/or access the Software solely on behalf of, and for the benefit of, You or Your applicable Affiliates and in accordance with the license purchased and the terms of this Agreement. You shall be

- responsible for all acts and omissions committed by any Users and any actions by such Users that would be a breach of this Agreement, if taken by You, shall be deemed a breach of this Agreement. You agree that Your license of the Software is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by MSI with respect to future functionality or features.
- 2.5. MSI provides the Software under one (1) general license type (“License Type”):
- 2.5.1. “Subscription License.” A time-limited license to use the Software that expires at the end of a specified period. For the purposes of this Agreement, each license may also be referred to as a License Seat. Software licensed under a Subscription License (“Licensed Software”) may contain disabling code to automatically disable itself upon the expiration of the subscription term.
- 2.5.2. Within the License Type, MSI offers the following five (5) license models (“License Models”):
- 2.5.2.1. “PFT Hardware-Limited.” Under the PFT Hardware-Limited model, You are licensed the Software for each unit of PFT Hardware with which the Software is to be used.
- 2.5.2.2. “PFT Hardware-Based.” Under the PFT Hardware-Based model, You are licensed the Software for each unit of PFT Hardware with which the Software is to be used, plus a specified number of additional licenses for use on additional Devices.
- 2.5.2.3. “Enterprise License.” (“EL”) Enterprise licenses are License Seats granted in larger quantities with some flexibility to scale for larger organizations. EL is further defined in Section 4.
- 2.5.2.4. “EMR Interface License.” EMR Interface licenses are generally, but not necessarily, granted at the organizational level and correspond directly to a single ComPAS EMR interface instance. Refer to the Order Form for details about Your EMR Interface License, if applicable.
- 2.5.2.5. “Non-Commercial License.” Under the Non-Commercial license model, You are licensed the Software for non-commercial, academic, or educational use. MSI retains sole discretion in the granting of non-commercial licenses and reserves the right to refuse or revoke non-commercial licenses at any time.
- 2.6. Order Form. The Order Form and/or Invoice shall set forth the License Type, License Model, quantity, and means of provisioning the Software which you are licensing.
- 2.7. Evaluation. If the Software is offered to You for evaluation purposes and provided on a trial use basis then, notwithstanding any contrary provision in this Agreement, You are permitted to use the Software only for internal demonstration, test or evaluation purposes in a non-production environment, and for the period specified on the software license (if not indicated, this period will be forty-five (45) days from Delivery) following which, Your License shall expire and the Software may automatically disable itself. You acknowledge that MSI is not obligated to permit further use of the Software past the expiration date.

3. Scope of Use

- 3.1. Scope. Your use of MSI Software may not exceed the applicable number of License Seats purchased and other limitations associated with the fees paid or payable by You for such use. You may not deploy or use such Licensed Materials in a manner that exceeds the term of subscription, the permitted number of users, server size or connections, or other subscription or term limitations associated with the applicable fees paid or payable by You.

4. Enterprise License

- 4.1. Enterprise License. MSI's Enterprise License ("EL") generally allows for unlimited use of the Software throughout the Customer's organization and Affiliates, although there may be restrictions and limitations. The Order Form, Invoice, and/or separate agreements You may enter into with MSI, shall set forth any applicable restrictions on, or limitations of, the Enterprise License.
- 4.2. License Count. You agree and represent that, at the time of purchase, the quantity of License Seats in the Invoice is greater than or equal to Your users ("User Count") and/or, depending on the relevant License Model or Models upon which your EL is granted, Your total number of PFT Hardware units (collectively, the "License Count"). Your Affiliate or Affiliates may use the Software You license under the EL only if You have included the total number of such Affiliate's or Affiliates' users and/or PFT Hardware units in Your total License Count.
- 4.3. True Forward. If so requested by MSI, You shall provide an updated License Count, at least thirty (30) days but not more than ninety (90) days prior to each annual period during the term of the Agreement. Any increase in total License Seats will be added as additional licenses and You will be invoiced accordingly for the next annual period. The License Count cannot be decreased at any time during the Initial Term unless specifically agreed to by the Parties in writing.

5. License Restrictions; Obligations

- 5.1. License Restrictions. You agree not to directly or indirectly: (i) sell, lease, rent, distribute, sublicense, assign or transfer any of the Licensed Materials; (ii) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to determine the source code of any of the Licensed Materials, except to the limited extent permitted by law; (iii) modify, make error corrections to or create derivative works based on the Licensed Materials; (iv) use any Licensed Materials for the benefit of any third parties (e.g., in an ASP, SaaS, outsourcing or service bureau relationship), or in any way other than in its intended manner, except as otherwise permitted by MSI; (v) publish, broadcast, circulate or otherwise disseminate any material based on or referencing the Products or Licensed Materials without the express prior written consent of MSI; (vi) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the Hardware or within the Licensed Materials; (vii) disable or circumvent any access control or related security measure, process or procedure established with respect to the Licensed Materials or any other part thereof; or (viii) use the Products in any manner that violates applicable law or the rights of any third party, including, without limitation, third parties with which You have a commercial or contractual relationship.

- 5.2. Usage. You are responsible for all use of the Products obtained by You and for compliance with this Agreement; any breach of this Agreement by You or other users in connection with the use of those Products obtained by You shall be deemed to have been made by You.
- 5.3. Your Obligations. You acknowledge, agree, and warrant that: (i) You are and will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software and Documentation and notify MSI; (ii) You and Your Users will comply with all applicable local, state, federal, and international laws; (iii) You will use the Software only in accordance with the Documentation, and you will ensure that the Software is installed on a supported platform as set forth in the Documentation and that the Software is used only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Software; (v) You are legally able to process and provide Your Data to MSI, including obtaining appropriate consents or rights for such processing; (vi), You have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vii) You will keep Your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Software and Documentation.

6. Intellectual Property; Title

- 6.1. Ownership of MSI Intellectual Property. This Agreement does not transfer to You any title or any ownership right or interest in any Licensed Materials or in any other intellectual property rights of MSI. You acknowledge that the Licensed Materials contain, embody, and are based upon patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned by MSI. In all instances, Licensed Materials are licensed to You pursuant to this Agreement and not sold to You. Except to the extent otherwise agreed to in writing by MSI, any deliverables produced by MSI in connection with any SKU-based Services, Professional Services, or any other contract for services, and all rights in and to such deliverables (including, without limitation, all patent, copyright, trademark, trade secret, and other intellectual property rights), shall be the sole and exclusive property of MSI. To the extent any such deliverables are produced, and except to the extent otherwise agreed to in writing by MSI, MSI grants a limited, non-exclusive, non-transferable, royalty-free license to You to use such deliverables during the term specified in the applicable services contract, or, if no such term is specified, during the term of this Agreement, for Your internal operations.
- 6.2. Ownership of Your Data. You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property, and other proprietary rights in and to Your Data. MSI's right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.

7. Fees and Payment; Taxes

- 7.1. Payments, generally. The terms of payment are governed by MSI's General Terms and General Terms and Conditions of Business found at <https://www.morgansci.com/legal/general-terms-conditions> or, if applicable, other duly executed contracts or agreements the Parties that may supplement or prevail over the General Terms and Conditions of Business and thereby bind the Parties to the certain payment terms and conditions therein.
- 7.2. Payments, Subscription Licenses. The following specific terms apply to the payment of fees for Subscription Licenses:
 - 7.2.1. You shall pay MSI the fees as described in the applicable Invoice ("Fees") on the dates indicated therein.
 - 7.2.2. For Subscription Licenses, all Fees shall be paid in advance of the subscription period to which such payment relates.
 - 7.2.3. Unless otherwise set forth herein, fees shall be at MSI's then-standard rates at the time of Invoice or, if applicable, as set forth in the Order Form.
 - 7.2.4. If You fail to pay as so required, MSI shall be entitled, at its sole discretion, to: (i) suspend the license to the Software until You fulfill Your pending obligations; (ii) charge You an interest rate; and/or (iii) terminate this Agreement.
 - 7.2.5. If You or your Users exceed the license capacity designated in Your Order Form, in addition to MSI's other remedies, You will be charged, and You shall pay, the then-current list price for the excess usage, which will be reflected in Your Invoice.
 - 7.2.6. If a payment date is not otherwise specified in the applicable Order Form or Invoice, all Fees for Licensed Software shall be paid within thirty (30) days from the Invoice date without offset or deduction.

8. Support and Maintenance Services

- 8.1. Support and Software Maintenance Services. Standard Support and Software Maintenance Services ("Support") are included in the price of the Software when purchased as a Subscription License or Enterprise License. As such, Licenses may also be described as "Use and Support" licenses. Except as set forth herein, You have no rights to any Updates or Upgrades unless You maintain an active Subscription License with its associated Support and Maintenance entitlement. To be eligible for Support, You are required to purchase licenses for all of Your License Seats. All Support and Software Maintenance Services are subject to MSI's then-current Supplemental Terms for Support and Maintenance Services found at <https://www.morgansci.com/legal/software-support-maintenance/>.

9. Professional Services and Training

- 9.1. Statement of Work ("SOW"). You may engage MSI to provide certain Professional Services pursuant to a statement of work or similar document, including a Quote, Invoice, or Order Form, whether in print or online, which describes the tasks or services to be provided. Each SOW shall incorporate this Agreement by reference, be governed by and subject to the terms and conditions of this Agreement, and in the event of any conflict or inconsistency between this Agreement and the SOW, this Agreement shall take precedence. Professional Services are subject to MSI's then-

current Supplemental Terms for Professional Services found at <https://www.morgansci.com/legal/professional-services-agreement/>.

10. Term and Termination

- 10.1. Term. Unless otherwise agreed upon in writing by MSI or terminated earlier in accordance with this Agreement, the term of this Agreement for the relevant Software will begin on the Effective Date and will continue for the period set forth in the Order Form or, if none is set forth in the Order Form, for a period of twelve months ("Initial Term"). Following the Initial Term, this Agreement will automatically renew and continue for successive twelve (12) month periods, unless terminated sooner in accordance with its express provisions. You hereby authorize MSI to automatically renew Your Subscription License for the Software for each such additional twelve-month period (each a "Renewal Term," and collectively with the Initial Term, the "Term").
- 10.2. Your Rights. You may terminate this Agreement at any time by providing MSI with thirty (30) days' prior written notice of Your intention to terminate this Agreement. The thirty (30) day termination period will commence on the first day of the full calendar month after receipt of the termination notice.
- 10.3. Termination by MSI. Unless as otherwise set forth herein, and in addition to any other right or remedy MSI may have, MSI may suspend or terminate the Agreement upon thirty (30) days' prior written notice or immediately: (i) if You become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (ii) if You infringe or misappropriate MSI's intellectual property rights; (iii) if You breach this Agreement, including failure to make any payment due hereunder; or (iv) pursuant to or in compliance with applicable law or our receipt of a subpoena, court order, or other request by a law enforcement agency.
- 10.4. Effect of Termination. Termination shall not relieve You of the obligation to pay any fees or other amounts accrued or payable to MSI through the end of the current Term. You shall not receive a credit or refund for any fees or payments made prior to termination. Without prejudice to any other rights MSI may have, upon termination, You must cease all use of the Software, MSI Marks, MSI Content and Documentation and destroy or return (upon request by MSI) all copies of the Software, MSI Content and Documentation and destroy all materials bearing the MSI Marks. You further acknowledge and agree that You will retrieve Your Data or copies of Your Data from MSI within five (5) business days of the termination of this Agreement. Unless in accordance with our internal policies, contractual, legal, or other obligation, You acknowledge and agree that MSI has the right to delete Your Data, including any and all copies thereof. Your Data, once deleted, will not be able to be recovered. Sections 1 (Interpretation), 6.1 (Ownership of MSI Intellectual Property), 6.2 (Ownership of Your Data), 7.1 (Fees and Payment); 7.2 (Taxes); 10.4 (Effect of Termination), 11 (Data; Protection of Your Data); 12 (Confidential Information), 13.2 (Warranty Disclaimer), 14 (Indemnification), 15 (Limitation of Liability), and 17 (General), shall survive any termination or expiration of this

Agreement, along with any other provisions which by their express terms do survive or by their nature should survive.

11. Data; Protection of Your Data

- 11.1. Your Data. You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Software and that MSI is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data.
- 11.2. Protection of Data. Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical, and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data. You are responsible for ensuring that the security of the Software is appropriate for Your intended use and the storage, hosting or processing of Personal Data.
- 11.3. Protected Health Information. MSI recognizes its status as a Business Associate under the definitions contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the HITECH Act of 2009 ("HITECH"). As a Business Associate, MSI shall comply with its applicable HIPAA and HITECH regulations pertaining to the Privacy and Security Rules of electronic Protected Health Information ("ePHI"). All ePHI handled by MSI Software is processed, stored, transmitted, and received on Your information systems. No ePHI is stored on MSI servers, workstations, or information systems ("MSI systems"). MSI's security posturing is to actively avoid any ePHI ever touching MSI systems. Instead, ePHI is accessed on Your information systems via Your granted, temporary, limited, and secure means mutually agreeable to MSI and its Customers.

12. Confidential Information

As used in this Agreement, "Confidential Information" means any nonpublic information or materials disclosed under this Agreement by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, which the disclosing party clearly identifies as confidential or proprietary. Confidential Information includes Personal Data, and MSI's Confidential Information includes the Software, and any information or materials relating to the Software (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party. The receiving party will: (i) hold the disclosing party's Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth in this Agreement. The restrictions will not apply to Confidential Information, excluding Personal Data, to the extent it: (i) is (or through no fault of the recipient, has become) generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iii) was known to the receiving party without such restrictions prior to

receipt from the disclosing party; or (iv) was independently developed by the receiving party without breach of this Agreement or access to or use of the disclosing party's Confidential Information. The recipient may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided that the receiving party will provide to the disclosing party prompt notice, where permitted, of such order and will take reasonable steps to contest or limit the steps of any required disclosure. The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 12 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

13. Limited Warranty and Warranty Disclaimer

- 13.1. Limited Warranty. MSI warrants for the Warranty Period (as defined below) that the Licensed Software (not including any Third-Party Components) will conform in all material respects in accordance with its Documentation. If, during the Warranty Period, the Licensed Software fails to comply with the limited warranty set forth in this Section and such failure is not excluded from this warranty pursuant to Section 13.2, MSI shall, subject to You promptly notifying MSI in writing of such failure, at its sole option, repair or replace the Licensed Software, provided that You provide MSI with all information MSI reasonably requests to resolve the reported failure, including sufficient information to enable MSI to recreate such failure. For purposes of these Terms, "Warranty Period" is one (1) year after Your initial access to the Subscription License. The remedies set forth in this Section 13.1 are Licensee's sole remedies and Licensor's sole liability under the limited warranty set forth in this Section 13.1.
- 13.2. WARRANTY DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 13.1, THE SERVICE IS PROVIDED "AS IS" AND MSI SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. MSI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. MSI MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE, THE LICENSED SOFTWARE OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

14. Indemnification

- 14.1. MSI Indemnification. Subject to Section 15 below, MSI will indemnify, defend, and hold You harmless from any third party claim brought against You that the Services, Software, Documentation, MSI Content, or MSI Marks infringes or misappropriates any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party (an "Infringement Claim"), provided: (i) use of the Services,

- Software, Documentation, MSI Content, and MSI Marks by You is in conformity with the Agreement and Documentation; (ii) the alleged infringement is not caused by modification or alteration of the Services, Software, Documentation, MSI Content, or MSI Marks; (iii) the alleged infringement was not caused by a combination or use of the Services, Software, Documentation, MSI Content, or MSI Marks with products or content not supplied by MSI; and/or (iv) You have not continued to use the Services, Software, Documentation, MSI Content, or MSI Marks after You are notified of the alleged infringement and provided with Services, Software, Documentation, MSI Content, or MSI Marks that avoids the alleged infringement. MSI indemnification obligations are contingent upon You: (i) promptly notifying MSI in writing of the Infringement Claim; (ii) granting MSI sole control of the selection of counsel, defense, and settlement of the Infringement Claim; and (iii) providing MSI with reasonable assistance, information and authority required for the defense and settlement of the Infringement Claim. This Section states MSI's entire liability (and shall be Your sole and exclusive remedy) with respect to Infringement Claims.
- 14.2. Your Indemnification. You agree to indemnify, defend, and hold harmless MSI and its directors, officers, employees, and agents from and against any claims, liabilities, damages, costs, and expenses (including attorneys' fees and expenses) arising out of or due to: (i) Your Data; (ii) Your (or Your User's) breach of this Agreement; (iii) Your (or Your User's) use of the Software or Documentation or MSI Content in violation of third party rights, including any intellectual property or privacy rights, or any applicable laws; or (iv) Your (or Your User's) misuse of the Software or Documentation, MSI Content, or MSI Marks.

15. Limitation of Liability

- 15.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL MSI OR ITS DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER DAMAGES OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION, MSI CONTENT, MSI MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF MSI AND ITS AFFILIATES, AND ITS DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY AVAILABLE TO YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION, MSI CONTENT, MSI MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO MSI UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.

16. Third-Party Programs

- 16.1. To the extent the Software is bundled with third-party software programs, the third-party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to Your use of the third-party software programs. Copyright notices and additional license terms for Third-Party Programs will be provided in the Software's "About" screen or in the Documentation that accompanies the Software. Nothing in this Agreement limits You or Your user's rights under, or grants You or Your User rights that supersede, the terms of any such third-party software program. If You do not agree to the license terms applicable to this third-party software, then You agree that You shall not use the Software or the third-party software.

17. General

- 17.1. Notices. All notices must be in writing and shall be mailed by registered or certified mail to Morgan Scientific, Inc., Attn: VP, Business Operations, 151 Essex St, 8th Flr, Haverhill, MA, 01832 and sent via email to legal@morgansci.com (with evidence of effective transmission).
- 17.2. Entire Agreement; Precedence. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, agreements, and understandings, written or oral, with respect to the subject matter hereof. If there is a conflict or inconsistency between the provisions of this Agreement and the documents otherwise referred to in this Agreement, the conflict or inconsistency will be resolved in the following order of precedence, with the first document listed having the highest precedence and the last document listed having the lowest precedence: the Agreement; the Order Form; any invoice issued by MSI hereunder; and any other document referred to in this Agreement. In addition, any and all additional or conflicting terms provided by You, whether in a purchase order, an alternative license, or otherwise, shall be void and shall have no effect.
- 17.3. Assignment. You may not assign any of Your rights under this Agreement or delegate Your performance under this Agreement, whether voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without MSI's prior written consent. MSI may assign its rights and delegate its performance under this Agreement to: (i) any entity that acquires all or substantially all of MSI's assets or substantially all of the assets of that portion of MSI's business that manages this Agreement; (ii) any affiliate that controls, is controlled by, or is under common control with MSI; or (iii) any successor in a merger, acquisition, or reorganization, including any judicial reorganization. Any purported assignment of rights or delegation of performance by You in violation of this Section is void. This Agreement is binding upon, and will inure to the benefit of, the Parties hereto and their permitted assigns and successors-in-interest.
- 17.4. Export Control Laws. The Software, and Documentation delivered to You under this Agreement are subject to export control laws and regulations of the United States and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. You shall abide by all

- applicable export control laws, rules, and regulations applicable to the Software, and Documentation. You agree that You are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Software or Documentation due to export restrictions and that You will not export, re-export, transfer, or permit the use of the Software or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.
- 17.5. **Modifications.** We may modify the terms and conditions of this Agreement (including MSI policies) from time to time, with notice given to You by email, through the Software or through our website. Generally, this will be done annually. Together with notice, we will specify the effective date of the modifications. Our products and business are constantly evolving, and we may make modifications, including during Your then-current License Term, in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications that, considered as a whole, would substantially diminish our obligations during Your then-current License Term. Modifications will take effect automatically as of the effective date specified in the updated Agreement or policies.
- 17.6. **Severability.** If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.
- 17.7. **Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.
- 17.8. **Remedies.** MSI's rights and remedies set forth in this Agreement are cumulative and are not intended to be exhaustive.
- 17.9. **Force Majeure.** MSI will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including: acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; war; or any other cause beyond its reasonable control (whether similar or dissimilar to the foregoing).
- 17.10. **Construction.** Paragraph headings are for convenience and shall have no effect on interpretation.
- 17.11. **Governing Law.** The validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and of the United States, without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to the exclusive jurisdiction of the state and federal courts in Boston, Massachusetts. You hereby waive all rights to trial by jury with respect to any dispute arising out of or relating to this Agreement or Your use of the Software, Documentation, MSI Marks, or MSI Content. If You have

any claim arising out of relating to this Agreement or the Software, Documentation, MSI Marks, or MSI Content, You must bring the claim in an appropriate court as set forth in this Section within two (2) years after Your right to bring the claim accrued. If MSI brings litigation against You regarding this Agreement or the Software, Documentation, MSI Marks, or MSI Content, in addition to any other relief to which MSI may be entitled, MSI shall be entitled to recover reasonable attorneys' fees, expenses, and costs of litigation. If this Agreement is translated into a language other than English and there are conflicts between the translations of this Agreement, You agree that the English version of this Agreement shall prevail and control.

- 17.12. Third Party Rights. Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.
- 17.13. U.S. Government Use. MSI's Software and Documentation were developed exclusively at private expense and are a "commercial item" as defined in Federal Acquisition Regulation ("FAR") 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Software, Documentation, and related items consist of "commercial computer software," "commercial computer software documentation," and commercial technical data as defined in the applicable acquisition regulations, including FAR 2.101 and FAR Part 12. Use, duplication, release, modification, transfer, or disclosure ("Use") of the Software and Documentation are restricted by this Agreement and in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202 and FAR Section 12.212, and the Software, and Documentation are licensed (i) only as commercial items; and (ii) with only the rights granted to commercial end users pursuant to this Agreement. Such Use is further restricted by FAR 52.227-14, 252.227-7015, or similar acquisition regulations, as applicable and amended. Except as described herein, all other Use is prohibited. This Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing government rights under this Agreement or any other contract under which the Software or Documentation is acquired or licensed. Manufacturer is Morgan Scientific, Inc., 151 Essex St, 8th Flr, Haverhill, MA, 01832.
- 17.14. Publicity. Unless You request in writing to opt out of this Section 17.14, You agree to be identified as a customer of MSI and agree that MSI may refer to You by name, trade name and/or trademark, if applicable, and may briefly describe Your business in MSI's marketing materials and on MSI's websites. You hereby grant MSI a license to use Your name and any of Your trade names and trademarks solely in connection with the rights granted to MSI pursuant to this Section 17.14. You also grant MSI the right to add Your name and company logo to its customer list and website.
- 17.15. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.