

## **MERGE HEALTHCARE END USER LICENSE AGREEMENT** **(the "Agreement")**

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE SOFTWARE, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE SOFTWARE; AND PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE SOFTWARE WAS DOWNLOADED, DESTROY ALL COPIES OF THE SOFTWARE.

1. **DEFINITIONS.** "**Affiliate**" means any legal entity that a party controls, controls it, or with which it is under common control. Control means to own or control, directly or indirectly, over 50% of voting shares. "**Confidential Information**" means information of a Party ("**Disclosing Party**") that the other Party ("**Receiving Party**") receives in connection with the Agreement, which based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential to Disclosing Party, including, without limitation, the Software, Documentation, the pricing of Products and Services, the provisions of the Agreement and a Party's information that is defined as a 'trade secret' under applicable law ("**Trade Secret**"). "**Documentation**" means user and system administrator guides and manuals and similar documentation generally supplied by Merge to its licensees to assist them in the use of the licensed Software. "**End User**," "**Licensee**" or "**you**" means the end user of the Software. "**Third Party Products Page**" means the section of the Merge Web Page that contains the specific terms applicable to Third Party Products, if any, purchased under the Sales Order. "**Merge**" means Merge Healthcare Solutions, Inc., an IBM company. "**Merge Software**" means Software that is proprietary to Merge and is licensed to Licensee as set forth in the Sales Order. "**Merge Web Page**" means the page on Merge's website found at <http://www.merge.com/legalterms.aspx>. "**Party**" means Merge or Licensee; "**Parties**" means Merge and Licensee. "**Professional Services**" means installation, implementation, integration, configuration, consulting, training and other professional services provided by Merge to Licensee. "**Services**" means Professional Services and Support Services. "**Software**" or "**Products**" means the software identified in the Sales Order and provided by Merge hereunder, including Updates thereto that Merge provides to Licensee. "Software" is the standard version of the applicable software product at the release level current as of the date of the Sales Order and is provided in object or executable code form. "**Support Services**" means the technical support and maintenance of the Products as set forth at [http://www.merge.com/common/Terms-\(1\).aspx](http://www.merge.com/common/Terms-(1).aspx). "**Third Party Product**" means a product other than a Merge Product that is identified on the Sales Order as 'Third Party Hardware', 'Third Party Software', 'Third Party Product', or with the name of a Third Party Vendor. "**Third Party Vendor**" means a third party vendor from which Merge obtains Third Party Products. "**Update**" means a version the Merge Software and/or Documentation that is from time-to-time released and that may include updates, modifications, bug fixes, corrections, and feature enhancements to the Merge Software and Documentation. Updates do not include new Merge products or modules that are marketed and priced separately by Merge or releases that materially increase the functionality of the Software. Whether a software release constitutes an Update is in Merge's sole discretion.

2. **SOFTWARE LICENSE AND OTHER PRODUCT SPECIFIC TERMS.** The Software is owned by Merge or Merge suppliers, and is copyrighted and licensed, not sold. Subject to the terms of the Sales Order, Merge grants Licensee a nonexclusive, non-sublicensable, non-transferrable, internal license to 1) use the Software up to the authorized use specified in the Sales Order, 2) make and install copies to support such authorized use, and 3) make a backup copy, all provided that a. Licensee has lawfully obtained the Software and complies with the terms of this Agreement; b. the backup copy does not execute unless the backed-up Software cannot execute; c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Software; d. Licensee ensures that anyone who uses the Software (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement; e. Licensee does not 1) use, copy, modify, or distribute the Software except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Software, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Software's components, files, modules, audio-visual content, or related licensed materials separately from that Software; or 4) sublicense, rent, lease the Software or use the Software for outsourcing. All Software licensed under this Agreement will be delivered electronically. Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with software.

### **3. THIRD PARTY TERMS AND SEPARATELY LICENSED CODE.**

3.1. **Third Party Code.** The Software may include third party code that Merge, not the third party, licenses to Licensee under this Agreement. The following terms apply to such third party code. Oracle or its licensor retains all ownership and intellectual property rights to the Oracle programs included with the Software. Licensee is prohibited from publicizing any results of benchmark tests run on the Oracle programs. Oracle is a third party beneficiary of this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement or Licensee's use of or rights in the Software. Some Oracle programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of this Agreement. Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the application package documentation and such third party technology is licensed to Licensee only for use with the application package under the terms of the third party license agreement specified in the application package documentation or as otherwise notified by you and not under the terms of the Agreement. All Software licensed under this Agreement will be delivered electronically. Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with software.

3.2. **Separately Licensed Code.** The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. The Software may include components that are "Separately Licensed Code"

as identified in the notices file that accompanies the Software. Separately Licensed Code is licensed to Licensee under the terms of the applicable third party license agreement(s) set forth in the Notices file. Notwithstanding any of the terms in the Agreement, or any other agreement Licensee may have with Merge, the terms of such third party license agreement(s) governs Licensee's use of all Separately Licensed Code unless otherwise noted below. Future Software updates or fixes may contain additional Separately Licensed Code. Such additional Separately Licensed Code and related licenses are listed in another file that accompanies the Software update or fix. Licensee acknowledges that Licensee has read and agrees to the license agreements contained in the "Notices and Information for Excluded file(s)". If Licensee does not agree to the terms of these third party license agreements, Licensee may not use the Separately Licensed Code.

#### **4. TERMINATION**

4.1. Termination. A license of Software may be terminated By Merge if Licensee breaches any provision of the Agreement and such breach has continued uncured for a period of 30 days after receiving written notice of the breach. Upon termination, Licensee must discontinue use, destroy or promptly return all copies of the Software and documentation to the party from whom Licensee acquired the Software.

4.2. Survival. All provisions of the Agreement which by their nature are intended to survive the termination of the Agreement (including, without limitation, the provisions of Sections 3, 5, 6, 7, 8, 9 and 10) shall survive such termination.

#### **5. CONFIDENTIALITY**

5.1. Obligations as to Confidential Information. A Receiving Party shall (i) limit access and use of Disclosing Party's Confidential Information to those of Receiving Party's employees and agents that require such access and use in connection with the Agreement and who are bound by confidentiality provisions no less restrictive than those in the Agreement; (ii) not disclose Disclosing Party's Confidential Information to third parties, unless authorized under this Section 5.1; (iii) protect Disclosing Party's Confidential Information as it protects its own Confidential Information, but in any event with not less than a reasonable degree of care; and (iv) not use Disclosing Party's Confidential Information for any purpose except as required to perform its obligations hereunder or as otherwise specifically permitted hereunder. Each Receiving Party shall take appropriate action with its employees, authorized users, and other authorized third parties, to satisfy its obligations hereunder. The obligations set forth above in this section shall survive termination of the Agreement and continue thereafter for five (5) years following termination, except that for Confidential Information consisting of a Party's trade secrets, the Confidentiality Period shall be extended for as long as such Confidential Information remains a trade secret. Either Party may disclose the existence and general nature of the Agreement, but may not, without the prior consent of the other Party, disclose the specific terms of the Agreement.

5.2. Exceptions. Nothing in this Article shall prevent Receiving Party from disclosing Confidential Information to a third party to the extent that such Confidential Information is: (i) previously known to Receiving Party prior to disclosure by Disclosing Party, without any obligation of confidentiality; (ii) publicly known or becomes publicly known through no breach of the Agreement by Receiving Party; (iii) rightfully received from a third party under no confidentiality obligation with respect to the Confidential Information; or (iv) independently developed by Receiving Party without use of Disclosing Party's Confidential Information.

5.3. Mandatory Disclosure. If any judicial, legislative or administrative body requests or threatens to compel disclosure of Confidential Information, Receiving Party shall, if legally permitted to do so, promptly notify, Disclosing Party. Receiving Party will comply with reasonable requests of Disclosing Party to assist Disclosing Party, at Disclosing Party's expense, in obtaining a protective order and to prevent or minimize the disclosure of any Confidential Information, and Receiving Party may then disclose Confidential Information only if, and to the extent, required by law.

#### **6. INDEMNIFICATION**

##### **6.1. Intellectual Property Infringement**

(a) Indemnity. Merge will defend Licensee against any third party claim that the Merge Software acquired under an Sales Order infringes a patent or copyright (a "Claim") and will defend Licensee against that claim and pay amounts finally awarded by a court against Licensee or included in a settlement approved in advance and in writing by Merge, provided that Licensee: (i) notifies Merge in writing of the Claim within ten (10) days of Licensee learning of same; (ii) promptly supplies all information requested by Merge; and (iii) allows Merge to control and reasonably cooperates in the defense and settlement of the Claim, including mitigation efforts.

(b) Additional Remedies. In the event any Merge Software becomes the subject of a Claim, or in Merge's sole opinion is likely to become the subject of a Claim, Merge may, at its option and expense, either: (i) obtain for Licensee the right to continue using the Merge Software; or (ii) replace or modify the Merge Software with functionally equivalent software to make it non-infringing. Notwithstanding the foregoing, if Merge, in its sole discretion, determines that neither of the said options is commercially reasonably available, Merge may terminate Licensee's license for the infringing Merge Software, in which event Merge shall refund to Licensee (1) a pro rata portion of the license fees paid by Licensee for the infringing Merge Software (as depreciated over a five-year life), and (2) any prepaid fees attributable to the period subsequent to termination.

(c) Exclusions. Merge's obligations in the event of infringement, under this Section 6.1 or otherwise, shall not apply to a Claim that arises from or relates to: (i) use of the Product, Support Services or Professional Service other than as set forth in the Agreement and in the then-current version of the Documentation; (ii) any modification or alteration to or of the Software or Hardware performed by anyone other than Merge or its designees; (iii) Merge's compliance with Licensee's instructions; (iv) Licensee's use of a superseded or altered release of the Software or model of the Hardware if the infringement would have been avoided by use of the current unaltered release of the Software or model of the Hardware; (v) combination, operation or use with software, hardware, information, data or other materials, whether or not approved or supplied by Merge, if infringement (including, without limitation, contributory infringement) would have been avoided by use without such software, hardware, information, data or other materials; or (vi) use of the Software or Hardware after Merge's notice to cease use of the Software or Hardware due to a claim of infringement.

(d) Sole Recourse. THIS SECTION 6.1 STATES MERGE'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE

REMEDY FOR ANY ACTUAL OR CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT BY, OR WITH RESPECT TO, THE PRODUCTS AND SERVICES.

6.2. Medical Responsibility; Licensee Indemnity. Licensee acknowledges and agrees that Merge is not engaged in the practice of medicine, and is not determining appropriate medical use of any of the Products and Services. All medical treatment and diagnostic decisions related to or connected with the Products and Services, including those arising from the analysis of images, are solely the responsibility of Licensee and its professional healthcare providers. Licensee shall indemnify, hold harmless, and, if requested by Merge, defend Merge and its Affiliates from and against all claims brought by a third party to the extent such claim is based upon or arises out of or is connected with any of the following: (a) professional malpractice, misdiagnosis, or any other medical treatment matter whatsoever in connection with the use by Licensee, Licensee personnel, clients, or any third parties, of any Product or Service, except to the extent that the Claim is the direct result of a negligent action or omission of Merge or its agents or any defect of the Merge Software; (b) use of the Products by Licensee or any authorized user other than as authorized under the Agreement; or (c) any breach of the Agreement by Licensee; or (d) any unlawful or negligent or willful acts or omissions of Licensee or of any authorized user.

## **7. WARRANTIES**

7.1. Warranties. Merge warrants that Merge Software used in its specified operating environment conform to its official published specifications. The warranty period for Merge Software is one year. During the Merge Software warranty period, Merge warrants that (a) the Merge Software will perform in substantial conformity with the functional specifications contained in the Documentation, and (b) the media on which the Merge Software is delivered will be free of defects. If Merge Software does not function as warranted during its warranty period and Merge is unable to repair or replace it with a functional equivalent, Customer may return it to Merge for a refund of the amount Customer paid (for recurring charges, up to 12 months' charges) and Customer's license or right to use it terminates.

7.2. Exclusions and Contingencies. Licensee's remedy and Merge's liability under Section 7.1 above are expressly contingent upon: (a) Licensee notifying Merge in writing of the claim within the Software Warranty Period, as applicable, and furnishing Merge with adequate supporting documentation and details to substantiate the claim and to assist Merge with the identification and detection of the cause of the problem; (b) the problem being capable of reproduction by Merge; (c) the Software having not been modified, altered or changed in any way by a party other than Merge; and (d) the Software having been properly installed and operated by Licensee in accordance with the Documentation. The above warranties shall be void if failure of the warranted Product is attributable to accident, abuse, misapplication, or use in conjunction with any third party product, application or configuration that has not been approved (in writing) by Merge.

7.3. Acknowledgement. Licensee acknowledges that the Products are not intended to replace the skill and judgment of a qualified medical practitioner and should only be used by professionals who have been appropriately trained. Licensee shall be responsible for the security and privacy of the Product configuration and data and for taking measures necessary to avoid security breaches (including hacker attacks) of the Products. Merge does not warrant that the Products and Services will meet the needs of Licensee or authorized users, that the Products will operate in the combinations that Licensee may select for use or with all non-Merge products used by Licensee, that the operation of the Products will be uninterrupted or error-free, or that all Software errors will be corrected. Licensee shall represent that it has obtained the individual consents necessary to permit Merge to access, use, and disclose to Merge's third party agents any personal data to the extent reasonably needed by Merge to provide troubleshooting and other services related to Licensee's use of the Software

7.4. Disclaimer of Other Warranties. EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS ARTICLE 7, MERGE MAKES AND CUSTOMER RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO ANY PRODUCT, DOCUMENTATION, SERVICES OR THIRD PARTY PRODUCT. MERGE SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE.

## **8. LIMITATIONS OF LIABILITY**

8.1. Liability Limitation. Merge's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Customer up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Product or Service that is the subject of the claim, regardless of the basis of the claim. Merge will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to Merge, its affiliates (including IBM), contractors, subprocessors, licensors and suppliers.

8.2. Exceptions. The following amounts are not subject to the above cap: (i) payments to third-party claimants under Merge's indemnification obligation per Section 8.1 above; and (ii) damages that cannot be limited under applicable law.

8.3. Allocation of Risk. The provisions of Sections 6, 7 and 8 allocate the risks under the Agreement between Merge and Licensee, and the Parties acknowledge that such provisions are a material condition for their respective entry into the Agreement.

## **9. GOVERNMENTAL MATTERS; PRIVACY**

9.1. U.S. Government ("Government") Restricted Rights. The Merge Software provided under the Agreement is commercial computer software developed exclusively at private expense, and is in all respects the proprietary data belonging solely to Merge or its licensors. Products and Documentation that may be provided to the Government hereunder (by contracts or subcontract) are provided with the

most restricted rights and limited rights permitted by law and regulation. Department of Defense: If the Software is acquired by or on behalf of agencies or units of the Department of Defense (DOD), then, pursuant to DOD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under the Agreement is subject to the restrictions of the Agreement. Civilian Agency: If the Software is acquired by or on behalf of civilian agencies of the Government, then, pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under the Agreement is subject to the restrictions of the Agreement.

9.2. Export Controls. Each Party is responsible for complying with, i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries.

9.3. Federal Equal Opportunity Regulations. **The Parties and their subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and against individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

9.4. Privacy. In the event the Parties are legally required to enter into a Business Associate Agreement and they do not have a valid Business Associate Agreement in force between them, then the Parties agree to the provisions of the *Business Associate Agreement* set forth at <http://www.merge.com/MergeHealthcare/media/documents/Legal/Merge-BAA-160603.pdf>, with the same force and effect as if each Party executed said *Business Associate Agreement* as of the Effective Date of the End User Order. The Parties acknowledge that compliance with the Health Insurance Portability and Accountability Act, Health Information Technology for Economic and Clinical Health Act and other privacy and security rules is not solely determined by Products and is a process that involves both Parties' systems, facilities and practices.

9.5. General Data Protection Regulation. General Data Protection Regulation. As used in this paragraph, "Content" also includes any information or data Customer may provide, make available or grant access to in connection with Merge providing Services, or maintenance. Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, Merge, and its contractors and subprocessors to use, provide, store and process Content in the Services, or maintenance. This includes Customer providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. Customer is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by Merge for an offering, Customer will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant Transaction Document or unless Merge has otherwise first agreed in writing to implement additional security and other measures. In regard to the provision of technical support services, Merge's Data Processing Addendum (DPA) is set forth as Exhibit A on Merge's website at <http://www.merge.com/MergeHealthcare/media/Legal-Terms/ExhibitA-DataProcessingAddendum.pdf>, and the applicable DPA Exhibit is set forth as Exhibit B on Merge's website at <http://www.merge.com/MergeHealthcare/media/Legal-Terms/ExhibitB-DataProcessingAddendumExhibit-TechnologySupportServices.pdf> and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in Content.

10. **GENERAL PROVISIONS. Relationship of the Parties; No Third Party Beneficiaries**. The Parties hereto are independent contractors to one another, and nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the Parties, and nothing in the Agreement will be construed as giving any right, remedy or claim to an entity other than the Parties, their permitted successors and permitted assigns, and persons and entities expressly indemnified hereunder. **Assignment**. Licensee may not assign or transfer its interests, rights or obligations under the Agreement by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of Merge. Merge may, without the consent of Licensee, assign this Agreement to a Merge Affiliate or incident to a merger/acquisition transaction or the transfer of assets related to the subject matter of this Agreement. Subject to the foregoing, the Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective permitted successors and assigns. **Notices**. All legal notices required or permitted to be given pursuant to the Agreement shall be in writing and delivered personally or by a commercially recognized national courier (such as Federal Express or UPS), and notices shall be effective upon receipt by the office of the Party to which the notice is directed. Neither Party shall refuse delivery of any notice hereunder. Legal notices hereunder to the Parties shall be to such Party's address set forth on the first page of the Agreement (with legal notices to Merge being directed to the attention of its General Counsel), provided that either Party may, by written notice to the other Party, direct that notices be sent to a different address. **Governing Law**. The Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of law or to the United Nations Convention on Contracts for the International Sale of Goods. **Equitable Relief**. Each Party agrees that, in the event injunctive or other equitable relief is appropriate to enforce compliance with confidentiality, license or property provisions of the Agreement, then such relief shall be in addition to any other remedies available to the aggrieved Party and that the aggrieved Party shall be entitled to seek such equitable relief. **Force Majeure**. Neither Party shall be responsible for any delay or failure in performance of any part of the Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, internet accessibility, utilities outage, inability to obtain products from a third party supplier, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control (collectively, a "**Force Majeure Event**"). The performance of the Party suffering the Force Majeure Event shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such Force Majeure Event. **Contract Construction**. The Agreement will not be presumptively construed in favor of or against either Party, including the Party that drafted the Agreement. The headings to the sections of the Agreement are for ease of reference only and shall not affect the interpretation or construction of the Agreement. **Severability**. If any term or condition of the Agreement is determined by a court of law (or arbitration proceeding to which both Parties are parties) to be invalid or unenforceable in whole or in part for any reason, the Agreement shall, to the greatest extent permitted by law, be reformed so as to

be valid and enforceable consistent with the intention of the Parties as expressed herein. **No Waiver**. No term or provision of the Agreement shall be deemed waived and no breach excused, unless such waiver or excuse is in writing signed by the Party granting such waiver or excusing such breach. No consent to or waiver of a breach shall be deemed as a consent to, waiver of, or excuse for any different or subsequent breach by such Party. **Entire Agreement**. The Agreement, including the Schedules hereto and all Sales Orders hereunder, constitutes the entire agreement between Merge and End User with respect to the subject matter hereof, and supersedes all proposals, purchase orders, previous agreements, understandings, representations and any other communications (whether written or oral) between the Parties relating thereto. The terms and conditions contained in any purchase order or other purchase document issued by Licensee or by any other party on Licensee's behalf (collectively, "**Purchase Order**") shall be of no legal force or effect, even if such Purchase Order is delivered to Merge; such Purchase Order is signed or otherwise accepted by Merge; and/or Merge provides Products and/or Services pursuant to such Purchase Order. **Amendment**. The Agreement may not be modified, except by a written amendment instrument that expressly refers to the Agreement and is signed by authorized representatives of each Party. **Independence between Orders**. The Sales Order is an order separate and independent from any other executed or contemplated order(s). Any fees due Merge for the Sales Order are separate from any other executed or contemplated order(s), and the payment terms for the Sales Order are not intended to be dependent upon or otherwise coincide with performance criteria of any other executed or pending order(s). No products or services that are the subject of the Sales Order are interrelated or interdependent in terms of design, technology or function or are essential to the functionality of a product in any other executed or contemplated order(s). **Merge Business Partners**. Merge has signed agreements with certain organizations (called "Merge Business Partners") to promote, market, and support certain Merge Products and Services. Licensee may order Merge Products or Services that are promoted or marketed to Licensee by Merge Business Partners or other suppliers, however, the Agreement shall apply only to the Merge Products or Services ordered under the Sales Order. Merge is not responsible for the actions or statements of Merge Business Partners or other suppliers, any obligations either has to Licensee, or any products or services they supply to Licensee under their own agreements. Merge Business Partners are independent from Merge and unilaterally determine their prices and payment terms. Payment terms in a Merge Business Partner's Sales Order or a Merge Business Partner's agreement shall govern a Licensee's order of Merge Products or Services from such Merge Business Partner.

## Country-required Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms above. All terms that are not changed by these amendments remain unchanged and in effect.

### **AUSTRALIA**

#### **1. DEFINITIONS**

The following terms are added:

**"Health Information"** has the meaning given to that term in the Privacy Act 1988 (Cth).

**"Personal Information"** has the meaning given to that term by the Privacy Act 1988 (Cth).

**"Sensitive Information"** has the meaning given to that term by the Privacy Act 1988 (Cth).

**"Sponsor"** has the meaning given to that term by the Therapeutic Goods Act 1989, and for the purposes of this Agreement the term "Sponsor" applies to IBM Australia Limited.

#### **7. WARRANTIES**

Section 7.3 is replaced by the following:

**7.3 Acknowledgement.** Licensee acknowledges that the Products are not intended to replace the skill and judgment of a qualified medical practitioner and should only be used by professionals who have been appropriately trained. Licensee shall be responsible for the security and privacy of the Product configuration and data (including Personal Information and/or Sensitive Information) and for taking measures necessary to avoid security breaches (including hacker attacks) of the Products. Merge does not warrant that the Products and Services will meet the needs of Licensee or Authorised Users, that the Products will operate in the combinations that Licensee may select for use or with all non-Merge products used by Licensee, that the operation of the Products will be uninterrupted or error-free, or that all Software errors will be corrected. Licensee shall represent that it has obtained the individual consents necessary to permit Merge to access, use, and disclose to Merge's third party agents any Personal Information or Sensitive Information to the extent reasonably needed by Merge to provide troubleshooting and other services related to Licensee's use of the Software.

#### **9. GOVERNMENTAL MATTERS: PRIVACY**

Section 9.1 is replaced by the following:

**9.1 Australian Consumer Law.** To the extent the Australian Consumer Law applies to this Agreement, the Products come with guarantees that cannot be excluded under the Australian Consumer Law and Licensee entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Licensee is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The warranties contained in Article 7 are subject to this Section 9.1. Certain legislation including the Competition and Consumer Act 2010 (Cth), may imply warranties, conditions or guarantees or impose obligations or remedies which cannot be excluded, restricted or modified except to a limited extent. To the extent that such legislation applies, this Agreement must be read subject to those statutory provisions and nothing in this Agreement is intended to alter or restrict the operation of such provisions.

Section 9.3 and 9.4 are replaced by the following:

**9.3 PRIVACY.** Merge, its Affiliates, and their third-party suppliers may collect, process, use, disclose, store, and maintain account data and Personal Information, Health Information and Sensitive Information which is processed in accordance with the Merge Privacy Statement available at <http://www.merge.com/Common/Privacy.aspx>. Merge and its subcontractors and Affiliates may process the business contact information of the Licensee, its employees and contractors worldwide for our business relationship. Licensee warrants and represents that it has obtained the necessary consents and made the necessary disclosures to enable Merge to do so. Merge will comply with requests to access, update, or delete such contact information. Merge may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services. The Parties will comply with all applicable laws and regulations, including, without limitation, the Privacy Act 1988 (Cth), Health Records Act 2001 (Vic), Health Records and Information Privacy Act 2002 (NSW), Privacy and Data Protection Act 2014 (Vic) and Privacy and Personal Information Protection Act 1998 (NSW).

#### **10. GENERAL PROVISIONS**

The term "**Governing Law**" is replaced by the following:

**Governing Law.** The construction, validity and performance of this Agreement shall be governed by the laws of the State or Territory in which the transaction is performed to this Agreement, without regard to its principles of conflicts of law or to the United

Nations Convention on Contracts for the International Sale of Goods. The Parties agree to submit to the jurisdiction of the courts of the State or Territory in which the transaction is performed for the conduct of any legal proceedings under or related to this Agreement.

## 11. ADDITIONAL PROVISIONS

A new Section 11 is added:

### 1. ADDITIONAL PROVISIONS

- (1) Licensee shall grant Merge, the Sponsor, or the Sponsor's Business Partners, or their nominee (acting reasonably) access (whether on-site or remote) to Licensee's facilities, systems, personnel and any information necessary for Merge, the Sponsor or the Sponsor's Business Partners to comply with any regulatory obligations or applicable laws, including but not limited to, obligations imposed on Merge, the Sponsor or the Sponsor's Business Partners by the Therapeutic Goods Administration.
- (2) In the event of a Product recall, Licensee shall comply with all reasonable directions of Merge, the Sponsor or the Sponsor's Business Partners.
- (3) Licensee shall give immediate written notice to Merge and the Sponsor of any information, circumstances, or events of which Licensee becomes aware in relation to:
  - a. any malfunction or deterioration in the characteristics or performance of the Products;
  - b. any inadequacy in the design, production, labelling, instructions for use or advertising materials of the Products;
  - c. any use in accordance with, or contrary to, the use intended by the manufacturer of the Products;
  - d. any actual or potential danger to any person arising out of the configuration, formulation, design, materials, or other characteristics of the Products; or
  - e. any actual or potential violation of any applicable law, rule, or regulation related to safety of Products.

## UNITED KINGDOM

### 1. DEFINITIONS

The following terms are added:

**"Personal Data"** shall have the meaning given in the Data Protection Act 1998 ("**DPA**"), as amended or replaced, from time to time.

**"Sensitive Personal Data"** shall have the meaning given in the Data Protection Act 1998 ("**DPA**"), as amended or replaced, from time to time.

### 7. WARRANTIES

Section 7.3 is replaced by the following:

7.3 Acknowledgement. Licensee acknowledges that the Products are not intended to replace the skill and judgment of a qualified medical practitioner and should only be used by professionals who have been appropriately trained. Subject to Clause 9, Licensee shall be responsible for the security and privacy of the Product configuration and data (including Personal Data and/or Sensitive Personal Data) and for taking measures necessary to avoid security breaches (including hacker attacks) of the Products. Merge does not warrant that the Products and Services will meet the needs of Licensee or Authorised Users, that the Products will operate in the combinations that Licensee may select for use or with all non-Merge products used by Licensee, that the operation of the Products will be uninterrupted or error-free, or that all Software errors will be corrected. Licensee shall represent that it has obtained the individual consents necessary to permit Merge to access, use, and disclose to Merge's third party agents any Personal Data to the extent reasonably needed by Merge to provide troubleshooting and other services related to Licensee's use of the Software.

### 9. GOVERNMENTAL MATTERS; PRIVACY

Section 9 is renamed "**DATA PROTECTION**" and is replaced by the following:

#### 9. DATA PROTECTION

9.1. For transactions, which involve the processing of Personal Data (including Sensitive Personal Data), the following terms apply.

9.2. If Licensee makes Personal Data available to Merge, Licensee is the sole controller for any Personal Data included in the content, and appoints Merge as a processor to process such Personal Data. Except as specified in a Sales Order, Merge will treat content as confidential by not disclosing content other than to Merge employees and contractors for use only to the extent needed to deliver the Products and/or Services. Merge will return or destroy it upon the expiration or cancellation of the Sales Order, or earlier upon Licensee's request. Merge may charge for certain activities performed at Licensee's request (such as delivering content in a specific format).

9.3. Licensee is responsible for obtaining all necessary permissions to use, provide, store and process content and grants Merge permission to do the same. Some of Licensee's content may be subject to governmental regulation or may require security measures beyond those specified by Merge for an offering. Licensee will not input or provide such content unless Merge has first agreed in writing to implement additional required security measures.

9.4. The Sales Order for each Product and/or Service describes the security functions and features of the Product and/or Service. By using the Products and/or Service Licensee acknowledges that it meets Licensee's requirements and processing instructions. Merge will provide Licensee notice of any unauthorised third party access to Licensee's content of which Merge becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Licensee's content is lost or damaged, Merge will assist Licensee in restoring it from the last available backup copy in compatible format.

9.5. Merge may use processors and sub-processors (including personnel and resources) in locations worldwide to deliver the Products and/or Services. Merge may transfer Licensee's Personal Data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed is available at [www.ibm.com/cloud/datacenters](http://www.ibm.com/cloud/datacenters) or as described in the Sales Order. A list of subprocessors is available upon request.

9.6. Upon request by either party, Merge, Licensee or their Affiliates will enter into additional agreements required by law for the protection of Personal Data included in content, such as the standard unmodified EU Model Clause agreements pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective Affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

9.7. Merge, its Affiliates, and their third-party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalise experience, and otherwise support or improve use of the Products and/or Services. Account data is all information (which may be further described in a Sales Order) about Licensee or its users provided to or collected by Merge (including through tracking and other technologies, such as cookies) which is processed in accordance with the Merge Privacy Statement available at <http://www.merge.com/Common/Privacy.aspx>.

## 10. GENERAL PROVISIONS

The term "**Governing Law**" is replaced by the following:

**Governing Law and Export Controls.** This Agreement shall be governed by and construed in accordance with the laws of England and Wales, without regard to its principles of conflicts of law or to the United Nations Convention on Contracts for the International Sale of Goods and each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Agreement. The rights and obligations of each party are valid only in the country where the transaction is performed. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

## 11. ADDITIONAL PROVISIONS

A new Section 11 is added:

### 11. ADDITIONAL PROVISIONS

- (1) Licensee shall grant Merge, Merge Business Partners or their nominee (acting reasonably) access (whether on-site or remote) to Licensee's facilities, systems, personnel and any information necessary for Merge or Merge Business Partners to comply with any regulatory obligations or applicable laws, including but not limited to, obligations imposed on Merge or Merge Business Partners by the Medicines & Healthcare products Regulatory Agency (MHRA).
- (2) In the event of a Product recall, Licensee shall (2) comply with all reasonable directions of Merge or Merge Business Partners.
- (3) Licensee shall give immediate written notice to Merge of any information, circumstances, or events of which Licensee becomes aware in relation to:
  - a. any malfunction or deterioration in the characteristics or performance of the Products;



- b. any inadequacy in the design, production, labelling, instructions for use or advertising materials of the Products;
- c. any use in accordance with, or contrary to, the use intended by the manufacturer of the Products;
- d. any actual or potential danger to any person arising out of the configuration, formulation, design, materials, or other characteristics of the Products; or
- e. any actual or potential violation of any applicable law, rule, or regulation related to safety of Products.