**The following are Terms and Conditions (“Terms and Conditions”) associated with Roche IT Solutions, including**

**Roche Middleware Solutions, cobas infinity, cobas IT 1000 application, cobas infinity POC Solution, cobas DMS Connect, cobas infinity edge, navify Tumor Board Solution, navify Algosuite, navify Montitoring, VANTAGE, navify Analytics applications, Viewics, navify Digital Pathology, uPath, navify Pathology Lab Hub, Virtuoso, and VENTANA Connect.**

**1. DEFINITIONS:**Any capitalized term defined herein shall have the meaning ascribed to it in these Terms and Conditions. In addition to terms defined as used in these Terms and Conditions, the following definitions shall be used herein:

a) “**Authorized User**” shall mean an individual who is permitted to have access to and use or display the Software pursuant to the terms of this Agreement, and shall mean specifically a named or specified (by password, license number or other user identification) individual authorized by Customer to use the Software, regardless of whether the individual is actively using the Software at any given time. Customer may request an authorized user logon to be permanently reassigned if the original individual identified as the authorized user leaves the employ of Customer, or otherwise ceases to need access to the Software.

b) **“Acceptance”** means acknowledgement by Customer of completion of installation of the Software

c) “**De-Identified Data**” means information (or any portion thereof) that (a) has been the subject of reasonable efforts to de-identify, aggregate and/or anonymize such data such that no individual, entity or particular record can be identified, or (b) is individually identifiable health information that has been de-identified in compliance with the de-identification standards set forth in 45 C.F.R. § 164.514(b) such that it is no longer Protected Health Information.

d) “**Installation**” means each licensed copy of Software installed at a Customer’s site.

e) “**Patient Data**” means any Patient Data concerning the health of a patient and including in particular any related data from various data sources (e.g. IT middleware, electronic medical record systems) that forms Patient Data and is automatically or manually uploaded into the Software.

f)“**Personal Information**” means any information that, individually or in combination, does or can reasonably be expected to identify a specific individual or by or from which a specific individual may be identified or contacted, including any data concerning or relating to the care and treatment of a patient.  Personal Information includes Protected Health Information but does not include De-Identified Data.

g)“**Protected Health Information**” has the meaning set forth under HIPAA at 45 C.F.R. §160.103.

h)“**Third Party Applications**” means third party applications and data services.

i) “**Roche Product Supply Agreement**” means one or more separate agreement(s) entered into between Customer and Roche pursuant to which Customer has agreed to acquire reagents, supplies, consumables (collectively, the “Reagents/Supplies”), or purchase, lease or acquire equipment (the “Equipment,” and collectively with IT solutions other than Software, and Reagents/Supplies, the “Products”) and service from Roche for Customer’s use in performing in-vitro diagnostics testing. The Roche Product Supply Agreement may include an allowance, surcharge or discount for the Software or Software Services described in Appendix D or to pursuant to which the Products and Services are “bundled” into the transactions contemplated by the Roche Product Supply Agreement.

j) **“Software”** means, the Software Product and Documentation provided to Customer

i. **“Software Product”** means a specific software product identified in the Schedule, including cloud based software-as-a-service solution of a Roche Affiliate which also includes drivers for instruments or accessories provided by Roche, as applicable.

ii. “**Documentation**” means Roche’s then-current documentation for the Software made available to Customer by Roche in writing, including user manuals, training guides, instructions and other updates or alerts provided by Roche from time to time.

iii. “**Approved Third Party Software**” means any third party software (including drivers for instruments or accessories provided by Roche) in a particular release version which Roche has expressly approved in writing or in any product information or other publication to be used in connection with or parallel to the Software.

iv. “Device Driver” means interface software and documentation provided to Customer for connectivity between the cobas IT 1000 application and/or cobas infinity POC solution Software and instruments, devices, software and/or accessories designed, manufactured, sold or distributed by a third party (“Third Party Device”).

k) **“Services”** or “**Software Services**” means the maintenance, support, integration, trainings, consulting services and similar activities for the Software being provided by Roche. Software Services may include Updates or Upgrades.

i. An “**Update**” is a change to Software which is necessary to enable the Software to continue to operate at existing functionality levels or to correct software defects.

ii. An “**Upgrade**” is an improvement to Software that adds new functionality to the Software or any Product. “Upgrade” does not include any new licensable features which Roche has determined, in Roche’s sole discretion; require payment of an additional license fee.

**2. CERTIFICATION OF USE:**By accepting these Terms and Conditions, Customer is certifying that (a) the party signing knows how the Software will be used, and (b) that the Software will not be used in a blood bank or transfusion setting as long as Customer continues to use the Software. For purposes of this certification, a blood bank or transfusion setting is any setting involving the collection, processing, compatibility testing, storage and/or distribution of blood and blood components, including the manufacturing and maintaining of these products and associated databases. If Customer’s use of the Software changes in a way that causes this certification to become inaccurate, Customer will notify Roche as soon as possible.

**3. LICENSING CONDITIONS:**

a) License Grant. Subject to these Terms and Conditions and for the term of use specified in Appendix D, Roche grants Customer a limited, personal, non-transferable, non-exclusive, non-assignable license to use the Software in object code only, and the Documentation for such Software, for Customer’s internal use in the United States of America.

b) Installations. The number and type of Software Installations are set forth in Appendix D.

c) Restrictions. Customer shall not, and shall not permit any third party to, translate, reverse engineer, decompile, recompile, update, reproduce or modify all or any part of the Software or merge the Software into any other software. Customer shall not allow any third party to have access to the Software without Roche’s prior written consent. Customer shall not sell, assign, transfer, publish, disclose, display or otherwise make available the Software or copies thereof to any third parties.

d) Ownership of Materials. All patents, copyrights, trade secrets, trademarks and other proprietary rights in or related to the Software are and will remain the exclusive property of Roche, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Software is used or licensed. Customer will not take any action that jeopardizes Roche’s proprietary rights or acquire any right in the Software. Roche will own all rights in any copy, translation, modification, adaptation, derivation, compilation, updated works and partial copies of the Software including any improvement or development thereof. Customer shall assign and hereby assigns these rights to Roche and will obtain, at Roche’s request, the execution of any instrument that may be appropriate to perfect these rights in Roche’s name. Customer shall secure and protect the Software, Documentation and copies thereof in a manner consistent with the maintenance of Roche’s or applicable third party rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to the Software to satisfy its obligations hereunder.

e) **Changes to Software.**  Roche may, from time to time without prior notice to Customer, add, delete or change the features or functionalities of the Services and the Software. If any such addition, deletion or change causes a material reduction in the entire functionality of any of the Services or Software, the Customer may (i) terminate the applicable Schedule with respect to such Service or Software by providing Roche written notice within thirty (30) days after such addition, deletion or change is made; and (ii) receive a refund of any prepaid amounts paid for such Service or Software, as prorated through the date of termination.

**4. TERM AND TERMINATION**:

a)Term. Customer’s contractual agreement with Roche relating to the Software (the “Term”) shall commence on the Effective Date of Appendix D and shall remain in effect until otherwise terminated in accordance with the provisions of these Terms and Conditions.

b) Termination for Default. These Terms and Conditions shall remain in effect until the licenses for all Software Products licensed hereunder have terminated.  Notwithstanding any other term or condition set forth herein, Roche may terminate: (i) if Customer is in default of, violates or fails to perform any term or condition of the applicable Roche Products Supply Agreement, Appendix D, or these Terms and Conditions and such failure continues for thirty (30) days after notice thereof by Roche; or (ii) as otherwise expressly permitted pursuant to these Terms and Conditions.  Except as otherwise specifically expired pursuant to its terms, the rights and obligations under Section 11 (Limited Warranty; Limitation of Liability; Indemnity) and Section 15 (third Party Device Drivers) of this Agreement shall survive the cancellation, termination, or expiration of Appendix D and/or these Terms and Conditions.

c) Remedies on Default. In the event of default by Customer as set forth in these Terms and Conditions, in addition to any remedies set forth in these Terms and Conditions, Customer shall immediately (a) cease all use of the Software, and (b) immediately delivery to Roche all copies of all Software in Customer’s possession and certify in writing to Roche within ten (10) business days after termination that the foregoing actions haven been taken. Further, Roche shall have the right to pursue any other remedy provided by law. Customer agrees to pay all costs of collection, including without limitation, court costs, and reasonable attorneys’ fees.

**5. FEES, BILLING AND PAYMENT TERMS:** Customer will pay all fees specified in Schedules. Except as otherwise specified herein or in a Schedule, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non- cancelable and any fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term. Customer will provide Roche with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Roche. If Customer provides credit card information to Roche, Customer authorizes Roche to charge such credit card for all Purchased Services listed in the Schedule for the initial term and any renewal term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Schedule. If the Schedule specifies that payment will be by a method other than a credit card, Roche will invoice Customer in advance and otherwise in accordance with the relevant Schedule. Roche will begin billing Customer for the Software Products and Services on the date of installation completion for the first Software Product installed.  Service will be billed as per the payment method defined in the Schedule. Roche will provide Customer with payment terms of net thirty (30) days from the date of invoice. Payment by credit card is acceptable at point of sale only. Failure to pay invoices when due may result in non-shipment of all future orders of products that Customer purchases from Roche and/or Customer being notified by Roche that Customer is in default of these Terms and Conditions. Customer is responsible for providing complete and accurate billing and contact information to Roche and notifying Roche of any changes to such information.

**6. SOFTWARE EARLY TERMINATION FEE:** Both parties agree and acknowledge that in the event of a default of these Terms and Conditions by Customer which results in the early termination of Customer’s obligations as set forth in these Terms and Conditions and/or Appendix D, the “Software Early Termination Fee” that Customer agrees to pay will be: (a) the sum of Customer’s remaining monthly payments for all rented and leased Software, less unearned interest; plus (b) the sum of Customer’s remaining payments for Software Service, whether or not included in the Software price; plus (c) the pro-rata remaining value of all Software and Software Services identified as “included” or “Included in Reagents”, provided at “No Additional Charge”, or identified as Discounts. Customer agrees that the provisions related to the Software Early Termination Fee are reasonable in light of the circumstances and are not disproportionate to the presumed injury or loss resulting from Customer’s default.

**7. RECORDS AND AUDITS.** During the Term and for one (1) year thereafter, Customer shall prepare and maintain complete and accurate records sufficient to enable Roche to verify compliance with the terms and conditions of this agreement. During the Term and for one (1) year thereafter, Roche has the right to examine and audit such records to verify performance under this Agreement and to verify the amounts paid to Roche. Any such audit will be conducted during normal business hours and upon reasonable advance notice, and will be subject to reasonable confidentiality obligations agreed to by Roche and Customer.

**8. DELIVERABLES:**

a) Software. Roche shall provide Customer with the Software in object code only, pursuant to the Installation/Acceptance Section below, as well as Documentation for the Software in electronic form.

b) Third Party Software. Any other third party software provided to Customer in connection with the Software is licensed subject to applicable third party terms and conditions. See Section 8.

i. Roche Middleware Solutions, cobas IT 1000 application, cobas infinity POC and cobas infinity Test Systems. If Customer acquires a separate Software system(s) for the purpose of testing changes to Customer’s laboratory environment, Customer agrees that this Software will not be utilized for reportable patient results.

c) Network Connections and Infrastructure. Customer shall be responsible for the acquisition, installation, testing, monitoring and maintenance of adequate hardware, network connections and services, including but not limited to all network infrastructure related hardware and software such as switching and routing equipment, name resolution systems, centralized data backup and recovery systems, virus protection systems, firewall and intrusion detection systems, physical security, etc. This shall be known as the “IT Infrastructure”.

d) Installation/Acceptance.

i. The installation of each Software shall occur following the completion and approval by Customer and Roche of a detailed site survey in accordance with an installation timeline to be provided by Roche. Customer and Roche agree to use their best efforts to maintain the estimated schedule in the installation timeline, however, neither Customer nor Roche will be liable to the other for delays as a result of events beyond their control.

ii. Customer's acceptance of Software occurs upon the earlier of Customer’s (1) written confirmation of acceptance or (2) use of Software in a manner that exceeds the scope or duration of the tasks in the installation timeline (for example, use in the assistance of actually processing patient billable results).

iii. Roche Middleware Solutions and cobas infinity Installation Processes. For each Installation, Roche will install the Software and necessary license files. Roche will provide setup of the connectivity to analytical Equipment and Customer’s LIS for the processing of orders and results. Roche will not provide any additional services as part of installation, including but not limited to consulting services or assistance to Customer in implementing any other Software functionality. This assistance may be acquired from Roche at an additional charge.

**9. IT INFRASTRUCTURE:**

a) Requirements. Customer shall ensure that the IT Infrastructure is suitable to run the Software and meets the minimum hardware and Software specifications provided to Customer by Roche. Unless otherwise specified in Appendix D, Customer is responsible for acquiring all hardware required for use of the Software. Customer is also responsible for providing all network segmentation, virtual networks (VLANs) with access control lists (ACLs), for the system. Customer agrees further that it is Customer’s responsibility to limit the network communication to only essential traffic. Specific to Roche Middleware Solutions, if Customer is currently using hardware and/or accessories previously acquired through Roche, Roche will continue to provide service for the hardware and/or accessories until Customer is required to complete a Software upgrade to a newer version in accordance with Section 14. If Customer is acquiring new hardware and/or accessories or if Customer is acquiring new hardware and/or accessories as part of any upgrade, Roche will not provide a warranty or service for the new hardware and/or accessories. Any warranty or service associated with the new hardware and/or accessories will be provided through the manufacturer. Roche’s Service Department will assist in providing contact information

b) Use of Approved Third Party Software. Customer shall ensure that no third party software other than Approved Third Party Software installed interferes with or negatively influences the Software. Roche does not guarantee that any third party software other than Approved Third Party Software does not negatively influence the Software or its performance, and vice versa. Roche denies any liability whatsoever if third party software is installed and such third party software is not an Approved Third Party Software.

c) Remote Access Connectivity. Customer shall provide an internet enabled connection and shall host Roche remote diagnostics software provided by Roche for Roche to remotely access the necessary systems for the purpose of installation, troubleshooting, user training, Software updates and other appropriate uses related to Customer’s operation and Roche’s service of the Software. Roche shall not be obligated to provide Software Services contracted for hereunder if Customer fails to comply with this section. In the event Roche provides Software Service to Customer hereunder for which Roche would be considered a “Business Associate” (as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and associated rules (together, “HIPAA”)), then the parties shall enter into and comply with the terms of a mutually acceptable Business Associate Agreement, as defined and in accordance with applicable laws.

d) Security and Maintenance. Customer is responsible for the maintenance, security, disaster recovery and integrity of the IT Infrastructure and in particular the hardware, system software, malware protection, antivirus software and its ongoing management and network environment. Customer is responsible to ensure that the operating system is current with any security patches released by Microsoft and that any Approved Third Party Software is also patched. Customer is responsible to ensure all Software is backed up following Customer’s standard operating procedures for software and applications backup.

e) Snapshot Expressly Prohibited. If Customer is operating Software in a virtual environment, CUSTOMER IS EXPRESSLY PROHIBITED from using Snapshot or any other similar backup method similar thereto for purposes of restoring previous test order, sample assignment or results processing. Roche expressly disclaims any and all liability for any claims, damages, judgments or losses arising from Customer’s use of Snapshot or any other similar backup method in violation of this express prohibition.

**10. U.S. GOVERNMENT RESTRICTED RIGHTS:** The Software licensed under these “Terms and Conditions” is “Commercial Computer Software” and “Commercial Computer Software Documentation” as those terms are defined in the applicable provisions of the Federal Acquisition Regulation (“FAR”) and supplements thereto, including the Department of Defense FAR Supplement (DFARS). The Software and related Documentation licensed hereunder is provided to end users for use, by and for the U.S. Government, with only those rights as are granted to all other end users pursuant to these Terms and Conditions. Use of the Software is permitted only by parties who are authorized by an appropriate U.S. Government official. This provision is in lieu of, and supersedes, any FAR, DFARS, or any other provision that relates to use of the commercial computer software licensed under these Terms and Conditions.

**11. LIMITED WARRANTY; LIMITATIONS ON LIABILITY; INDEMNITY:**

a) Warranty. Roche warrants that the Software will function in conformance with its specifications and be free of material defects for a period of one (1) year from the date of Acceptance of the Software, provided the Software is used in accordance with these Terms and Conditions and operated on the IT Infrastructure directed by Roche.

**THE ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY ROCHE FOR THE SOFTWARE AND SOFTWARE SERVICES. ROCHE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO WARRANTY IS MADE THAT THE OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS IN THE SOFTWARE WILL BE CORRECTED. NOTWITHSTANDING ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS, BUT EXCLUDING ANY CLAIMS FOR INFRINGEMENT INDEMNIFICATION SPECIFICALLY PROVIDED FOR UNDER THESE TERMS AND CONDITIONS, IN NO EVENT WILL ROCHE OR ANY OF ROCHE’S AFFILIATES (OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, CONSULTANTS, ATTORNEYS OR AGENTS) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGE TO COMPUTER SOFTWARE OR HARDWARE (WHETHER OR NOT PROVIDED BY ROCHE), LOST PROFITS, LOST DATA OR INFORMATION, LOSS OF USE OF THE SOFTWARE, BUSINESS INTERRUPTION, LOSS OF BUSINESS REPUTATION OR GOODWILL, DOWNTIME COSTS, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES WHICH CUSTOMER MAY INCUR OR EXPERIENCE, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR RELATING TO THE SOFTWARE OR THE SERVICES FURNISHED BY ROCHE, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ROCHE OR ANY OF ITS AFFILIATES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ROCHE’S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATING TO THE USE OR NON-USE OF THE SOFTWARE BY CUSTOMER SHALL BE LIMITED, AT ROCHE’S OPTION, TO REPLACEMENT OF THE SOFTWARE OR A REFUND BY ROCHE OF ANY LICENSE FEES RECEIVED FROM CUSTOMER WITH RESPECT TO THE SOFTWARE.**

b) IP Indemnification. During the Term, if a third party makes a claim against Customer that Software, when used in accordance with the Documentation and these Terms and Conditions, directly infringes any U.S. patent, copyright, or trademark or misappropriates any trade secret (“IP Claim”); Roche will (1) defend Customer against the IP Claim at Roche’s cost and expense, and (2) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Roche arising out of such IP Claim. If the Software is held to infringe, or Roche believes it is likely that the Software infringes a third party’s intellectual property rights then as Customer’s exclusive remedy, Roche shall have the option, at its expense,

to (a) replace or modify the Software to be non-infringing, or (b) obtain for Customer a license to continue using the Software. If it is not commercially reasonable to perform either of the options specified in the preceding sentence, then Roche may terminate the license for the infringing Software and refund to Customer the unamortized portion of the applicable license fee actually paid by Customer to Roche for the Software. Roche’s obligation to indemnify shall be contingent upon timely notification by Customer to Roche of any claims; control by Roche over the conduct and disposition of any claim; and cooperation by Customer in the defense of the claim.

c) Third Party Hardware. Third Party hardware includes a standard manufacturer’s warranty from date of shipment.

d) Third Party Patches. Customer is solely responsible for all effects and consequences of loading any third party patches onto the operating system or the system software within the IT Infrastructure. This excludes patches provided by Roche to fulfill its contractual obligations and patches approved by Roche for Approved Third Party Software.

**e) The following Warranty Terms and Conditions ONLY apply to cobas infinity and Roche Middleware Solutions:**

i.  No Warranty on Functionality. The Software offers sample optimization functionality in two specific ways: software-driven configuration management in which Customer provide operational guidelines (in the form of data) to be executed by the Software, including workflow instructions and autoverification parameters (“Data-Driven Functionality”), and customer-driven rules-based decision making in which Customer create and implement algorithms to direct the Software in the processing of test results (“Rules -Driven Functionality”). Customer agrees that any parameters used for workflow instructions, autoverification parameters or “rules” implemented by Customer using Data-Driven Functionality or Rules-Driven Functionality shall be the sole responsibility of Customer. Customer will not, at any time, rely upon Roche to make any determinations regarding the data inputted by Customer relating to Data-Driven Functionality or the content and direction of any of Customer’s “rule-writing” or result processing decisions relating to Rules-Driven Functionality. ACCORDINGLY, ROCHE MAKES NO REPRESENTATIONS AND WARRANTIES WITH RESPECT TO ANY WORKFLOW INSTRUCTIONS, AUTOVERIFICATION, ALGORITHMS OR RULES IMPLEMENTED VIA DATA-DRIVEN FUNCTIONALITY AND/OR RULES-DRIVEN FUNCTIONALITY AND FURTHER SPECIFICALLY DISCLAIMS ANY WARRANTIES NOT EXPRESSLY MADE HEREIN. **IN ADDITION TO ANY OTHER LIMITATIONS ON LIABILITY AND WARRANTY DISCLAIMERS CONTAINED IN THESE TERMS AND CONDITIONS, UNDER NO CIRCUMSTANCES SHALL ROCHE BE LIABLE FOR ANY LOST PROFITS, LOSS OF INCOME, LOSS OF DATA OR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ASSOCIATED WITH THE USE OF THE DATA-DRIVEN FUNCTIONALITY OR RULES-DRIVEN FUNCTIONALITY. CUSTOMER IS SOLELY RESPONSIBLE FOR THE CONTENT, STRUCTURE, CONSISTENCY AND CORRECTNESS OF ALL RULES APPLIED, E.G., MULTIPLE-STAGE DIAGNOSTIC DECISION TREES OR VALIDATION RULES.**

ii. Customer Indemnity of Roche. Customer agrees to defend, indemnify and hold Roche harmless from any demands, claims, actions, losses, damages, expenses or liabilities (including reasonable attorneys’ fees and court costs) arising out of, relating to, or in connections with the processing or use of patient test results using Data-Driven Functionality or Rules-Driven Functionality as implemented by Customer. Customer agrees and acknowledges that the representations, warranties and agreements set forth in Sections 11(d) and (e) will survive the termination of the underlying Appendix D and/or Terms and Conditions and shall remain in effect for as long as continues to use the Software.

f) **Roche Integration Services Representations and Warranties.**  Roche warrants that any Services consisting of integration services (“Integration Services”) will be performed: (i) using qualified personnel, and; (ii) in a professional and workmanlike manner (the “Integration Services Warranty”).  Upon receipt of written notice that Roche has failed to comply with the Integration Services Warranty, Roche will re-perform the affected Integration Service to endeavor to correct the failure. If Roche cannot correct the failure within forty-five (45) days of the warranty notice, then Customer may terminate the affected Integration Services at any time within the next thirty (30) days and Roche shall refund the Fees paid for the unperformed Integration Service to the extent arising from such breach of warranty. Notwithstanding any provision hereof to the contrary, the foregoing shall be Customer’s sole and exclusive remedy for a failure of the Integration Services Warranty.

i. **Limitations.** Notwithstanding the foregoing, Roche’s obligations in this Section will not apply: (i) to the extent any failure of the Integration Services to comply with such warranty is due to causes that are external to the Integration Services or otherwise beyond Roche’s reasonable control; (ii) if the Service have been misused, or otherwise used in a manner not in compliance with the Documentation related thereto or this Agreement or the relevant Schedule; (iii) if there has been a modification or attempted modification of the Service (other than by Roche); or (iv) if Customer has refused or otherwise failed to implement corrections, updates, enhancements, new releases, or other modifications that Roche has made available.

**12. The following Terms and Conditions ONLY apply to Viewics and navify Analytics:**

**i) License and Services.** As part of Viewics and navify Analytics, Roche is sub-licensing certain software of Tableau Software, Inc. (“Tableau”) to Customer pursuant to the Tableau Software End User Agreement ("EULA"). With respect to such sublicensed software, Customer shall comply with the EULA during the term of this Agreement. The Tableau EULA can be located at go.roche.com/rocheITcontracts. Roche and/or any of its Affiliates will provide Customer with access to Services. Roche and/or any of its Affiliates will make Viewics and/or navify Analytics available to Customer through the Internet, and will provide other Services over the Internet, by telephone or in-person, as specified in the applicable Schedule. Customer is responsible for procuring and maintaining all hardware, system software, devices, networks and telecommunications or other connectivity required to access the Internet and any cloud computing infrastructure selected by Roche and/or any of its Affiliates, and for paying all telecommunications, connectivity, and other costs (including costs of data transmission) associated with such access. If any Services result in Roche and/or any of its Affiliates providing Customer with or making available to Customer any material, content or other deliverable (“Deliverables”), then such Deliverables are licensed by Roche to Customer pursuant to these Terms and Conditions. Any use of Software, a Service or a Deliverable in a manner prohibited by these Terms and Conditions shall void any responsibility on the part of Roche and its Affiliates to provide integration, support or other Services under this paragraph concerning such Service or Deliverable.

ii) **Availability of Services.** Roche will undertake commercially reasonable efforts to make the Services and Viewics and/or navify Analytics available twenty-four (24) hours a day, seven (7) days a week, at a monthly availability service level of 99%. Notwithstanding the foregoing, Roche reserves the right to suspend Customer’s access to the Services and Software (and such suspension shall not be deemed to constitute an unavailability of Services or Software): (i) for scheduled maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Roche.

iii) **Authorized Users.** Customer will be responsible for all the acts and omissions of all Authorized Users (including without limitation any violation of the Restrictions and Customer Responsibilities section below by an Authorized User) as if they were Customer’s own acts or omissions. Each Authorized User will be provided unique authentication credentials, which may only be used by the single Authorized User to whom such credentials have been assigned by or on behalf of Roche. Customer is responsible for all use of the Software by any person using the authentication credentials assigned to Authorized Users, even if unauthorized by Customer. Roche may deactivate any authentication credentials at any time for any suspected unauthorized use or any misuse of any Software and/or Service. Customer shall: (i) ensure the security of Authorized Users’ authentication credentials; (ii) not permit an individual other than the Authorized User uniquely associated with particular authentication credentials issued by or on behalf of Roche to use such credentials to gain access to the Software; (iii) not disclose any authentication credentials to any person other than the Authorized User uniquely associated with such authentication credentials. Customer shall immediately notify Roche in writing upon any loss, use or unauthorized disclosure, or other compromise of an Authorized User’s authentication credentials.

iv) **Restrictions and Customer Responsibilities.** Customer and all Authorized Users (including Customer employees and contractors) shall abide by all Applicable Laws and shall not, directly or indirectly: (a) sell, lend, rent, distribute, resell, lease, assign, license, sublicense or otherwise transfer to any third party any Software, Service or Deliverables or the rights granted under this Agreement with respect to the Software, Services or Deliverables and/or otherwise use the Software, Services or Deliverables or Authorized User’s authentication credentials, (b) translate, port, modify, reproduce, distribute, republish, frame, download, or make or create derivative works based on any Software, Service or Deliverables, (c) access or use the Software, Deliverables and Services in any way that improperly avoids incurring subscription or other fees or exceeding use limitations, (d) derive or attempt to derive the source code, source files, or any component, logic, or structure of all or any portion of any Software, Deliverable or Service by reverse engineering, disassembly, decompilation, or any other means (the foregoing prohibitions include review of data structures or similar materials produced by programs), or access or use any Software, Deliverable or Service in order to build or support, or assist a third party in building or supporting, products or services competitive to Roche or its products and services, (e) remove, obscure or alter any proprietary or other notice associated with the Software, Services or any Deliverable, (f) use or permit the access to or use of any Software, Service or Deliverable for any unlawful activity, including exporting a Software, Service or Deliverable in violation of Applicable Law, or (g) access or use the Software, Services or Deliverables for any use other than those expressly authorized in this Agreement or any Schedule.

v)**Locally Installed Software.** Access to the Software and the Services may require the Customer to install certain software applications on its local computers. Customer agrees to be bound by any End-User Software Agreements that govern the installation and use of such Customer software applications. The licenses governing Customer’s use of any locally installed software shall terminate upon the termination of this Agreement. Customer agrees that it will use the locally installed Software only to support its use of Services in accordance with the Documentation provided by Roche and/or any of its Affiliates

13. **The following Interfacing provision applies only to cobas infinity and Roche Middleware Solutions:**

a) Pre-Analytical and/or Automation Equipment: If Customer is acquiring Roche pre-analytical and/or automation equipment on the Agreement, Customer understands and agrees that the Roche pre-analytical and/or automation equipment may only be operated when interfaced with Roche Software purchased directly from Roche. Customer may not interface the Roche pre-analytical and/or automation equipment with Middleware software (or any other similar middleware product) acquired from any third party.

14. **The following Allowance provision applies only to Roche Middleware Solutions:**

a) Middleware Software Changes: Up to one change or addition, not to exceed $7,500 may be made to the contracted software licenses up to 45 days after the shipment of Customer’s Middleware Software listed in the Agreement to accommodate Customer’s unanticipated laboratory workflow needs. The Middleware Software, as well as the delivery timelines and expectations, may be revised by Roche in accordance with any change Customer requests. Deletions of any software licenses will not be credited back to Customer after it ships if Customer’s system configuration changes. Unless Customer specifically requests otherwise, Roche reserves the right to ship Customer a newer version of the Middleware Software than is stated in the Agreement, but Roche will notify Customer if this occurs.

**15. Point-of-Care Software Third Party Device Drivers:** If commercially available, Roche may choose to offer interface information (a “cobas IT 1000 / infinity POC Driver”) to Customer for connectivity between the cobas IT 1000 Software and instruments, devices, software and/or accessories designed, manufactured, sold or distributed by a third party (“Third Party Device”).  If Customer orders a cobas IT 1000 Driver for a Third Party Device, Customer acknowledges that such Third Party Device is not designed, manufactured, validated, sold, or distributed by Roche or any of its affiliate companies.  Customer is solely responsible for the selection, acquisition, testing, validation, and servicing of any Third Party Device, and for obtaining any and all licenses or other agreements required to use the Third Party Device.  Notwithstanding any other term or condition set forth herein, if Services are being furnished hereunder, Roche is only responsible for servicing Roche systems up to the point of interface with the Third Party Device.  Any hardware, cables, switches, or peripheral devices that are connected external to the Roche instruments and systems are not Roche’s responsibility. In the event of a communications failure between a Third Party Device and the cobas IT 1000 Software, Customer may contact the Roche Diagnostics Technical Support Center for help isolating the cause of the failure. If the source of the failure is determined to be a Third Party Device, or any other hardware, firmware or software that Roche has not supplied, Roche will have no responsibility for correcting the problem. Customer further acknowledges and agrees that Roche has developed any available cobas IT 1000 Driver for the Third Party Device based on the version of the Third Party Device software and firmware available at the time of Roche’s development of such cobas IT 1000 Driver.  Roche makes no representation or warranty that the cobas IT 1000 Driver for the Third Party Device will operate with any later version of the Third Party Device software or firmware. Before implementing any software or firmware update to the Third Party Device, Customer should contact Roche Technical Support Center to verify that the cobas IT 1000 Driver for the Third Party Device has been configured to operate with the latest version of the Third Party Device software or firmware.

**16. MAINTENANCE AND SUPPORT SERVICES:** Customer is required to maintain Service plan coverage for the Software (“Software Services”) for the duration of the Term. The scope of Software Service provided by Roche pursuant to any service plan shall be as follows:

a) Scope of Software Services. Roche will provide the following Services to Customer during the Term of Software Service coverage for the Software:

i. Corrections of material defects in the Software so that the Software will operate in accordance with the Documentation. All Software Services will be performed via telephone, modem connection and/or web tunneling or in the case of updates, via the best delivery method as determined by Roche.

ii. Periodic updates of Software that may incorporate corrections of any material defects or fixes of any minor bugs. Customer is responsible for installation of all updates and upgrades to the Software provided by Roche within thirty (30) days of receipt.

a) Generally. Subject to any limitations provided in this Section, all Software Updates and Upgrades will be provided to Customer at no additional charge. However, it shall be Customer’s responsibility during the Term to ensure that all Updates and Upgrades made available by Roche are installed in a timely fashion such that all Software remains within two (2) versions of the then-current version being sold by Roche to new customers (the “Current Release”). To the extent that Customer fails to maintain within two versions of the Current Release, Roche is no longer required to provide a warranty or any support to Customer’s Software (regardless of the existence of any Service component of these Terms and Conditions) unless Customer upgrades all Software to a version within two versions of the Current Release and further, Roche may charge Customer for such upgrades.

b) Planned Obsolescence. Next Generation Replacement Software. During the Term, Roche may, in its sole discretion, cease supporting any version of the Software because it is opting to make that version of Software obsolete. If, during the Term, the version of Software used by Customer is subject to such a planned obsolescence, Roche will provide Customer with a more current Software version or alternative Software product, at Roche’s option, at no additional charge to Customer. The replacement software provided by Roche will have functionality at least equivalent to the version subject to the planned obsolescence.

iii. Telephone support 24 hours per day, seven days per week, to assist Customer in using and troubleshooting the Software.

iv. Remote system support for diagnostics, training, troubleshooting and the provision of Software updates.

v. Assistance with configuration changes required as part of new Roche instrument or assay purchases.

vi. Roche will work with Customer to plan and deliver its standard training for the Software licensed under Appendix D and these Terms and Conditions. Customer will only allow individuals with appropriate skills and training to use the Software licensed under this Agreement.  To assist Customer with this responsibility, Roche will provide Customer access to interactive training for some Software products and reference material through both its online customer training system, Roche Diagnostics University ("RDU"), and its documentation portal, Roche Diagnostics USA.  Additional training support, called "Office Hours", is offered through live sessions provided and scheduled through RDU.  Additional telephone technical support is available 365 days per year, by calling Roche at 1-800-440-3638.

b) Additional Services. Additional training, maintenance and services may be provided to Customer by Roche at Roche’s standard rates pursuant to mutually agreeable terms.

c) Services Not Included. Software Services do **not** include:

i. Following completion of the Software installation and acceptance by Customer, work performed by Roche to accommodate changes or modifications to Customer’s hardware, software or network that affect their operation or interaction with Software or affect the Software’s performance. This includes but is not limited to adjustments to the Software configuration required because of (A) Customer’s LIS migration or upgrades, (B) maintenance and support of Customer’s IT Infrastructure, including uninterruptible power supplies, power conditioners and other items external to the Software, and/or (C) configuration changes to any third party systems connected to the Software.

ii. The repair, correction, or replacement of the Software when such repair, correction or replacement is due, directly or indirectly, to: (A) Customer’s failure to adhere to the standards of, or to follow operation or maintenance instructions as set forth in, the Documentation; (B) the use of media, supplies, or consumable supplies which are not compatible with the Software; (C) the unauthorized repair, maintenance, modification or alteration of the Software unless specifically approved in writing by Roche in advance; (D) hardware or software not supplied or authorized by Roche; (E) negligent acts or omissions of Customer; (F) power failure, surges or electrical damage, lightning, fire or water damage, accident or disruptive events reasonably within Customer’s control; (G) changes in Customer’s operation standards that would require Roche to modify its standard configurations or procedures, or (H) other causes external to the Software and not attributable to Roche, including but not limited to any acts of nature or any Third Party Device.

iii. Major new releases of a Software containing substantial new enhancements, features or functionality, that are not distributed generally by Roche as a periodic update pursuant to (a)(ii) of this Section.

iv. Maintenance and support of Customer hardware or software other than Software licensed hereunder and other services not set forth in this Section.

**17. INTELLECTUAL PROPERTY**

**17.1 Customer Intellectual Property.**  Customer shall retain all right, title and interest in and to all information or data transmitted by Customer to Roche in connection with the Software and Service (collectively, “**Customer Data**”) *provided*, *however*, that Customer hereby grants Roche and its Affiliates and their respective agents and contractors (including third party service providers), a worldwide, non-exclusive, non-assignable (other than as set forth herein), sublicensable, royalty-free, fully paid-up license to access, extract, use, host, reproduce, distribute, display, analyze, modify and prepare derivative works of all Customer Data solely for purposes of (i) providing the Software and/or Service to Customer; and (ii) making improvements to such Software and/or Services. For clarity, Customer Data may include Patient Data, and does not include (i) any De-Identified Data, data that is non-identifiable aggregate data analytics compiled by Roche; (ii) any Feedback provided by Customer to Roche.

**17.2 Roche Intellectual Property.** Roche owns and retains all right, title and interest in and to the Software and Services, Roche content, deliverables, Feedback, as defined herein below, improvements, modifications and derivative works related to any of the foregoing, and all intellectual property rights in and to any of the foregoing. Any and all content or data made available to Customer through access to or use of the Software or Services or otherwise provided by Roche, including data made available through clinical decision support functions and any third party applications or included in the Software or Services, including all right, title, and interest thereto, is and will remain the exclusive property of Roche and its licensors, and may only be used by Customer in accordance with the license terms contained in this Agreement and any relevant Schedule or SOW while in effect. Except for the licenses expressly granted to Customer in this Agreement, Customer is not provided with any license or right to the Software or Services or the intellectual property rights therein, whether by implication, estoppel or otherwise. Customer is not granted any right to use any trademark, service mark, logo or trade name of Roche. Customer may not remove, alter, or obscure any proprietary notices contained on or within the Software, all of the Services, and Roche content. Roche does not provide any Software or Services which result in work for hire, work product or joint development. To the extent Customer, Customer’s Authorized Users and Customer’s employees, contractors and agents will provide Roche with suggestions, comments or other feedback regarding the Service (“**Feedback**”). Roche may use or utilize any Feedback without any obligation of any kind to Customer. Further, by submitting Feedback to Roche, Customer hereby assigns to Roche all of their right, title and interest in Feedback. In the event such assignment may not be valid under the Applicable Law, Customer agrees and grants to Roche a royalty-free, worldwide, perpetual license to use or incorporate into the Software and/or Service any suggestions, enhancement requests, recommendations or other information provided by Customer, Customer’s Authorized Users and Customer’s employees relating to the Software and/or Service.

**Section 18 shall only apply to cobas Infinity software**

**18. cobas infinity PERFORMANCE MONITORING**. ciHAT is a Roche software tool to analyze telemetry data that has been directed to a US based infrastructure regarding essential memory resources and the health of cobas infinity application based on performance indicators that are installed on customers across the US. A Roche team will use ciHAT to monitor certain performance indicators in order to proactively identify certain potential issues with the cobas infinity software. When one of the performance indicators indicates an alert, a Roche service team member will contact a designated individual at your institution regarding the performance indicator and attempt to remedy the issue. If unable to make contact, an email will be sent to system administrators.  The specific performance indicators that will be reviewed include, but are not limited to, the following:

|  |  |
| --- | --- |
| * Mirror Status * Journal Status * Memory Parameters * Disk used by * Database size * HCA Queue in * HCA Queue OUT * End of Day history | * Total errors in tsyslogs * Total Events * Licenses * Locks * Instrument connections * Host connection * Services |

Roche reserves the right to add or remove performance indicators in the future. The types of issues these performance indicators will allow us to potentially avert or resolve include, but are not limited to, the following:

* Performance Issues
  + Reduced Orders and Results Processing Time
  + Reduced Application Response
* Memory Resource Reduction
* cobas infinity Application Failure

Roche will have no obligation to alert or notify Customer of any issues or problems arising in connection with any cobas infinity instance which are or would have been discernable from a study or review of any data obtained from ciHAT. Roche warrants that the resulting services provided will be free from defects in workmanship for a period of 30 days from the date of the Services. THE LIMITED WARRANTY SET FORTH IN THIS SECTION WILL BE IN LIEU OF, AND ROCHE EXPRESSLY DISCLAIMS, ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL ROCHE BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES

**19. SUSPENSION**

**19.1 Suspension of Services and Acceleration.**  Roche may suspend access to the Services provided under an Schedule or SOW if: (i) Customer or an Authorized User or any third party engages in activities that Roche reasonably deems a risk to the security or integrity of Roche, the Services or any Personal Information, or that are prohibited pursuant to this Agreement; (ii) any charge owing by Customer is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized Roche to charge to Customer’s credit card) or Customer fails to pay the Fees/payments in accordance with Section 5 (Fees/payments) and any applicable Schedule or SOW; (iii) Customer fails to comply with any of the terms and conditions of this Agreement; or (iv) in Roche’s reasonable opinion it is required to do so by law.  In each case, Roche shall provide, other than for customers paying by credit card or direct debit whose payment has been declined, at least 10 days’ prior notice, and otherwise prompt notice after the fact, and such suspension will only remain in effect for the duration of time Roche deems necessary to address the applicable issue.  Customer will be liable for any Fees/payments incurred up to the suspension date and will remain responsible for all Fees associated with any partial continued access during any suspension (to the extent Roche only partially suspends Services). Additionally, Roche may, without limiting its other rights and remedies, accelerate Customer’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable.

**19.2 Termination for Ongoing Suspension:**  Roche may terminate this Agreement or any applicable Schedule if Customer or an Authorized User has committed an act warranting suspension under Section 18.1 (Suspension of Services) and such act has not been resolved within thirty (30) days.