

Data Innovations End User License Agreement

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DATA INNOVATIONS  
INSTRUMENT MANAGER  
END USER LICENSE AGREEMENT (EULA)

THIS END-USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT (the "AGREEMENT") concerning the use of Software between you, the end user, either individually or as an authorized representative of the company using the software, and DATA INNOVATIONS INC. a Vermont corporation, 120 Kimball Avenue, Suite 100, South Burlington, Vermont, 05403, USA; Data Innovations Europe S.A., a Belgian corporation, 34 avenue Jacques Brel, 1200 Brussels, Belgium; Data Innovations Asia Limited, a Hong Kong corporation, Room 3709, 37/F, 118 Connaught Road West, Hong Kong and Data Innovations Latin America Ltda, a Sao Paulo corporation, Rua Cotoxo, 303 Cj 71, Perdizes Tower II, Sao Paulo, Brazil, 05021 ("DATA INNOVATIONS"). PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE DATA INNOVATIONS, INC. INSTRUMENT MANAGER™ SOFTWARE ("SOFTWARE") YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: USE AND TRANSFERABILITY CONTAINED IN SECTION 2; WARRANTY IN SECTION 3; AND LIABILITY IN SECTION 4. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE, DO NOT USE THIS SOFTWARE.

Data Innovations owns all intellectual property rights ("Intellectual Property Rights") in the Software. Data Innovations, Inc. (whether directly or through a sublicense arrangement with an authorized Business Partner of Data Innovations) permits you to Use the Software only in accordance with the terms of this Agreement.

1. Definitions. "Software" means (a) all of the contents of the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided, including but not limited to (i) Data Innovations software; and (ii) related explanatory written materials, manuals, or files excluding the source code for the Software ("Documentation"); and (b) upgrades, modified versions, updates, additions, and copies of the Software, if any, licensed to you by Data Innovations (directly or through a sublicense arrangement with an authorized Business Partner of Data Innovations) (collectively, "Updates"). "Use" or "Using" means to access, install, download, execute, display or otherwise benefit from using the functionality of the Software in accordance with the Documentation. "Permitted Number" means one (1) unless otherwise indicated under a valid license granted by Data Innovations (directly or through a sublicense arrangement with an authorized Business Partner of Data Innovations). "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions; "Intellectual Property Rights" means all patents, improvements, concepts and discoveries (whether patentable or not), copyrights, models, designs, trademarks, service marks, trade names, brand names, trade dress, and other proprietary rights or applications thereof which pertain to the Software, whether registered or not; "Confidential Information" means all data and information of a confidential nature, including know-how and trade secrets, relating to the Software and/or the business or affairs of Data Innovations. Confidential Information may be communicated orally, visually, in writing or in any other recorded or tangible form. Data and information shall be considered to be Confidential Information hereunder (a) if Data Innovations has marked them as such, (b) if Data Innovations, orally or in writing, has advised you of their confidential nature, or (c) if, due to their character or nature, a reasonable person would treat them as confidential.

2. Software License. Subject to your compliance with the terms of this Agreement, Data Innovations (directly or through a sublicense arrangement with an authorized Business Partner of Data Innovations) grants to you a non-exclusive non-transferable license to Use the Software only for the purposes described in the Documentation. Data Innovations reserves all rights not expressly granted pursuant to this Agreement. This Agreement is not a sale of the Software, and you will have no title to, or ownership in, the Software, or any copies thereof.

(a) General Use. You may install and Use a copy of the Software on your compatible Computer, up to the Permitted Number of computers.

(b) Reproduction. You shall not copy the Software without the written permission of Data Innovations. Notwithstanding, you may make one backup copy of the Software for archival and disaster recovery purposes, provided your backup copy is not installed or used on any Computer. You may not transfer the rights to a backup copy unless you transfer all rights in the Software as provided under Section 2 d). All copies shall remain the property of Data Innovations. You shall maintain a record of the number and location of all copies of Software, including copies merged with other software, and shall make those records available to Data Innovations upon request. Any copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software.

(c) No Modification. You shall not modify, adapt, or translate (excluding any language translation features that are part of the Software) the Software unless it is absolutely necessary for the use of the Software in accordance with its intended purpose. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted to decompile under applicable law. You will inform Data Innovations in writing accordingly and Data Innovations shall notify you that: (i) Data Innovations will perform the work in order to achieve such interoperability and charge a reasonable expense allowance for such work to you, or (ii) you or a person authorized to act on your behalf are / is entitled to

undertake those actions. The decompilation must be performed only if the information necessary to achieve the interoperability has not previously been readily available to you and the decompilation is confined to the parts of the original program which are necessary to achieve interoperability. Any such information obtained by you by such permitted decompilation may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Software. You may customize or extend the functionality of the Software as specifically allowed by and provided in the Documentation. You may not otherwise alter or modify the Software. Data Innovations reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.

(d) Transfer. You may not, rent, lease, sublicense, assign or transfer your rights in the Software, or authorize all or any portion of the Software to be copied onto another user's Computer except as may be expressly permitted herein. You may, however, with prior written approval from Data Innovations, and under such terms and conditions as Data Innovations considers appropriate, transfer all your rights to Use the Software to another person or legal entity provided that: (i) you also transfer (1) this Agreement, and (2) the Software and all other software or hardware bundled or pre-installed with the Software, including all copies, Updates and prior versions, to such person or entity; (ii) you retain no copies, including backups and copies stored on a Computer; and (iii) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which you legally purchased a license to the Software.

(e) Updates. If the Software is an Update to a previous version of the Software, you must possess a valid license to such previous version in order to Use such Update. All Updates are provided to you on a license exchange basis. You agree that by Using an Update you voluntarily terminate your right to Use any previous version of the Software. As an exception, you may continue to Use previous versions of the Software on your Computer after you Use the Update but only to assist you in the transition to the Update, provided that: (a) the Update and the previous versions are installed on the same Computer; (b) the previous versions or copies thereof are not transferred to another party or Computer unless all copies of the Update are also transferred to such party or Computer; and (c) you acknowledge that any obligation Data Innovations may have to support the previous versions of the Software may be ended upon availability of the Update. Updates may be licensed to you by Data Innovations with additional or different terms.

3. NO WARRANTY. The Software, when properly installed, will substantially perform in accordance with the Documentation provided with the Software. Your use of the Software will not, to the best of Data Innovations' knowledge, infringe any third party's copyright, patents or any other intellectual property rights. Data Innovations does not warrant that the Software is error free or that you will be able to operate the Software without problems or interruptions. DATA INNOVATIONS DOES NOT AND cannot WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE. THIS AGREEMENT IS A LICENSE AND IS NOT A SALE OF GOODS. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, DATA INNOVATIONS MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Section 3 and Section 4 shall survive the termination of this Agreement for any reason, but this shall not imply or create any continued right to Use the Software after termination of this Agreement.

#### 4. LIMITATION OF LIABILITY.

(a) IN NO EVENT WILL DATA INNOVATIONS BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING WITHOUT LIMITATION LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. DATA INNOVATIONS' AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. Nothing contained in this Agreement limits Data Innovations' liability to you in the event of death or personal injury resulting from Data Innovations' negligence or fraud to the extent that applicable law requires such liability.

(b) Data Innovations shall not be liable for disturbances and failure of Internet connections.

(c) Data Innovations shall not be liable for your data input in the Software and you will hold Data Innovations harmless against any damage claimed in relation to the use of such data.

(d) Data Innovations shall not be liable for consequential damages due to force majeure, including unavailability of the server due to power failure or disturbance or equipment failures and/or Software maintenance.

5. Indemnity. You will indemnify, protect and hold Data Innovations, its affiliates and all officers, directors, employees and agents thereof (hereinafter referred to as "Indemnitees") harmless from all claims, liabilities, demands, suits or actions (including

attorneys' fees incurred in connection therewith) which may be asserted against Data Innovations for any kind of damages, including but without limitation damage or injury to property or persons and incidental and consequential damages, which may be sustained by any third party or any of the Indemnitees occurring out of or incident to the conduct of your operations under this Agreement.

6. Audit Right. During normal business hours and at any time during which the Software or Documentation are being utilized, Data Innovations, or its authorized representative or licensors, shall have the right upon reasonable advance notice to audit and inspect your or any of your affiliate's utilization of such items, in order to verify compliance with the terms of this Agreement. If you are found not to be in substantial compliance with your obligations, you shall pay the reasonable expenses incurred by Data Innovations associated with such inspection and will promptly take measures to come into compliance.

7. Intellectual Property Rights.

(a) Ownership. You acknowledge that Data Innovations has all exclusive right, title and interest, including Intellectual Property Rights in the Software. You acquire only the right to Use the Data Innovations' Software and do not acquire any ownership rights or title or any Intellectual Property Rights in the Software, including all future Updates, modifications, new versions, releases, compilations and translations of the Software. All suggestions, improvements, corrections, and other contributions provided by you shall become the property of Data Innovations and you hereby agree to assign any such right to Data Innovations.

(b) You shall promptly notify Data Innovations of any unauthorized access to the Software and all infringements, imitations, illegal use, or misuse of the Intellectual Property Rights that come to your attention. Data Innovations will have the right but not the obligation, to prosecute and defend, as the case may be, all claims of infringement, imitations, illegal use, or misuse of the Intellectual Property Rights.

(c) Data Innovations will defend or settle, at its option, any action brought against you alleging that the Software infringes a third party's intellectual property rights.

(d) Notwithstanding paragraphs (b) and (c) of this Section 7, Data innovations will have no liability for:

–any infringement arising from the combination of the Software with other products not supplied by Data Innovations; or

–the modification of the Software unless the modification was made or approved expressly by Data Innovations.

(e) You agree not to remove, alter or obscure any of Data Innovations' copyright notices, proprietary legends, trademark or service mark attributes, patent markings or other indicia of Data Innovations' ownership.

8. Confidential Information

(a) Confidential Information of Data Innovations, including permitted copies, shall be deemed the property of Data Innovations.

(b) In order to protect the rights of Data Innovations in its Confidential Information, you agree to take all reasonable steps and the same protective precautions to protect the Confidential Information from disclosure to third parties as with your own proprietary and confidential information. You shall not, without the prior written consent of Data Innovations, disclose, provide, or make available any of the Confidential Information of Data Innovations in any form to any person, except to your bona fide employees, officers, directors, or third parties whose access is necessary to enable such party to exercise its rights hereunder. You agree that prior to disclosing any Confidential Information of Data Innovations to any third party, you will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 8 with respect to the Confidential Information and naming Data Innovations, as the case may be, as a third party beneficiary.

(c) You acknowledge that Data Innovations' Confidential Information is unique property of extreme value to Data Innovations and that unauthorized use or disclosure thereof would cause Data Innovations irreparable harm. If you fail to abide by your obligations of confidentiality under this Section 8, Data Innovations shall be entitled to immediate injunctive relief, in addition to any other rights and remedies available to it at law or in equity.

(d) Upon termination of this Agreement, you agree to immediately cease using the Confidential Information of Data Innovations and either deliver to Data Innovations or destroy all such Confidential Information together with all copies thereof (including erasing such Confidential information from all memory or data storage apparatus) and certify to Data Innovations such destruction / return within thirty (30) days following such termination.

9. Termination.

- (a) If you materially breach this License Agreement, Data Innovations may terminate your right to Use the Software by written notice to you.
- (b) Upon termination of this License Agreement, you will immediately cease Using the Software or using any Intellectual Property Rights or any Confidential Information. You will either return to Data Innovations or destroy all copies of the Software in your possession or control.

10. Export Rules. You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed nation and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement.

11. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Vermont, United States. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any and all disputes, controversies, differences or claims arising from or related to this Agreement, or the interpretation, making, performance, breach or termination thereof or transactions conducted pursuant to the rights and duties granted by this Agreement ("Disputes"), shall be settled or resolved in the following manner:

Mediation: The parties will attempt to settle their Disputes by mediation. To initiate mediation, a party must give written notice requesting mediation to the other party to the Dispute. The parties will nominate an independent third party trained as a mediator ("the Mediator") who will act fairly and with complete impartiality towards the parties. The language of any mediation shall be English. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, without breach of this mediation agreement.

In the event mediation fails to resolve a Dispute, then any party who engaged in good faith in the mediation process may pursue its rights under this Agreement in any court of competent jurisdiction in the State of Vermont, United States.

12. General Provisions.

- (a) If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.
- (b) This Agreement shall not prejudice the statutory rights of any party dealing as a consumer.
- (c) This is the entire agreement between Data Innovations and you relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software. This Agreement may only be modified by a writing signed by an authorized officer of Data Innovations.
- (d) The text of this Agreement herein written in the English language is the authentic text and any difficulties or uncertainties in the interpretation arising shall be resolved by reference to this text.
- (e) No Waiver. Failure on any occasion by either party to enforce any term of this Agreement shall not prevent enforcement on any other occasion.