

Cloud Subscription – Terms of Service

Caresphere Workflow Solution and Sysmex Validation Solution Subscription

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THESE TERMS OF SERVICE ARE A BINDING AGREEMENT ENTERED INTO BETWEEN SYSMEX AMERICA, INC. OR ITS AFFILIATES (“**SYSMEX**”) AND THE ENTITY IDENTIFIED IN ANY AGREEMENT REFERENCING AND INCORPORATING THESE TERMS OF SERVICE (“**CUSTOMER**”, AND “**AGREEMENT**” RESPECTIVELY).

The use of Caresphere Workflow Solution (“Caresphere WS”) and Sysmex Validation Solution (“Sysmex VS”) are subject to the terms and conditions of this Terms of Service, which is hereby incorporated into the Agreement.

1 PROVISION OF SERVICES

- 1.1 In consideration of the fees paid by Customer under the Agreement, Sysmex agrees to provide Customer access to and use of the Caresphere WS and/or Sysmex VS services (individually and collectively the “Subscription Service”) subject to the terms and conditions of the Agreement and these Terms of Service.
- 1.2 Capitalized terms not otherwise defined will have the meaning ascribed to them in the Agreement unless otherwise defined in the text of these Terms of Service or specifically defined in the definitions section below.

2 LICENSE GRANT AND RESTRICTIONS

- 2.1 Subject to the terms and conditions set forth in these Terms of Service, during the subscription Term, specified in the Agreement, Sysmex grants to Customer a nontransferable, nonexclusive right to permit Users to (a) access and use the selected Subscription Service for Authorized Customer Sites, (b) display and export Customer’s configuration, and (c) use the Materials and the Sysmex Supplied Software, if any, solely in connection with the Subscription Service, all solely for Customer’s own internal business operations. For purpose of this license grant, “Customer” will include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer’s direction and for whom Customer is fully responsible (which personnel or consultants will each be considered a “User”), or any Customer sites licensed to use the Subscription Service (“Authorized Customer Sites”). Customer acknowledges and agrees that the license granted is subject to all of the following agreements and restrictions: (i) Customer is only authorized to access and use the Subscription Service in connection with the business operations of the Authorized Customer Sites identified in the Agreement; (ii) Customer will not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Subscription Service or the Materials available to any third-party other than a User using the Subscription Service for an Authorized Customer Site; (iii) Customer will not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Subscription Service, including without limitation the Sysmex Supplied Software and or Materials, or access the Subscription

Service or Materials in order to build a similar or competitive product or service; (iv) Customer will not create Internet “URL links” to the Subscription Service or “frame” or “mirror” any part of the Subscription Service on any server or device so that it appears to be a service offered by Customer, except as permitted by this Agreement; (v) except as expressly stated herein, no part of the Subscription Service or Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form, including but not limited to electronic, mechanical, photocopying, recording, or other means; (vi) Customer will make every reasonable effort to prevent unauthorized third-parties from accessing the Subscription Service; (vii) Sysmex or its Third Party Vendors own all right, title and interest in and to all intellectual property rights in the Subscription Service and the Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Users relating to the Service or the Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (viii) Customer does not acquire any rights in the Subscription Service or Materials, express or implied, other than those expressly granted in these Terms of Service and all rights not expressly granted to Customer are reserved by Sysmex and its Third-Party Vendors; and (ix) these Terms of Service do not constitute a sale and do not convey any rights of ownership in or related to the Subscription Service, Sysmex Supplied Software, Third-Party Products, or Materials to Customer.

- 2.2 Service Extensions or Updates. Unless explicitly stated otherwise, any new features, updates or upgrades that augment or enhance the Subscription Service, and or any new service subsequently purchased by Customer pursuant to an amendment or order accepted by Sysmex referencing these Terms of Service will be subject to these Terms of Service. Sysmex reserves the right to require an additional fee for any new service or major updates to the Subscription Service. A major update includes significant new features and will be identified by a version number which increases the number before the decimal point (e.g., Version 1.0 to Version 2.0).

3 CUSTOMER DATA AND LICENSES FROM CUSTOMER

Customer owns all right, title and interest in all data and/or content created or provided by Customer and in all data derived from it, including Personal Data, Personal Information and Protected Health Information (both as defined below) (“*Customer Data*”). Nothing in this Agreement will be construed to grant Sysmex any rights in Customer Data beyond those expressly provided herein. For clarity, Sysmex will not store any Customer Data other than as required for the provision of the Subscription Service, except to the extent that it constitutes Usage Data (as defined in these Terms of Service). As between Sysmex and Customer, Customer is solely responsible for (i) the content, quality, accuracy, reliability, integrity, legality, appropriateness and copyright of all Customer Data and information made available regarding Customer and Data Subjects (as defined in these Terms of Service), (ii) providing notice to Data Subjects with regard to how Customer Data will be collected and used for the purpose of the Subscription Service, (iii) ensuring Customer has a valid legal basis for processing Customer Data and for sharing Customer Data with Sysmex (to the extent applicable), and (iv) ensuring that the Customer Data made available by Customer complies with applicable laws, rules and regulations including (where applicable) any information, data protection or privacy laws (collectively, “**Applicable Data**”).

Protection Laws”). Subject to these Terms of Service, Customer grants to Sysmex and its Third-Party Vendors the non-exclusive, nontransferable right to copy, store, record, transmit, display, view, print or otherwise use Customer Data solely to the extent necessary to provide the Subscription Service and Materials to Customer. Customer acknowledges and agrees that Customer Data and information regarding Customer, Data Subjects that is provided to Sysmex and its Third-Party Vendors in connection with the Agreement may be Processed by Sysmex and its Third-Party Vendors to the extent necessary to provide the Subscription Service. In addition, Customer hereby grants to Sysmex a non-exclusive, worldwide, royalty-free license to use the Usage Data in accordance with and for the purposes described in the Section entitled “Data” in these Terms of Service. Customer agrees that the license to the Customer Data will survive termination of these Terms of Service and the Agreement solely for the purpose of storing backup Customer Data in accordance with these Terms of Service and that the license to the Usage Data will also survive termination of these Terms of Service and the Agreement.

4 PROPRIETARY RIGHTS

Customer acknowledges and agrees that the Subscription Service and any necessary software used in connection with the Subscription Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Subscription Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Sysmex, nothing in the Subscription Service, the Materials, or the Agreement will be construed to confer any license to any of Sysmex’s Third-Party Vendors’ intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Sysmex Supplied Software and other Sysmex Trademarks, service marks, logos and product service names are marks of Sysmex (the “Sysmex Marks”). Customer agrees not to display or use the Sysmex Marks, or the marks of any Third-Party Vendor, in any manner without the owner’s express prior written permission. Sysmex reserves the right to subcontract any or all services provided hereunder to third parties.

5 SECURITY AND PRIVACY.

5.1 Obligations

Each Party has obligations with respect to the security of the Subscription Service and Customer Data. Taking into account the nature and types of Customer Data, Sysmex will employ administrative, physical and technical measures in accordance with applicable industry practice to protect the Subscription Service and prevent the accidental loss or unauthorized access, use, alteration or disclosure of Customer Data under its control (“Security Services”). Except to the extent caused by Sysmex’s failure to provide Security Services, Sysmex is not responsible for (i) unauthorized access to Customer’s Data, or (ii) damages arising out of unauthorized access.

5.2 Customer Responsibility

Customer is responsible for enabling directory services for single sign-on for Customer’s accounts, and securing access passwords, keys, tokens or other credentials that may be used by Customer in connection with the Subscription Service (collectively, “Customer Credentials”). Customer is solely responsible for ensuring: (i) that only appropriate Users have access to the Subscription Service, and (ii) that Customer managed passwords, and access procedures with respect to logging

into the Subscription Service are used properly. Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Subscription Service and to promptly, but in no event later than 72 hours, notify Sysmex if Customer believes (a) any Customer Credentials have been lost, stolen or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Subscription Service or Customer Data.

5.3 Personal Information and Protected Health Information

Except for limited Personal Information in Customer Credentials, Sysmex does not require Personal Information for Customer's access and use of the Subscription Service. Customer will limit Personal Information provided to Sysmex to only that necessary for the creation and administration of its account. With regard to Customer Data, Customer acknowledges that Personal Information or Protected Health Information may be included in the Customer Data. Customer will use reasonable efforts to restrict the inclusion of Personal Information or Protected Health Information in Customer Data to only that necessary for the use of the Subscription Service. Sysmex will use commercially reasonable efforts to encrypt and protect any Personal Information or Protected Health Information in the Subscription Service and to provide Customer with the ability to filter and/or mask Personal Information and Protected Health Information for Customer Data Processed by the Subscription Service. Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Subscription Service, including without limitation those related to data privacy, Protected Health Information, Personal Information, or Personal Data. Customer will be solely responsible for providing any notices required by applicable law to, and receiving any consents and authorizations required by applicable law from, persons, including Data Subjects, whose Personal Information or Protected Health Information may be included in Customer Data or Customer Credentials. Customer understands and acknowledges that Customer Credentials may be transmitted to Sysmex's authentication server, which may be located outside of Customer's country, for the sole purpose of authenticating Customer Credentials.

5.4 Operational Data

Sysmex may Process information about Customer's instruments, configuration and use of the Subscription Service, including any machine data, meta data, quality configuration data (or "Sysmex QC" Data), network usage data, data pertaining to Customer's Sysmex account or other data that is not PHI (individually and collectively "Usage Data"), and Customer Data: (a) to manage Customer's account, and monitor usage, including to calculate fees; (b) to provide and improve the Subscription Service, maintenance and support, including to address support requests and troubleshoot issues; and (c) to provide Customer with insights, service and feature announcements and other reporting. Sysmex may also Process Usage Data that does not allow a third party to identify Customer or any Data Subject as the source of the information: (i) to develop new services and features and (ii) to promote Sysmex's services, including, for example, through analyses of patterns and trends. Sysmex's Processing of Usage Data, and Customer Data will at all times be subject to Sysmex's obligations under this Agreement, including those of security and confidentiality.

6 LICENSE FEE, TERM AND PAYMENT

The Subscription Term is identified in the Agreement. Customer will pay the fees identified in the Agreement for the Subscription Service.

7 SUSPENSION/TERMINATION/MODIFICATION

7.1 Suspension for Delinquent Account

Sysmex reserves the right to suspend Customer's access and/or use of the Subscription Service for any account for which any payment is due but remains unpaid after 30 day's written notice of such delinquency. Customer agrees that Sysmex will not be liable to Customer, or to any third party, for any suspension of the Subscription Service resulting from Customer's non-payment of the fees.

7.2 Suspension for Ongoing Harm

Customer agrees that Sysmex may, with reasonably contemporaneous telephonic or electronic mail notice to Customer, suspend Customer's access to the Subscription Service if Sysmex reasonably concludes that Customer's use of the Subscription Service is causing immediate and ongoing harm to Sysmex or a threat to the security or integrity of the Subscription Service, or to comply with the law or requests of a government entity. Sysmex will use commercially reasonable efforts to resolve the issues causing the suspension of Subscription Service. Customer agrees that Sysmex will not be liable to Customer or to any third party for any suspension of the Subscription Service under such circumstances.

7.3 Handling of Customer Data in the Event of Termination

Customer acknowledges and agrees that following termination of this Agreement, Customer will return all Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Sysmex and Sysmex may immediately deactivate Customer's account. Sysmex will, for up to 30 days from the effective date of termination of this Agreement, permit a User designated by Customer to continue to access and, at Customer's expense, download or export Customer Data that was accessible to Users through the Subscription Service immediately prior to termination. The designated User's access and use will continue to be subject to these Terms of Service, provided the User will not access or use the Subscription Service other than to download Customer Data. Furthermore, unless otherwise agreed-upon by the Parties in writing, Sysmex may remove or overwrite all applicable Customer Data from Sysmex's systems 90 days following the effective date of termination or cancellation, in accordance with Sysmex's standard procedures.

7.4 Modification to or Discontinuation of the Subscription Service

Sysmex reserves the right at any time and from time to time to modify, temporarily or permanently, the Subscription Service (or any part thereof), provided such modification does not diminish the functionality of the Subscription Service to the Customer on which the Customer materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, Sysmex will use commercially reasonable efforts to notify Customer prior to any such modification. Customer acknowledges that Sysmex reserves the right to discontinue offering the Subscription Service at the conclusion of Customer's then current Subscription Term. Customer agrees that Sysmex will not be liable to Customer or any third party for any modification or discontinuance of the Subscription Service as described in this Agreement.

8 SYSTEM ADMINISTRATION

8.1 Customer's Environment

Customer will be solely responsible for Customer's environment, including enabling Users' access and use of the Subscription Services.

8.2 Hosting

Customer acknowledges that Sysmex's Subscription Service operates on one or more third party cloud computing platforms and that Sysmex will have the right to change or add to the cloud computing platforms on which its Subscription Service operates.

8.3 Modification to Third Party Software, Hosting and Support Cost

In the event that Sysmex incurs any increased cost from third party software licenses, hosting fees, or annual support fees, Sysmex reserves the right to pass these costs onto the Customer.

8.4 Transmission of Data

Customer understands that the technical processing and transmission of Customer's Data is fundamentally necessary to Customer's use of the Subscription Service. Customer expressly consents to Sysmex's Processing of Customer Data, and Customer acknowledges and understands that Processing Customer's Data will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Sysmex. Customer further understands that although all Customer Data is encrypted in transit, Customer Data may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, or other electronic means. Customer agrees that Sysmex is not responsible for any Customer Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Sysmex.

8.5 Sites, Passwords, Access, and Notification

Use of the Subscription Service is based on the number of Authorized Customer Sites licensed for use by Customer. The number of Users associated with each Authorized Customer Site is not limited, however, Customer will provide and assign unique password and usernames to each User. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and or usernames with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and usernames. Customer will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Subscription Service portal or under Customer's account. Sysmex will act as though any electronic communications it receives under Customer's passwords, username, and/or account number will have been sent by Customer.

9 SUPPORT & MAINTENANCE

9.1 Sysmex's Support

Sysmex will make commercially reasonable efforts to provide Product Support and Infrastructure Support in connection with the Subscription Service and Sysmex Supplied Software. Product Support pertains to support designed to remedy errors in Subscription Service or Sysmex Supplied

Software that cause it to deviate from the specifications as described in the Materials. Infrastructure Support pertains to the maintenance of the hosting environment provided as part of the Subscription Service.

9.2 Maintenance

In order to perform maintenance, including Subscription Service, there will be routinely scheduled down time. Sysmex further reserves the right from time to time to issue new updates in which Sysmex adds functionality to the Subscription Service. The time necessary to provide such updates will not be counted in any System Availability calculations. Customer will be apprised of software updates to the Service. It will be the Customer's responsibility, in cooperation with Sysmex, to perform any required validation of the updated service. Customer agrees that any updates to the Subscription Service will be applied by Sysmex to Customer's production environment within the time frame included in the associated release notes. Sysmex may charge Customer an "out of current version" fee if Sysmex is required to support a version of the Subscription Service that is not a current, supported version or if Customer requires an on-premises version. In the event that Sysmex, in its sole discretion, determines that any unscheduled maintenance is necessary, Sysmex will use commercially reasonable efforts to notify Customer as soon as it becomes aware of such need. Any on-premises components of the Subscription Service will be maintained and updated by solely by Sysmex. Sysmex will validate, install, and maintain all minor updates including security patches to the operating system. Notification will be provided in application release notes.

9.3 Service Levels

Sysmex will make reasonable commercial efforts to provide the Subscription Services at the Service Levels, which Sysmex may include in the Materials from time to time, if any, subject to all requirements and exceptions provided by Sysmex for each Service Level.

10 WARRANTIES

10.1 Warranty of Functionality

Sysmex warrants to Customer during the Subscription Term that the Subscription Service will comply with the material functionality described in the Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Subscription Service. Customer's sole and exclusive remedy for Sysmex's breach of this warranty will be that Sysmex will use commercially reasonable efforts to correct such errors or modify the Subscription Service to achieve the material functionality described in the Materials within a reasonable period of time. Sysmex will, however, have no obligation with respect to a warranty claim unless notified of such claim within 30 days of the first material functionality problem. Further, Sysmex will have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Sysmex. Sysmex does not warrant that the Subscription Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

10.2 Data Maintenance and Backup Warranty

Sysmex warrants during the Subscription Term, that it will, at a minimum, use and maintain the backup procedures listed in the Materials. In the event of a breach of this provision, Sysmex will

use commercially reasonable efforts to correct Customer Data or restore Customer Data within three (3) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer). Provided Sysmex complies with the procedures set forth in the Materials, it will be deemed to have satisfied its obligation with respect to this warranty.

10.3 Non-Infringement Warranty

Sysmex warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Subscription Service, any Sysmex Supplied Software and other rights granted by the Agreement to Customer with respect to the Subscription Service and that neither the performance by Customer in its utilization of the Subscription Service, nor the license of and authorized use by Customer of the Subscription Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

11 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED ABOVE, SYSMEX DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SUBSCRIPTION SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SUBSCRIPTION SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SUBSCRIPTION SERVICE AND/OR MATERIALS WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SUBSCRIPTION SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY SYSMEX OR THE OPERATION OF THE SUBSCRIPTION SERVICES WILL BE SECURE OR THAT SYSMEX AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY SYSMEX. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED ABOVE, THE SUBSCRIPTION SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SUBSCRIPTION SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

12 U.S. GOVERNMENT RESTRICTED RIGHTS

Any use of the Subscription Service by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

13 DEFINITIONS

“**Customer Data**” means all data and/or content created or provided by Customer, and in all data derived from it, including Personal Data and PHI, and all associated test results and flags, information related to a sample ID record, and incoming data from the Customer’s Laboratory Information System (“LIS”).

“**Data Subjects**” means individuals who have provided information which includes Personal Information, Protected Health Information or other Personal Data relating to that individual.

“**Materials**” means documents, documentation, manuals, user guides, software and other media that contains information related to the operation and use of the Subscription Services.

“**Personal Data**” or “**Personal Information**” is any information that relates to an identified or identifiable living individual. Different pieces of information, which collected together can lead to the identification of a particular person, also constitute personal data.

“**Process**” or “**Processing**” means to access, use, transmit, or store data.

“**System Availability**” means any time that a system is available for use by the Customer.

“**Usage Data**” means data pertaining to the operation of the Subscription Service, the network or an instrument. Usage Data Includes, without limitation, information about Customer’s instruments, configuration and use of the Subscription Service, including any machine data, meta data, quality configuration (or “QC”) data, network usage data, data pertaining to Customer’s Sysmex account or other non-identifiable, de-identified or anonymized data.

“**Users**” means individuals authorized by Customer to access and use the Subscription Service, with each User having unique login credentials enabling access to the Subscription Service.

“**Third Party Vendors**” means third party manufacturer’s, author’s, developer’s, vendor’s, and service providers who provide products or services to Sysmex.