

ATTACHMENT A – MMODAL

This agreement and the underlying GSA Schedule Contract, Schedule pricelist, and purchase order which by this reference are incorporated herein (together referred to hereinafter as the **“Agreement”** or **“End User Agreement”**) is a binding agreement between MModal Services, Ltd. and/or its Affiliates (hereinafter referred to as **“M*Modal”**) and the entity identified in the purchase order as the licensee of software from M*Modal (hereinafter referred to as **“Ordering Activity”**). M*Modal and Ordering Activity may be referred to herein individually as a **“Party”** and collectively as the **“Parties.”**

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

- 1.1 “Access Credentials”** means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual's identity and authorization to access and use the Software.
- 1.2 “Affiliate”** means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. **“Control”** means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by Agreement. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall each be deemed Control.
- 1.3 “Authorized User”** means each of the individuals employed or engaged by Ordering Activity at a Facility with appropriate Access Credentials to the Software and/or Services.
- 1.4 “Ordering Activity Data”** means clinical information, in any form or medium, collected, downloaded or otherwise received from Ordering Activity or an Authorized User by or through the Software.
- 1.5 “Ordering Activity Systems”** means the Ordering Activity's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Ordering Activity or through third-party services.
- 1.6 “Confidential Information”** means business or technical information disclosed by one Party (the **“Disclosing Party”**) to the other Party (the **“Receiving Party”**), in any form or medium, tangible or intangible, in connection with this Agreement and (a) is designated either in writing or orally as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (d) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (e) becomes publicly available through no fault or breach of the Receiving Party.
- 1.7 “Deliverables”** means work produced from the Software, created for and delivered to Ordering Activity under this Agreement.

1.8 “Facility” means the Ordering Activity location where Software is downloaded and/or installed.

1.9 “Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.10 “M*Modal Materials” means the Software, User Guide, M*Modal Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, hardware, software and other technologies and inventions possessed by M*Modal prior to the commencement of or independent of M*Modal’s delivery of the Services or Products, or acquired, developed or used by M*Modal in the performance of Services or licensing of Software (other than Ordering Activity Confidential Information and Ordering Activity Data), and any modifications, enhancements and derivative works thereof, regardless of who or how created, and all Intellectual Property Rights attendant thereto.

1.11 “M*Modal Systems” means the information technology infrastructure, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by M*Modal or through third-party services, used by M*Modal in providing Services or Software.

1.12 “Services” means any services provided by M*Modal to Ordering Activity pursuant to the Agreement.

1.13 “Specifications” means the descriptions concerning the functionality, features, and requirements of the Software listed within the User Guide.

1.14 “Software” means M*Modal branded software applications including any maintenance releases and the appropriate User Guide Ordering Activity is granted a license to under this Agreement.

1.15 “Third Party Products” means any non-M*Modal branded materials or equipment.

1.16 “User Guide” means the operator and/or user manual and written instructions for the Software.

2 EFFECT OF TERMINATION. In the event of termination or expiration of this Agreement (a) M*Modal will cease providing any Services; (b) the licenses related to this Agreement shall terminate, unless expressly stated otherwise in the Agreement; (c) Ordering Activity shall immediately cease using any M*Modal Confidential Information and destroy all copies of M*Modal Materials and other M*Modal Confidential Information that Ordering Activity has not previously returned to M*Modal; and (d) M*Modal shall immediately cease using any Ordering Activity Confidential Information and destroy all copies of Ordering Activity Data and other Ordering Activity Confidential Information that M*Modal has not previously returned to Ordering Activity. Notwithstanding the above, a Party may retain a copy of the other’s Confidential Information to comply with its legal obligations, or to the extent Confidential Information is embedded in the Receiving Party’s off-site disaster recovery or information technology backup systems until such systems are purged in accordance with the Receiving Party’s systematic back-up and archiving procedures.

3 RESERVED.

4 INTELLECTUAL PROPERTY

- 4.1 General:** Except for the limited license(s) granted herein, all right, title and interest in and to M*Modal Materials are retained by M*Modal or its licensors. Absent the prior, written consent of M*Modal, neither Ordering Activity nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal notice or legend contained in or on copies thereof. Ordering Activity shall make reasonable efforts to protect M*Modal Materials from unauthorized use. Ordering Activity unconditionally and irrevocably assigns to M*Modal its entire right, title and interest in and to any Intellectual Property Rights that Ordering Activity may now or hereafter have in or relating to the M*Modal Materials (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, Agreement, assignment or otherwise. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.
- 4.2 Continuous Improvement:** Ordering Activity acknowledges and agrees that M*Modal may use, compile (including creating statistical or other models), and analyze Ordering Activity Data to (a) improve, develop or otherwise modify M*Modal Materials, and (b) use computerized processes to tailor and deliver to Ordering Activity relevant communications. To the extent Ordering Activity Data is used or compiled in or with any M*Modal Materials, all Intellectual Property Rights in such M*Modal Materials shall be solely owned by M*Modal.
- 4.3 Ordering Activity Data and Deliverables:** Except for the limited purpose of performing Services or providing Software, and except for the limited license(s) granted herein, all right, title and interest in and to Ordering Activity Data is retained by Ordering Activity. Subject to this Agreement, and except to the extent Deliverables include any M*Modal Materials or M*Modal Confidential Information, M*Modal hereby assigns to Ordering Activity all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, contract, assignment or otherwise. Ordering Activity is responsible for making and maintaining its own backup copies of any Ordering Activity Data and Deliverables.
- 4.4 License Grant:** Any license granted to Ordering Activity in the Software (a) is non-exclusive and non-transferable; and (b) extends to Ordering Activity and Authorized Users to access and use the Software in the United States solely for Ordering Activity's internal business purposes. The Software shall be downloaded and installed on only computing device for a single Authorized User. The term of the license shall be set forth in the ordering documents.
- 4.5 License Restrictions:** Without expanding the limited license grant herein, Ordering Activity and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer the Software, or take any action in order to derive a source code equivalent of the Software, (b) release to any third party results of any benchmark, performance, or functionality tests performed on the Software, (c) release to any third party results obtained through use of the Software other than the Deliverables, (d) incorporate, bundle or pre-load any portion of the Software into any software or computing device of Ordering Activity except as expressly set forth in this Agreement, (e) copy, modify or create derivative works of the Software, (f) sublicense the Products or any portion thereof to a third party, or otherwise permit use of the Software including, without limitation, timesharing or networking use by any third party, except as expressly set forth in this Agreement, (g) link, combine or use the Software with any open source software without the written permission of M*Modal if such linkage, combination or use would create a risk, or have the "viral" effect, of disclosing or licensing M*Modal source code or rendering any M*Modal patent unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto, or (h) cause the Software to interact with the functionality of a Third Party Product similar to that contained in the Software. For clarification, a Third Party Product shall not be deemed to "interact with" the Software if such Third Party Product does not export or import data from the Software to such Third Party Product, or vice versa.

5 M*MODAL WARRANTIES AND DISCLAIMERS.

5.1 M*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M*Modal, or shipment in all other cases (the **“Warranty Period”**), Products shall materially function in accordance with applicable Specifications and the media on which Software is distributed shall be free from defects in materials and workmanship. Ordering Activity must provide M*Modal with written notice of breach of this warranty during the Warranty Period setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option, (a) repair or replace that portion of the Products effected.

5.2 M*Modal warrants that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Ordering Activity must provide M*Modal with written notice of breach of this warranty within thirty (30) days after performance of Services setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option re-perform the Services.

5.3 The limited warranties set forth above do not apply to problems arising out of or related to:

5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;

5.3.2 Any operation or use of, or other activity relating to, the Products other than as specified in the User Guide, including any incorporation in the Products of, or combination, operation or use of the Products in or with, any technology or service not specified for Ordering Activity’s use in the User Guide or expressly authorized by M*Modal in writing;

5.3.3 Ordering Activity’s or any Authorized User’s negligence, abuse, misapplication or misuse of the Products;

5.3.4 Ordering Activity’s failure to promptly install maintenance releases that M*Modal has previously made available to Ordering Activity;

5.3.5 Operation of or access to Ordering Activity Systems; and

5.3.6 Third Party Products.

5.4 To the extent applicable, M*Modal shall pass through to Ordering Activity any warranty provided to M*Modal for Third Party Products.

5.5 OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH ABOVE OR IN THIS AGREEMENT, M*MODAL MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR PRODUCTS. M*MODAL DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. M*MODAL DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6 ORDERING ACTIVITY WARRANTIES AND ACKNOWLEDGEMENTS. Ordering Activity warrants that Ordering Activity and any person or entity using the Software shall (a) use the Software consistent with the User Guide and this Agreement; (b) comply with all applicable laws and regulations, including export and

import laws, in connection with receipt or use of the Software; (c) be responsible for the accuracy and legality of information provided to M*Modal; and (d) be responsible for identifying errors in the results from use of the Software or before relying on such results. Ordering Activity agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by M*Modal regarding future functionality or features. Ordering Activity further acknowledges that M*Modal may make changes to the Software determined reasonably necessary by M*Modal so long as such changes do not materially decrease the functionality of the Software.