

General License and Service Conditions for cobas® software solutions of ROCHE

as of 1 August 2020

Preamble

1. These License and Service Conditions for cobas® software solutions together with the Offer issued to Licensee by ROCHE form the legal framework ("Agreement") for using and licensing the rights in and the ROCHE Application Software described in the Offer. Read the following License and Service Conditions and the Offer carefully before using the ROCHE Application Software. **YOU ACCEPT AND AGREE TO BE BOUND BY THE LICENSE AND SERVICE CONDITIONS AS WELL AS THE OFFER BY USING THE ROCHE Application Software.** If you are entering into this Agreement on behalf of another person or a company or other legal entity, you represent and warrant that you have full authority to bind that person, company, or legal entity. If Licensee is not willing to be bound by these License and Service Conditions and the Offer, the ROCHE Application Software must be promptly returned to ROCHE.
 2. The License and Service Conditions define the conditions for use of the ROCHE Application Software and of the Services. These License and Service Conditions shall apply unless a written agreement provides differently or other agreed documents prevail. This version of the License and Service Conditions replaces any former versions.
 3. The ROCHE Application Software is to be used exclusively in clinical laboratories and hospitals to support basic laboratory work processes or sub-processes. **cobas IT** middleware can also be used in blood donation testing laboratories.
 4. The ROCHE Application Software has a modular structure, such modules to be selected to suit the Licensee's specific requirements. The scope of the selected modules and a description of the configuration are provided in the Offer which determines the ROCHE Application Software licensed to the Licensee.
 5. ROCHE grants the Licensee the license to use the ROCHE Application Software as described in the Offer and the Licensee may use them within the scope of such license grant. For reasons associated with the state of technology, it is not possible to write computer software in such a way that it operates faultlessly in all applications, configurations, and environments and on all data processors. The ROCHE Application Software is designed that, under normal conditions, it is usable as described by ROCHE in the Offer.
 6. While the ROCHE Application Software provides the Licensee with functions and user applications as a framework, the Licensee must provide the data needed to run the ROCHE Application Software ("Licensee Data"). The Licensee shall, therefore, ensure that the content of the Licensee Data is correct and shall ensure the security and integrity of the Licensee Data. Moreover, as the operator of the ROCHE Application Software, the Licensee must perform regular checks to ensure that the functions and user applications employed correspond to the current state of legislation.
- 1. Definitions**
- 1.1 **Agreement** shall mean the contractual relationship between ROCHE and the Licensee for licensing the ROCHE Application Software, based on the Offer as accepted by the Licensee and including these License and Service Conditions and further documents, if any.
 - 1.2 **Approved Third Party Software** shall mean any third party software (including drivers for Instruments or accessories) 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 ROCHE Application Software.
 - 1.3 **Client** means the technical device used by one named user at a time to use the ROCHE Application Software.
 - 1.4 **Instrument** means an analytical or pre-analytical device from ROCHE or a third party supplier used for preparing or processing samples.
 - 1.5 **IT Infrastructure** shall mean the required technical framework and the system configurations for the use of the ROCHE Application Software.
 - 1.6 **License and Service Conditions** shall mean these General License and Service Conditions which shall form an integral part of the Agreement.
 - 1.7 **Licensee** shall mean the person (legal entity) being the recipient of the Offer and who will license and operate the ROCHE Application Software according to the Agreement.
 - 1.8 **Offer** shall mean the written proposal submitted by ROCHE to the Licensee containing details regarding the license to the ROCHE Application Software, information regarding the selected modules, number of Clients and/or named users, the IT Infrastructure, the fees and costs, scheduled delivery dates, any further specifications, any third Party products provided by ROCHE, and these License and Service Conditions.
 - 1.9 **ROCHE** shall mean the legal entity of the ROCHE Group being entitled to

grant rights with respect to the ROCHE Application Software, and issuing the Offer to the Licensee.

- 1.10 **ROCHE Application Software** shall mean the standard ROCHE Application Software licensed in accordance with the Agreement (i.e. **cobas infinity** POC, **cobas infinity** POC Remote Access, **cobas IT** middleware, **cobas IT 3000**, **cobas IT 5000**, **cobas infinity** laboratory solution and **cobas infinity** production monitoring).
 - 1.11 **Services** shall mean any services, i.e. planning, installation, training, maintenance, support and consulting, provided by ROCHE to the Licensee in connection with the ROCHE Application Software according to the service fees provided in a separate agreement. Services include improvements and enhancements to the ROCHE Application Software, in particular bug fixes to the existing ROCHE Application Software ("patch"), further development of the existing ROCHE Application Software ("release") and enhancements to the existing ROCHE Application Software with new modules ("upgrades") and as further specified in Section 4 of these License and Service Conditions.
 - 1.12 **User Manual** shall mean the description how the ROCHE Application Software shall be used and applied. The User Manual is provided as a separate document.
- 2. Object of the Agreement**
- 2.1 Upon payment of license fees, ROCHE grants the Licensee a non-exclusive, non-transferable or sublicensable right to use the ROCHE Application Software on the IT Infrastructure and for the number of registered Clients and/or named users during the term of the Agreement subject to the terms and conditions of the Agreement and these License and Service Conditions, in particular Section 3 of these License and Service Conditions. A written agreement with ROCHE must be concluded for any further usage rights. Licensee is not entitled to access the master data of ROCHE, unless mutually agreed and in line with the terms of the Agreement.
 - 2.2 The on-site installation of the ROCHE Application Software on the Licensee's systems will be performed by ROCHE according to the Agreement.
 - 2.3 The ROCHE Application Software is considered to have been accepted by the Licensee if the Licensee does not report any faults in writing to ROCHE within 14 days after the beginning of the routine use of the ROCHE Application Software by the Licensee.
 - 2.4 Upon payment of the fees listed in the Agreement, ROCHE agrees to provide the Services according to the provisions in Section 4 of these License and Service Conditions. Any further services ordered by the Licensee will be covered by the terms of these Service and License Conditions.
 - 2.5 If the Licensee requires assistance with testing and training, ROCHE will provide these upon a written agreement at the then current ROCHE rates.
 - 2.6 The Licensee shall create all necessary conditions for the successful implementation of the ROCHE Application Software and shall provide ROCHE within a reasonable time with all necessary information concerning objectives and organisational conditions required for the successful use of the ROCHE Application Software. The Licensee shall provide the IT Infrastructure and further requirements concerning the set-up, such as hardware, system software, network environment, employees, etc. as per the Agreement.
 - 2.7 ROCHE is responsible for providing, activating and maintaining the technical standard interfaces of the ROCHE Application Software as licensed to the Licensee. If those technical standard interfaces change, ROCHE may develop the ROCHE Application Software further and may provide the Licensee with such new software to interact with the new technical standard interfaces. The Licensee is responsible for providing, activating and maintaining the technical standard interfaces to enable the communication between third party software and the ROCHE Application Software. Upon written agreement, ROCHE will assist the Licensee with the development of those interfaces at the then current ROCHE rates.
 - 2.8 The Licensee shall ensure that the IT Infrastructure is suitable to run the ROCHE Application Software and that no third party software other than Approved Third Party Software installed interferes with or negatively influences the ROCHE Application Software. ROCHE does not guarantee that any third party software other than Approved Third Party Software does not negatively influence the ROCHE Application Software or its performance, and vice versa. ROCHE will upon Licensee's request use its best reasonable efforts to provide a solution in case such interference occurs. ROCHE denies any liability whatsoever if third party software is installed and such third party software is not an Approved Third Party Software.
 - 2.9 The Licensee is solely responsible for the evaluation, implementation and maintenance of the Licensee's data and third parties' data, which are related

- to the ROCHE Application Software. ROCHE will support the Licensee until the ROCHE Application Software can be successfully connected to the databases used by the Licensee. In addition the Licensee is solely responsible for the data administration and hence for the security and integrity of the data and for operation and maintenance of the hardware underlying to the databases. In particular, the Licensee shall create backup copies and store them appropriately.
- 2.10 The Licensee is solely responsible for the selection and use of the ROCHE Application Software and, thus, for the results achieved when using it. The Licensee also is solely responsible for all security measures required in connection with protecting the ROCHE Application Software from damage, theft or abuse, and for the provision of emergency alternatives.

3. ROCHE Application Software - License

3.1 Scope of Use

- 3.1.1 The Licensee's right to use the ROCHE Application Software includes the installation of the ROCHE Application Software on a server within the IT Infrastructure and loading of the ROCHE Application Software onto the Client according to the Agreement. Any installations of and related to ROCHE Application Software shall be made by ROCHE only.
- 3.1.2 Only licensed named users are entitled to use the ROCHE Application Software. Users are authenticated by entry of a user ID and a personal password.
- 3.1.3 The Licensee shall use the ROCHE Application Software only on the data servers identified in the Agreement. If a licensed data server is temporarily unserviceable, it may be exchanged for another server that meets the requirements as specified in the Agreement.
- 3.1.4 The use of the ROCHE Application Software on data servers other than those specified in the Agreement requires the prior written consent of ROCHE.
- 3.1.5 The usage rights granted apply exclusively to the modules listed in the Agreement. If the Licensee uses other modules or functionalities for which the Licensee has not obtained a license, Licensee shall approach ROCHE for additional licenses and shall pay applicable license fees for the use according to the then current ROCHE rates.
- 3.1.6 ROCHE shall be entitled to audit the compliance of Licensee with the Agreement by accessing the IT Infrastructure remotely at any time or in person during Licensee's normal business hours at Licensee's premises. The audit costs shall be borne by ROCHE unless the audit is caused by Licensee or shows a material breach of any obligation under the Agreement by Licensee. In such case, the audit costs and any further costs in connection with this material breach shall be borne by Licensee. Further claims for damages or claims in tort due to breach of Licensee's contractual obligations in connection with the Agreement remain unaffected.
- 3.1.7 If the Licensee's installed unmodified ROCHE Application Software is destroyed through user error or events beyond its control, the Licensee may obtain a replacement from ROCHE. No additional license fee other than the agreed is owed for the replacement. The installation costs and possible specifications for the Licensee are charged according to the then current ROCHE rates.
- 3.1.8 If the number of licences is increased, an amendment to the Agreement will be issued. If the total license fee is higher than the previous license fees, the increase will be charged to the Licensee. If the total license fee is reduced for any reason, the Licensee is not entitled to a reduction in fees already due.
- 3.1.9 The Licensee is not entitled to:
- produce copies (duplicates) of the ROCHE Application Software other than for back-up purposes;
 - produce copies of any documentation supplied on paper or in electronic form unless these copies are for exclusive use by the Licensee;
 - install or use the ROCHE Application Software on more servers than described in the Agreement. If the Licensee wishes to install or use the ROCHE Application Software on multiple servers simultaneously, Licensee must purchase the corresponding number of licences prior to installation or use of the ROCHE Application Software on multiple servers;
 - rent, lease or issue a sub-licences for the ROCHE Application Software and/or documentation;
 - pass, sell or donate the ROCHE Application Software and/or the documentation to third parties or to transfer copies of the ROCHE Application Software or copies of the documentation to third parties;
 - decompile, disassemble, translate, reverse engineer, extend or modify the ROCHE Application Software in any way. This does not apply if applicable copyright laws provide otherwise;
 - reverse engineer into the source code, even if only in part, if ROCHE provides the ROCHE Application Software merely in the form of machine code (object code);
 - remove or modify any copyright notices, serial numbers and other features serving to identify the program;
 - alter the database connected to the ROCHE Application Software, especially to alter the database structure or the data model. This applies not to the alteration or the use of databases, which are made in accordance with the Agreement, e.g. databases with patient data.
- 3.1.10 ROCHE asserts all rights to publish, edit or process the ROCHE Application

Software and any documentation, particularly all existing or potential future patent rights, copyrights or other commercial trademark or usage rights to or related to the ROCHE Application Software. Other than the simple usage right conferred by the Agreement, no ownership or other rights to the ROCHE Application Software and any documentation are granted to the Licensee, in particular no rights to the source code or to modify the ROCHE Application Software are granted.

- 3.1.11 For software of third parties which is transferred to the Licensee in connection with the Roche Application Software, Licensee shall obtain the limited rights of use only to the extent necessary for the use in connection with the Roche Application Software according to the Agreement. The conditions of this right of use are set forth in the respective license conditions and functional description of the third party.

3.2 Warranty

- 3.2.1 ROCHE warrants to the Licensee that the ROCHE Application Software will function properly for a period of one year after the beginning of routine use of the ROCHE Application Software by the Licensee and if used under the intended operating conditions. The ROCHE Application Software is considered to function properly under intended operating conditions when the licensed modules are used in accordance with the Agreement, and operated on the designated IT Infrastructure.
- 3.2.2 A ROCHE Application Software error covered by this warranty exists if the licensed modules repeatedly and verifiably do not function properly when used under the intended operating conditions in accordance with the Agreement and operated on the designated IT Infrastructure.
- 3.2.3 The Licensee acknowledges that the state of technology does not enable ROCHE Application Software to be created in such a way that it will function faultlessly and without interruptions with all applications and combinations of applications and with all data processors, or can be used under all operating conditions, or that the ROCHE Application Software corresponds to the Licensee's requirements. The warranty in section 3.2 is the only warranty applicable to the ROCHE Application Software; all other warranties express or implied, including the warranties of merchantability and fitness for a particular purpose are specifically disclaimed.
- 3.2.4 The Licensee must report any errors in the ROCHE Application Software to ROCHE in writing within ten days of discovery. Any errors in the ROCHE Application Software must be reproducible and documented in detail.
- 3.2.5 The warranty is limited to the removal of errors in the ROCHE Application Software or the delivery of defect-free ROCHE Application Software, at ROCHE's option, provided that the Licensee reports it to ROCHE in accordance with section 3.2.4 above. ROCHE's response may include or consist of the issuance of a patch, the provision of a corrected version, or a workaround for the Licensee. ROCHE is entitled to refuse subsequent performance if it is not possible to eliminate an error with a reasonable amount of effort (severity of a defect compared with the effort involved in eliminating it).
- 3.2.6 Claims by the Licensee for defects are excluded if the defects are insignificant. An insignificant defect is considered to exist if the value of the ROCHE Application Software or its suitability for normal use is only reduced to an insignificant extent.
- 3.2.7 If attempts to remove an error have failed twice, have been refused by ROCHE or cannot be reasonably expected, the Licensee is entitled to demand reduction of the agreed payments or rescind from the Agreement.
- 3.2.8 Any ROCHE warranties with respect to system performance or security and integrity of data shall be excluded, including but not limited to, should the IT Infrastructure on which the ROCHE Application Software is installed not be capable of running this ROCHE Application Software and should any third party software other than Approved Third Party Software be run on the same IT Infrastructure. The same applies, if and to the extent that any third party software other than Approved Third Party Software has a negative impact on the system performance or security and integrity of data.
- 3.2.9 Any warranty is no longer applicable if the ROCHE Application Software is modified or edited by the Licensee. If ROCHE removes an error at the Licensee's request or if, after completion of work under the warranty, it is determined that the error did not exist, ROCHE may charge applicable compensation at the then current ROCHE rates.
- 3.2.10 ROCHE warrants that the ROCHE Application Software does not infringe or disregard the property rights of any third parties. If any third parties should assert a claim against the Licensee on the basis of disregarded patents, copyrights, or other intellectual property, ROCHE is obliged to defend the Licensee against such claims. ROCHE will cover the justifiable costs and financial obligations resulting from such claims against the Licensee, provided that the Licensee promptly notifies ROCHE of the accusation in writing and reasonably cooperates for ROCHE to take the necessary action to protect its own interests in a timely manner. Licensee may not enter into a settlement or agree to a judgment or decision unless with ROCHE's prior written approval.
- 3.2.11 ROCHE uses its best reasonable efforts that the ROCHE Application Software is compliant with the current legislation and the standards generally applicable in the industry as part of the Services it provides. However, ROCHE cannot guarantee that the ROCHE Application Software will comply

- with the entire current legislation and with the standards generally applicable in the industry at any time. This applies especially if the legislation has changed on short notice or retroactively. The Licensee must alert ROCHE in writing to changes in legal requirements.
- 3.2.12 For software of third parties which is transferred to the Licensee in connection with the Roche Application Software, Licensee is entitled to the warranties according to the license conditions and, if applicable, according to the functional description of the respective third party. Roche may at its own choice either assign any warranty claims against the respective third party to the Licensee or in case of warranty claims to remedy on its own. In this case Roche is entitled to empower third parties in order to remedy any warranty claims.
- 4. Services**
- 4.1 General**
- 4.1.1 The Services provided by ROCHE assist the Licensee to operate the ROCHE Application Software.
- 4.1.2 ROCHE reserves the right to decide when a patch will be provided and when a new ROCHE Application Software release or upgrade is appropriate. It is within ROCHE's sole responsibility to define whether a patch, a release or an upgrade applies.
- 4.1.3 Patches, updates or upgrades may require changes of the requirements of the IT Infrastructure. If patches, updates or upgrades require modifications to the IT Infrastructure, the changes shall be defined in an amendment to the Agreement and the Licensee shall implement the modifications accordingly.
- 4.2 Scope of Services**
- 4.2.1 **HOTLINE**
The hotline will provide the Licensee during ROCHE's normal business hours with telephone advice and support concerning technical or user problems with the ROCHE Application Software to an extent as described in the Agreement. ROCHE cannot guarantee the hotline support or that all ROCHE Application Software errors in connection with the Hotline support will be eliminated.
- 4.2.2 **MAINTENANCE OF THE STANDARD VERSION**
Maintenance services of the standard version consist of three levels. ROCHE may define which category of maintenance services apply.
- a) *Patches*
Upon expiry of the warranty period specified in section 3.2, ROCHE will undertake all economically reasonable measures to remove or avoid faults and bugs in the ROCHE Application Software that can be replicated on the basis of written error documentation provided by the Licensee. ROCHE reserves the right to provide the Licensee with a new release or upgrade as per b) and c) below instead of a patch.
- b) *Releases*
Releases are periodically issued program parts and associated documentation, containing improvements, enhancements and other changes representing developments of the ROCHE Application Software such as the optimization of existing functionalities in individual modules. ROCHE will ensure that new releases are compatible with earlier versions or, if necessary, will provide any conversion programs that may be required, free of charge.
- c) *Upgrades*
Upgrades are an essential change or recreation of a module or enhancements of the existing ROCHE Application Software. ROCHE grants usage rights for upgrades in separate agreements. Upgrades are not covered either by the license fees or the service fees and ROCHE reserves the right to charge for upgrades to the current ROCHE Application Software.
- 4.3 Service requirements at Licensee's premises**
- 4.3.1 The Licensee shall ensure that the following requirements are met for ROCHE, free of charge, during the term of the Agreement:
- a) provision of access to the productive installation, and cooperation of the responsible database and system administrators in enabling the provision of Services;
- b) provision of broadband remote access for service purposes 24 hours a day / 365 days a year.
- 4.3.2 The provision of Services by ROCHE requires that the Licensee has installed and runs on the IT-Infrastructure the current version of the ROCHE Application Software as provided by ROCHE. ROCHE is not obligated to provide Services for any version of the ROCHE Application Software other than the most recent one released unless expressly stated otherwise herein.
- 4.3.3 If the Licensee agrees to replace an old release version with a new release of the ROCHE Application Software later than six months after such new release was offered to the Licensee by ROCHE, the Licensee shall purchase all upgrades and releases which were issued between the Licensee's old and the new release version.
- 4.4 Additional Services**
Licensee shall be liable for the cost incurred for error rectification if the source of the error is traced back to unapproved changes to the ROCHE Application Software by the Licensee or a third party, or other circumstances for which ROCHE cannot be held responsible.

5. Payment Terms

5.1 Charges

- 5.1.1 License fees, service fees and other charges to be paid by the Licensee are specified in the Agreement.
- 5.1.2 Value-added tax and other indirect taxes and the fees that could be charged (e.g. sales, use or similar taxes) are payable by the Licensee.
- 5.1.3 ROCHE is entitled to increase the service fees and will announce such increases to Licensee in text form (written or via e-mail) at least four (4) weeks in advance to the effective date of such increase. If the increase exceeds 8% of the existing service fees, the Licensee is entitled to terminate the Agreement within two (2) weeks upon the receipt of the announcement of the increase, taking effect on the date when the increase shall apply. If the Licensee does not terminate the Agreement the increase in service fees is deemed to be accepted by the Licensee.

5.2 Due Date

- 5.2.1 Regular license fees and fees for regular Services are payable annually in advance, unless agreed otherwise in the Agreement.
- 5.2.2 All invoices are payable within 30 days after (i) in case of goods provided: delivery, or (ii) in case of Services: the agreed extent of Services was provided independent from the success of such Service endeavours, or (iii) in case of the installation of ROCHE Application Software: the beginning of the routine use of the ROCHE Application Software by the Licensee, and in any event set forth in (i) through (iii) above the date of the invoice. Any exceptions to the payment conditions may be set out in the Agreement.

6. General Provisions

6.1 Liability

- 6.1.1 ROCHE is liable for damage for which it is responsible only if it is attributable to:
- a) culpable breach of a duty fundamental to the Agreement caused in such a way that it jeopardises the Agreement purpose, or
- b) wilful misconduct or gross negligence on the part of ROCHE.
- 6.1.2 In the case of a breach of significant contractual duties without a charge of wilful misconduct or gross negligence, ROCHE is conditionally liable as per Section 6.1.3 below, but only for the foreseeable damages or the yearly license fee, whichever is less, up to a maximum of CHF 100,000 (one hundred thousand Swiss Francs). The same applies for damage caused by gross negligence on the part of staff who are not legal representatives of ROCHE.
- 6.1.3 ROCHE is not liable for incidental, indirect, and consequential damages, damages as a result of an error, or lost income, provided that it cannot be traced back to wilful misconduct or gross negligence on the part of ROCHE representatives. Particularly, all liability for incidental, indirect, and consequential damages whether directly or indirectly caused by the ROCHE Application Software is excluded, insofar as this is permissible by law.
- 6.1.4 ROCHE's liability for death, personal injury damage, damage covered by product liability laws or other applicable legal regulations remains unaffected.
- 6.1.5 The Licensee is responsible for the contents of documents, forms, data elements, data catalogues and decision trees belonging to the Licensee and which are processed by the ROCHE Application Software. Furthermore, ROCHE is not responsible for the security of the Licensee's data. The Licensee must ensure through suitable security procedures that the data can be restored at any time with an acceptable amount of work.
- 6.1.6 The Licensee 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 fulfil its contractual obligations and patches approved by ROCHE for Approved Third Party Software.
- 6.1.7 The Licensee is responsible for the maintenance, security and integrity of the IT Infrastructure and in particular the hardware, system software, anti virus software and its ongoing management and network environment.
- 6.1.8 The Licensee is solely responsible for all data stored in the database, e.g., patient data, test requirements and results as well as the use of such data (including use of extracted data).
- 6.1.9 The Licensee is solely responsible for the content, structure, consistency and correctness of all rules applied, e.g., multiple-stage diagnostic decision trees or validation rules.
- 6.1.10 Roche is not liable for data if the source of the error is traced back to unapproved changes to the ROCHE Application Software by the Licensee or a third party, or other circumstances for which ROCHE cannot be held responsible.
- 6.1.11 ROCHE is not liable for the Licensee's selection, application, and use of the ROCHE Application Software. This applies in particular if the IT Infrastructure, the hardware, the operating system, the databases or the data catalogues and data elements provided are unsuitable for the ROCHE Application Software. ROCHE is not liable for the results of the ROCHE Application Software arising from the data catalogues and data elements provided or decision trees entered by the Licensee. Except for errors in the ROCHE Application Software covered by ROCHE's warranty, the use of the ROCHE Application Software is at the Licensee's sole risk. The Licensee declares that it is familiar with the ROCHE Application Software and has satisfied itself that it is suitable for its purposes.

6.2 Secrecy / Access Protection

- 6.2.1 The Licensee shall treat any documentation as strictly confidential. It shall take all reasonable and necessary measures to protect the ROCHE Application Software and any documentation from disclosure or unauthorised access by third parties.
- 6.2.2 Furthermore, the Licensee must handle confidentially all drawings, plans, samples, technical information, data and other information which it receives from ROCHE and which are marked as confidential or which must in the circumstances be treated as confidential, and not pass them on to third parties or further process them in any way. This includes the content of the Agreement.
- 6.2.3 ROCHE may provide occasionally interface information to the Licensee to achieve interoperability between the ROCHE Application Software and the computer programs or Instruments used by the Licensee. In any case a prior written agreement is needed. In these cases the Licensee may provide the required information to a third party called in to develop interfaces for a limited period. In any case, the Licensee must ensure that the third party takes the measures specified in Section 6.2.1 to protect the ROCHE Application Software and returns the originals in full on completion of work. Any such third party shall be bound to secrecy by the Licensee. The Licensee bears full responsibility for the third party at all times.
- 6.2.4 The Licensee shall also impose on its employees the obligations specified in Sections 6.2.1 and 6.2.2. Furthermore, the Licensee shall inform users of the conditions of these License and Service Conditions.
- 6.2.5 ROCHE is obliged to use any knowledge of the Licensee's company secrets and information marked in writing as confidential that it acquires as part of the Agreement with the Licensee for the purpose of the Agreement only and to treat these confidentially. ROCHE is, however, entitled to name the Licensee and the services provided to the Licensee to other parties as a reference.
- 6.2.6 The obligation of confidentiality and nondisclosure described herein continues after termination of the Agreement.

6.3 Data Protection

- 6.3.1 Roche shall provide its Services on the basis of Licensee's specifications and only with the consent of the Licensee.
- 6.3.2 The Licensee understands that it is obliged to ensure itself that all legal requirements of data protection are complied with when it uses the Systems for processing personal data.
- 6.3.3 Roche undertakes when providing its Services to comply with the valid data protection regulations. If Roche anyhow obtains knowledge regarding personal data in providing its Services, such data or information shall be kept confidential and shall not be disclosed to any unauthorized person. The employees of Roche shall be instructed about data protection regulations and provisions, and bound to obey and comply with data secrecy as provided under the applicable data protection laws. Roche may be required to retain such personal data up to 15 years due to regulatory reasons. If external specialist are required to be involved in elimination of failures, such specialists shall be also bound by Roche to comply with data secrecy as provided under the applicable data protection laws.

6.4 Use of Performance Data

- Roche and its affiliates are hereby authorized by the Licensee to download and to use non-personal data (such as e.g. performance data) via the secure gateway system from the ROCHE Application Software as well as from all connected Instruments. Intended use includes, but is not limited to optimization of the Roche service, anticipation and preparation for potential epidemics and analysis of regional testing behavior.

6.5 Term of Agreement

- 6.5.1 The Agreement including these License and Service Conditions and the Offer will enter into force on acceptance by the Licensee by using the ROCHE Application Software and will remain effective for the duration of five (5) years upon the beginning of routine use of the ROCHE Application Software

by the Licensee, unless agreed otherwise in writing. At the end of the minimal term of the Agreement, the Agreement will be extended annually for an additional year. The Agreement may be terminated after expiration of the minimal term of the Agreement by either Party by the end of each contract year, by giving three months written notice.

- 6.5.2 Both Parties are permitted to terminate the Agreement for breach of a material provision of these License and Service Conditions with immediate effect.

- 6.5.3 In the event of termination or expiry of the Agreement the license to use the ROCHE Application Software shall convert to a restricted license to use the ROCHE Application Software for search and review operations within the at the time of termination or expiry existing database only. No further rights are granted to include new data in the database. Any Instruments shall be and remain disconnected from the ROCHE Application Software. ROCHE shall have no further obligations to service, maintain or support otherwise such ROCHE Application Software. ROCHE shall be granted access to the IT Infrastructure where such ROCHE Application Software is run to implement necessary changes to convert the ROCHE Application Software according to this sub-section. After the conversion no further license fees shall be due.

6.6 Final Provisions

- 6.6.1 The Agreement shall contain all agreements between the Parties regarding the subject matter of the Agreement. No oral side agreements have been made. Changes or additions are valid only if made in writing and signed by both Parties. The same applies to the waiver of this obligation. Any of the Licensee's general terms and conditions do not apply, even if not refused explicitly.

- 6.6.2 The Agreement may be assigned only upon the other Party's prior express written approval, such approval not unreasonably withheld. Such approval shall not be required for assignments by ROCHE to any of its affiliated companies.

- 6.6.3 Force Majeure of all kinds, unforeseeable disturbances to operations, transport or dispatch, fire damage, flooding, unforeseeable shortages of power, energy, raw materials or auxiliary materials, lawful strikes, lawful lock-outs, official orders and other impairments not attributable to the party obliged to perform its obligations under the Agreement shall exonerate the affected party from its obligations. This also applies if these circumstances occur with suppliers. The above-mentioned circumstances can also not be blamed on the party obliged to perform if they occur during an already existent default. If delivery or acceptance is delayed by more than 8 weeks as a result of the disturbance, both parties are entitled to rescind from the Agreement without being entitled to claim any damages.

- 6.6.4 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

- 6.6.5 The Agreement is subject to **Swiss Law** and the Court of Jurisdiction for disputes concerning the Agreement is **Basel, Switzerland**.

- 6.6.6 If individual parts of the Agreement or these License and Service Conditions should be or become invalid or inexecutable, the validity of the remaining provisions shall not be affected. In such a case, the invalid or inexecutable provisions shall be replaced by provisions that are as close as possible to the commercial intent of the invalid or inexecutable ones. The same applies if the Agreement or the License and Service Conditions are incomplete.

- 6.6.7 The Agreement is also binding on any legal successors and permitted assignees of either Party.