

**D-SCOPE® SYSTEMS  
SOFTWARE LICENSE AND EQUIPMENT PURCHASE,  
WARRANTY TERMS AND CONDITIONS**

**THIS SOFTWARE LICENSE AND EQUIPMENT PURCHASE, WARRANTY SETS FORTH THE TERMS AND CONDITIONS WITH RESPECT TO BOTH: (i) THE PURCHASE OF HARDWARE AND LICENSE OF D-SCOPE SOFTWARE; AND (ii) THE LICENSE OF D-SCOPE SOFTWARE ONLY. AS SUCH, PLEASE UNDERSTAND THAT IF YOU ARE ONLY LICENSING THE SOFTWARE, THE TERMS RELATING TO THE HARDWARE DO NOT APPLY AND ARE NOT INCORPORATED IN ANY PURCHASE ORDER WITH MEDICAL DIGITAL DEVELOPERS, LLC.**

**I. EQUIPMENT PURCHASE**

This Equipment Purchase Agreement, made as of the date set forth in the relevant Purchase Order (the “Effective Date”), is made by and between the client set forth in the Purchase Order (“Client” or “You”), and Medical Digital Developers LLC, with its principal address at 270 North Avenue Suite 810, New Rochelle, New York 10801 (“D-Scope Systems”, “Us”, “We”).

You have acquired from Medical Digital, the D-Scope® System (“D-Scope System” or “Equipment”), as set forth in the relevant Purchase Order/Quote.

The D-Scope System consists of hardware (which You are purchasing) and the proprietary D-Scope Systems Software and related documentation (which You are licensing, as addressed below).

This Equipment Purchase Agreement relates to the terms and conditions of Client’s purchase of the equipment set forth in the Purchase Order/Quote executed by You (the “Client Purchase Order”).

**1. Overview.**

By executing the Client Purchase Order, Client agrees to purchase the D-Scope Workstations described therein (each a “Workstation”) and other hardware set forth in one or more Client Purchase Order(s) (the “Equipment”) and receive support for such Workstations and D-Scope Software (the “Support”) and pay all amounts due as set forth in the Client Purchase Order, all on the terms set forth herein. This Agreement is personal to You, and You may not sell, assign, lease or loan the Equipment to others without the express written consent of Medical Digital, as any such transfer will invalidate the Warranty and Support set forth herein.

**2. Purchase of the Equipment.**

(a) Pilot Period. If Client was provided a pilot period and has decided to purchase the Equipment, Client acknowledges the Equipment is in good working order and in accordance with Client’s specifications as set forth in the Purchase Order (if any).

(b) Title/Delivery. (i) Title to each Workstation and all other Equipment passes to Client on the first date on which Client has paid D-Scope Systems the full fee amount listed in

the Purchase Order as to the respective Equipment. (ii) Risk of loss with respect to the Equipment passes to Client when delivered to Client.

(c) Additional Policies. This Agreement is also deemed to incorporate, and by accepting the terms of this Agreement, Client is deemed bound by (i) a required co-signed Business Associates Agreement, and (ii) the service and support set forth herein, which covers the maintenance, service and support included with your purchase, and any additional support, which requires a separate Gold Services Agreement located here <https://www.dscopevia.com/support/d-scope-via-gold-service-plan/>.

### **3. Equipment Warranty.**

(a) The Equipment You have acquired is covered by the warranty offered by the relevant manufacturer. However, certain packages or bundles offered by us also include the D-Scope Systems Gold Service Plan. If you purchased any offered bundle, the right to the extended service will be set forth in your Purchase Order and will governed by the terms and conditions in the Gold Service Plan Agreement (the "Gold Service Plan"). In addition, upon the expiration of the term of any included or separately purchased Gold Service Plan, your warranty rights will be limited to the warranty provided by the manufacturer.

(b) Replacement or repair of failed D-Scope System components is not available as to Equipment found to be damaged by your misuse, neglect or other actions by You which void the warranty. If You discover a defect with respect to any Equipment purchased from D-Scope Systems, You must notify us promptly. Any delay in notifying D-Scope Systems with respect to the Equipment which results in additional damage shall be your responsibility. D-Scope Systems, or its authorized Value Added Reseller ("VAR"), will provide support to repair or replace the defective components. As to Equipment covered by the warranty, reasonable attempts will be made by authorized D-Scope Systems service personnel or its authorized VAR to repair the Equipment via phone. If reasonable attempts to repair are not successful, D-Scope Systems will issue a Return Merchandise Authorization number ("RMA #") and provide return shipping labels and instructions for shipping the defective Equipment to D-Scope Systems or its VAR at no cost to You. If we find the returned components to be in full working order or if any damage was caused by your misuse, neglect or actions that void the warranty, You may be charged a service fee. On-site repair is only available if included in the express terms of the D-Scope Systems Quote and associated Client Purchase Order.

(c) Other than the foregoing warranty, the Equipment is provided "as is." D-Scope does not make any representations or warranties in connection with the Equipment, or modifications or improvements thereto, or services delivered hereunder, express, implied, statutory or under any provision of this Agreement or communication between D-Scope and You. We specifically disclaim all implied representations or warranties, including representations or warranties of merchantability, non-infringement and fitness for a particular purpose, or arising from a course of dealing, usage or trade practice. Notwithstanding anything else herein, the aggregated liability of D-Scope Systems, its licensors, its VARs or its suppliers under this Agreement or otherwise shall be limited to the invoiced price. In no event shall D-Scope Systems, its licensors, its VARs or its suppliers be liable for any incidental, special or consequential damages, lost profits or lost data, damage to other hardware or software, or any other indirect damages, even if we have been informed of the possibility thereof.

#### **4. General**

(a) This Agreement, including attachments, represents the entire agreement between You and D-Scope Systems with respect to the subject matter herein and shall supersede all other agreements or terms You and D-Scope Systems may have except for any Non-Disclosure Agreement, Business Associate Agreement, any separate System Hardware and Software Gold Service Agreement ("Gold Service Agreement"), or any other separate agreement that may exist between us. To the extent that any term or clause of this Agreement is determined to be unenforceable, then the remainder of this Agreement shall continue in force.

(b) The General Terms set forth in Article III of the below Software License Agreement are deemed incorporated herein and apply to this Equipment Purchase Agreement.

## II. SOFTWARE LICENSE

This non-exclusive software License Agreement and Warranty (the “Agreement”) is entered into as of the date of one or more Purchase Order(s)/Quote(s) (the “Client Purchase Order”) (the “Effective Date”) by and between Medical Digital Developers, LLC, d/b/a D-Scope Systems®, a New York limited liability company, with its principal address at 270 North Avenue, New Rochelle, New York 10801 (“D-Scope Systems” or “Licensor”) and the undersigned licensee (“You” or “Licensee”). This Agreement is a condition of your activation and use of the Software and Service (defined below). Each of D-Scope Systems and You are a “Party” and collectively, the “Parties”.

The D-Scope System consists of the D-Scope Systems Workstation (the “Workstation”) and other hardware (which you may be purchasing and is subject to a separate Equipment Purchase Agreement) and the proprietary D-Scope Systems Software and related documentation (which You are licensing). Pursuant to the terms of the separate Client Purchase Order, you have acquired a license for the Software (defined herein), as evidenced by your payment of the license and maintenance fees indicated in the Client Purchase Order. For the purposes of this license, “Software” shall mean and include all proprietary D-Scope Systems software as delivered with the hardware, any upgrades, patches, and any optional D-Scope modules that are installed after delivery pursuant to an existing Gold Service Agreement, including any software customizations or configurations.

This Agreement incorporates, and You are deemed bound by, the (1) Terms of Use and Privacy Policy located at <https://www.dscopevia.com/privacy-policy/>, (2) the Business Associates Agreement between the Parties (the “BAA”), and (3) any **separate** SYSTEM HARDWARE AND SOFTWARE Gold SERVICE AGREEMENT (“Gold Service Agreement”) between You and D-Scope Systems, if applicable (collectively, the “Agreement”).

This LICENSE AGREEMENT, LIMITED WARRANTY, AND ADDITIONAL TERMS & CONDITIONS is also published on the D-Scope website at <https://www.dscopevia.com/support/d-scope-via-license-and-warranty/>. Notwithstanding anything to the contrary herein, unless you execute a separate Purchase Agreement or other agreement, your use of the Workstation with the Software at any time, including following termination of any previously executed agreement, is subject to this Agreement.

For the purposes of this license, Software shall include all proprietary D-Scope Systems software as delivered with the hardware, any upgrades, patches, and any optional D-Scope modules that are installed after delivery pursuant to an existing Service & Support agreement, including any software customizations or configurations made at Your request and included in your Purchase Order.

## III. Terms of Use

You shall be solely responsible for the supervision, management control and use of the Equipment and/or and related products and documentation. The Equipment is not intended to substitute for or replace the skill, knowledge, and experience of licensed physicians or other care providers. D-Scope Systems assumes no responsibility for patient care and expressly states that it is not providing the Equipment and/or Software to You as a substitute or replacement for Your medical judgment or that of other physicians or care providers. Notwithstanding anything to

the contrary contained herein, You shall defend, indemnify and hold harmless D-Scope Systems, its officers, directors, trustees, employees, agents, and representatives from and against any and all claims, losses, costs, damages, settlements, judgments and expenses of every kind and nature (including court costs and attorneys' fees) caused by, resulting from, incidental to, or arising out of the improper treatment of patients, or allegation of improper treatment of patients, by You or other physicians or care providers in connection with the use of the Equipment. The foregoing indemnification shall survive the expiration or termination of this Agreement.

## **1. Definitions.**

1.1 "Confidential Information" means any information, technical data, or know-how, or trade secrets (under state and federal law, including the Defend Trade Secrets Act of 2016) considered proprietary or confidential by D-Scope Systems including, but not limited to, research, services, inventions, Intellectual Property, processes, specifications, designs, drawings, diagrams, concepts, marketing, techniques, documentation, source code, structure of the D-Scope Systems' software, pricing information, Licensee information, procedures, business and marketing and business plans, and financial information, any information that would reasonably be considered confidential.

1.2 "Intellectual Property" means all patent, copyrights, trademarks, trade secrets, inventions, and other intellectual property rights, and all goodwill related thereto.

1.3 "Minimum System Requirements" means the minimum system requirements set forth in Schedule 1.

1.4 "Service" includes the installation, maintenance and technical support of the Software, as provided in Section 6.1. This Agreement does not contemplate service or support of any (i) third party equipment or hardware; or (ii) upgrades, patches, and any optional D-Scope Systems modules that are installed after delivery. Installation and maintenance or support of the forgoing shall be pursuant to a separate Gold Service Agreement by and between the Parties, if any. In the event your purchase does not include the Gold Service Agreement, your rights to services or support are limited to the terms and conditions in Section 6.1.

1.5 "Software" consists of the proprietary D-Scope® Systems Software and its related documentation. The D-Scope Systems® Software referenced herein is an FDA Class 1 Medical Device (as defined under § 201(h) of the Federal Food, Drug, and Cosmetic Act), intended use, and should be installed and run on hardware that meets defined minimum requirements, identified in the D-Scope Systems Instruction for Use (IFU).

## **2. Limited License and Use of the Service.**

2.1 (a) Subject to the terms of this Agreement, including but not limited to the Minimum System Requirements, and any separate Gold Support Agreement that you enter into with Licensor, Licensee is hereby granted a non-exclusive, non-transferable, non-assignable (except as otherwise set forth in this Agreement), non-sublicensable limited license to access and use the Software in accordance with the terms of this Agreement (the "License"). (b) Licensee agrees not to reproduce, duplicate, copy, sell, resell, disclose, permit to be disclosed, or publicly display or perform, the Software, in whole or in part, or any copy thereof, or exploit access to the

Software, use of the Software, or any portion thereof without the express written permission from D-Scope Systems. (c) Licensee agrees not to modify, create derivative works of, decompile, attempt to derive the source code for, reverse engineer, adapt or otherwise tamper with the Software. (d) Licensee agrees that it will not knowingly use the Software in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene, or in violation of the terms of this Agreement. € Licensee is only permitted to access and use the Software if it is an authorized user with a valid license.

2.2 The Software may only be installed and used on hardware that meet the Minimum System Requirements. The Licensee, and not Licensor, is responsible to ensure that, other than with respect to the Workstations, the hardware meets the Minimum System Requirements. Any warranty or technical support under this Agreement or any Gold Service Agreement shall not apply to Software installed or attempted to be installed on any hardware that does not meet the Minimum System Requirements.

2.3 Except for the License pursuant to this Agreement, Licensee agrees that all ownership, license, intellectual property and other rights and interests in and to the Software shall remain solely with D-Scope Systems. D-SCOPE<sup>®</sup> and D-Scope<sup>®</sup> Systems are trademarks of D-Scope Systems (the “Marks”). All Intellectual Property rights whatsoever are reserved to D-Scope Systems. D-Scope Systems retains title to and ownership of, and all other rights with respect to, the Marks and the Software and all copies thereof, including, without limitation, all Intellectual Property therein. Licensee is granted only the limited license hereunder, and Licensee has no other rights, implied or otherwise. Licensee acknowledges and agrees that the Software is licensed, not sold, and that right to use the Software is acquired only under the license from D-Scope Systems. Licensee may not alter, obscure or remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Software (including those of third parties).

2.4 D-Scope Systems reserves the right at any time to modify the Software, with or without notice, provided such action does not have a material adverse effect on the features of the Software. D-Scope will not be liable to Licensee, or to any third party, for any modification, suspension or discontinuance of the Service or use of the Software. Continued use of the Software following any modification constitutes Licensee’s acceptance of the modification.

2.5 Licensee grants to Licensor a non-exclusive, royalty free right to use Licensee’s Confidential Information in conjunction with the Software license granted under this Agreement. Such rights shall include the permission for D-Scope Systems to use Licensee Confidential Information to generate and publish aggregate, anonymous reports on system usage trends and type. Licensor shall have the unrestricted right to use or act upon any suggestion, ideas, requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Software.

2.6 D-Scope may discontinue the license of any Software set forth in the Client Purchase Order prior to installation, provided that D-Scope Systems replaces the discontinued Software with a functionally equivalent software at a price equal to or less than the MSRP of the discontinued Software. With respect to each discontinued Software, D-Scope Systems shall provide Client with: (a) the discontinued Software’s catalogue number, and (b) the catalogue number and product category, for the functionally equivalent replacement Software.

### **3. Confidentiality and HIPAA Obligations.**

3.1 Confidentiality. You shall not disclose D-Scope Systems' Confidential Information. You agree at all times during the term of the Agreement and following termination for any reason, to keep in trust and confidence all of Licensor's Confidential Information, and not to use such Confidential Information other than as expressly authorized by D-Scope Systems.

3.2 HIPAA. Licensee agrees to comply with all laws and regulations, including without limitation, the Health Insurance Portability and Accountability Act of 1996 as codified at 42 U.S.C. Section 1320d ("HIPAA") and any current and future regulations promulgated hereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 ("Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 160,162 and 164 ("Federal Security Regulations"), and the Health Information Technology for Economic and Clinical Health Act ("HITECH") contained in Section 13402 of Title XIII of the American Recovery and Reinvestment Act of 2009 ("Stimulus Bill"). To the extent that D-Scope Systems is provided with access to Personal Health Information then the terms of the co-signed BAA apply.

4. **Payment, Refunds and License Changes.** You shall pay all license fees and other costs and expenses as set forth in any Purchase Order, or any other agreement between You and D-Scope Systems. All license fees are exclusive of all federal, state, provincial, municipal, V.A.T., or other taxes.

### **5. Cancellation and Termination.**

5.1 This license and the Services will continue for the term set forth in any Purchase Order, or other Agreement between You and D-Scope Systems, provided that in the event of any conflict the Purchase Order shall control (the "Term").

5.2 This Agreement, the License and your right to use the Software, shall automatically terminate without prior notice upon (a) the non-payment of any fees required pursuant to the Client Purchase Order or any other agreement between Licensor and Licensee, (b) any material breach of this Agreement, or (c) upon the liquidation, insolvency, bankruptcy, or dissolution of Licensee.

### **6. Technical Support and Limited Warranty.**

6.1 Technical Support. Technical support relating to the Software shall be as set forth on our website at <https://www.dscopevia.com/support/> , or as expressly set forth in any separate Gold Service Agreement between Licensor and Licensee.

6.2 Limited Warranty/Limitation on Liability. D-Scope Systems warrants that for a period of sixty (60) days after installation of the Software, or if the license term is shorter, such shorter period the term of this Agreement ("Warranty Period"). Licensor's entire liability and Licensee's exclusive remedy during the Warranty Period with respect to the Software ("Limited Warranty") will be, with the exception of any statutory warranty or remedy that cannot be excluded or limited under law, at D-Scope Systems' option, (a) to attempt to correct or work around errors, if any, or (b) to refund any License fees, if any, paid by Licensee in connection with the non-working Software, for the period such was not functional, and terminate the Agreement. The limited warranty under this Section 6.2 shall not apply to the Software to the extent that Licensee's

hardware does not meet the Minimum System Requirements. Licensee shall not have a right to any technical support, under the Terms of the Gold Support Agreement or otherwise, nor any right to the reimbursement of any fees in conjunction with any Client Purchase Order, as to any installation or attempted installation on hardware that does not meet the Minimum System Requirements as detailed in the D-Scope Systems IFU.

### **III. GENERAL TERMS APPLICABLE TO HARDWARE AND SOFTWARE LICENSE AGREEMENTS**

***THE FOLLOWING TERMS APPLY TO YOU WHETHER YOU HAVE PURCHASED THE (I) EQUIPMENT, (II) SOFTWARE OR BOTH EQUIPMENT AND SOFTWARE FROM D-SCOPE SYSTEMS. THESE GENERAL TERMS AND CONDITIONS ARE DEEMED INCORPORATED IN EACH OF THE EQUIPMENT PURCHASE AGREEMENT AND THE SOFTWARE LICENSE AGREEMENT.***

1. NO OTHER WARRANTIES/DISCLAIMER. EXCEPT AS OTHERWISE PROHIBITED BY LAW, YOU AGREE THAT THE LIABILITY OF D-SCOPE SYSTEMS (OR ITS THIRD-PARTY SERVICE PROVIDERS OR LICENSORS) ARISING OUT OF ANY CLAIM CONNECTED WITH THE EQUIPMENT OR SOFTWARE WILL NOT EXCEED FEES PAID TO D-SCOPE SYSTEMS IN CONNECTION WITH THE NON-WORKING SOFTWARE OR HARDWARE, FOR THE PERIOD SUCH WAS NOT FUNCTIONAL. YOU FURTHER AGREE THAT D-SCOPE SYSTEMS (AND ITS SERVICE PROVIDERS OR LICENSORS) ARE NOT AND WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES) RELATING TO THIS AGREEMENT, THE SERVICE, THE SOFTWARE, THE WORKSTATIONS OR ANY HARDWARE.

YOU AGREE THAT D-SCOPE SYSTEMS (AND ITS SERVICE PROVIDERS OR LICENSORS) ARE NOT AND WILL NOT BE LIABLE (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, (B) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE, RIGHTS, OR TECHNOLOGY, (C) FOR ANY LOST PROFITS OR REVENUES, OR LOSS OF BUSINESS, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE DISCLAIMERS APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER SUCH DAMAGES ARE FORESEEABLE AND WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE LIMITATION OF LIABILITY, DISCLAIMER OF DAMAGES, OR EXCLUSION OF DAMAGES PROVISIONS ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE FROM AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

6.3 AS-IS CONDITION. EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT OR AS REQUIRED BY APPLICABLE LAW, THE EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS". D-SCOPE SYSTEMS DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS,



WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE WITH RESPECT TO THE SERVICE AND THE EQUIPMENT AND SOFTWARE. D-SCOPE DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, BUG-FREE, OR COMPLETELY SECURE.

6.4 No Warranty as to Compatibility. D-Scope Systems makes no warranty (a) that the Equipment or its Software will be compatible with your software, hardware, or other equipment; (b) that the Software will be secure or error free; (c) as to any results from the use of the Equipment or Software, or (c) as to your electronic equipment, medical equipment, computer system, devices, network or any third-party system or technology or software. You are solely responsible for any damage to or loss of data contained in any Workstations or other hardware, or which occurs with respect to any Licensee, its electronic equipment, medical equipment, or computer system, network, or any third-party system or technology arising from use of the Software with any incompatible hardware, equipment, technology or software.

## **7. Indemnification/No Medical Services.**

7.1 Indemnification. You (and any related medical practice or group) shall defend, indemnify, and hold D-Scope Systems, its officers, directors, members, employees, agents, and representatives harmless from and against any and all direct and third party claims, losses, costs, damages, settlements, judgments, and expenses of every kind and nature (including court costs and attorneys' fees) caused by, resulting from, incidental to, or arising out of your (a) use of the Equipment and/or Software in breach of this Agreement, (b) breach of any representations or warranties or other breach of the Agreement, (c) intentional misconduct or negligent acts or omissions, or (d) the improper treatment of patients, or allegation of improper treatment of patients, by you or other physicians or care providers. The foregoing indemnification shall survive termination of the Equipment Purchase Agreement and Software License.

7.2 No Medical Services. You shall be solely responsible for the supervision, management, control, and use of the Equipment and Software. The Equipment and Software are not intended to substitute for, or replace the skill, knowledge, and experience of licensed physicians or other care providers. D-Scope Systems assumes no responsibility for patient care and expressly states that it is not providing the Equipment or Software to anyone as a substitute or replacement for your medical judgment or that of other physicians or care providers. Licensee (and any related medical practice or group) shall defend, indemnify, and hold harmless D-Scope Systems, its officers, directors, trustees, employees, agents, members and representatives from and against any and all direct and third party claims, losses, costs, damages, settlements, judgments, and expenses of every kind and nature (including court costs and attorneys' fees) caused by, resulting from, incidental to, or arising out of your use of the Equipment or Software, or the improper treatment of patients, or allegation of improper treatment of patients, by you, or other physicians or care providers.

7.3 The above indemnification shall survive termination of the Equipment Purchase Agreement and the Software License Agreement.

## **8. Miscellaneous.**

8.1 Governing Law and Venue. This Agreement, and all claims arising hereunder, shall be governed by and interpreted exclusively in accordance with the laws of the State of New York, without regard to its conflict of law provisions. All disputes under this Agreement shall be resolved exclusively by the courts of Westchester County, New York, and Licensee consents to the jurisdiction of and venue in such courts and waives any objection as to inconvenient forum. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and legal fees.

8.2 Medical Device Status. The D-Scope Systems Software is an FDA Class 1 Medical Device (as defined under § 201(h) of the Federal Food, Drug, and Cosmetic Act) and should be installed and run on hardware that meets defined minimum requirements, identified here <https://www.dscopevia.com/intended-use/>. The D-Scope Systems Workstation has been tested to confirm compliance with the minimum requirements.

8.3 Third Party Vendors. D-Scope Systems may use third party vendors and hosting partners to provide the necessary, software, networking, storage, and related technology required to run the Software and D-Scope Systems shall not be liable for any acts or omissions thereof. D-Scope Systems is not liable for any inability to access or the failure of any network, hosting, data, storage, or related technology of a third-party vendor unless such is caused by the D-Scope Systems Equipment or Software.

8.4 Third Party Products. D-Scope Systems may provide the ability to integrate the Software with third party products and services; however, such use or integration is at your own risk. Access to and use of any third-party products and services are subject to the separate terms and conditions required by the providers of the third-party products and services. D-Scope Systems has no liability arising from your use or integration of third-party products and services or arising from changes made by the third-party products which impair the functioning of the Equipment or Software. You may modify or cancel any integrations at any time without notice.

8.5 Cyber Risks. You acknowledge the risk that data stored or transmitted through the Software may be intercepted, can be subject to a wide variety of cyber attacks, and You hereby accept such risk, and shall not hold D-Scope Systems liable for any resulting loss, damage, or injury.

8.6 U.S. Government Licensees. The Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users license the Software with only those rights set forth therein.

8.7 Export Law. You represent that they are not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and you will not access or use the Service in any manner that would cause any party to violate any U.S. or international embargo, export control law, or prohibition. The Equipment, Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and acknowledges its responsibility to obtain such licenses to export, re-export or import as may be required.

8.8 Waiver. The failure of either party to enforce any provision hereof shall not constitute a waiver of such provision or of the right to enforce it at a later time.

8.9 Entire Agreement. The Equipment Purchase Agreement (if you purchased any Equipment from D-Scope Systems), Gold Services Agreement (if included with your purchase) constitutes the entire agreement between any you and D-Scope Systems with respect to the subject matter herein and shall supersede all other agreements or terms you and D-Scope may have, except for any Non-Disclosure Agreement or BAA that may exist between us.

8.10 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated only to the extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

8.11 Third Party Beneficiaries. Unless otherwise set forth in this Agreement, no person or entity shall be considered a third-party beneficiary of this Agreement.

8.12 Remedies. (a) You agree that in the event of any breach or threatened breach of the Confidentiality and BAA, D-Scope Systems will suffer irreparable damage for which it will have no adequate remedy at law. In addition to any other remedy that it may have at law or in equity, D-Scope Systems shall be granted injunctive and other equitable remedies as to any such breach or threatened breach, without the necessity of posting a bond. (b) The exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

8.13 Force Majeure. You shall not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, pandemic, acts of government order, government-issued lockdown, pandemic/epidemic, terrorism, acts of war, shortage of materials, labor or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond its reasonable control ("Force Majeure"). If an event of Force Majeure occurs, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure. You may terminate the Equipment Purchase Agreement (if applicable) or the Software License Agreement (including the License granted hereunder) if the Force Majeure event continues for more than sixty (60) days.

8.14 No Assignment. You may not assign this Agreement or the License, in whole or in part, without the written consent of D-Scope Systems. D-Scope Systems has the right to assign this Agreement without your consent. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties.

8.15 Headings. The headings in this Agreement are for convenience and reference only, and they shall in no way define, limit, or describe the scope of the provisions or be considered in the interpretation, construction or enforcement hereof.