



COVER SHEET AND SIGNATURE PAGE
to
CUSTOMER LICENSE AND ONLINE SERVICES TERMS AND CONDITIONS
and
PROFESSIONAL SERVICES TERMS AND CONDITIONS

This **COVER SHEET AND SIGNATURE PAGE** is entered into on <date> ("Effective Date of the Agreements") by and between <customer legal entity>, a corporation organized under the laws of <state of incorporation>, with its principal place of business located at <customer address> (hereinafter the "First Customer") and **Dassault Systemes Biovia Corp.** and its affiliates, with its principal place of business located at 5005 Wateridge Vista Dr., San Diego, CA 92121 (hereinafter "BIOVIA").

By signing below, each party indicates its acceptance of the terms and conditions outlined in each the "Customer License and Online Services Terms and Conditions" and the "Professional Services Terms and Conditions," (each an "Agreement" and together the "Agreements") attached hereto. Each of the Agreements, together with its applicable attachments, shall be considered individually as an independent and separate Agreement between Customer and BIOVIA. Each party acts exclusively in its own name and on its own behalf with respect to the rights and obligations pursuant to these Agreements. To the extent that this Cover Sheet and Signature Page is not populated with Customer information or signatures, the Effective Date of the Agreements and Customer for the Agreement shall be the Effective Date and Customer referenced on the most recent **Attachment A** or SOW executed by Customer and BIOVIA, and Customer's acceptance of the terms of such **Attachment A** or SOW shall be considered acceptance of the terms and conditions of the Agreements. Customer also expressly accepts and shall be bound by the terms of these Agreements by issuing a purchase order against a quote which references these Agreements.

IN WITNESS WHEREOF, the parties have caused this Cover Sheet and Signature Page to be executed by their duly authorized officers or representatives.

<customer legal entity>

Dassault Systemes Biovia Corp.

Name of signatory:

Name of signatory:

Title:

Title:

Date:

Date:

Signature:

Signature:

CUSTOMER LICENSE AND ONLINE SERVICES TERMS AND CONDITIONS

1. Definitions

Affiliate means (i) with respect to First Customer, any entity which Controls, is Controlled by, or is under common Control with the First Customer, and (ii) with respect to BIOVIA, any entity which Controls, is Controlled by, or is under common Control with BIOVIA. Such entity shall be deemed to be an "Affiliate" only so long as such Control exists.

Agreement means these General Terms, the Transaction Document(s) and the terms contained in the web links referenced herein and hereby incorporated by reference.

Control and/or Controlled by means (a) in the case of corporate entities, direct or indirect ownership of more than fifty percent (50%) of the stock or shares entitled to vote for the election of directors; or (b) in the case of non-corporate entities, direct or indirect ownership of more than fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities.

Customer means the First Customer or an Affiliate of First Customer that has entered into a Transaction Document under this Agreement, but solely with respect to the BIOVIA Offerings and/or Support Services such First Customer or Affiliate orders under this Agreement.

Distributor means a third party authorized by BIOVIA to distribute BIOVIA Offering and Support Services.

Documentation means, at any time, the current user documentation in any form or media as delivered together with the BIOVIA Offering for use in connection with the BIOVIA Offering.

BIOVIA Offering means one or more Licensed Programs and/or Online Services and/or Packaged Offering.

Effective Date means (i) for a Licensed Program, the later of the following (x) the date on which such Licensed Program is shipped or made available electronically to Customer or, if applicable, (y) the date on which Customer is informed by BIOVIA that the associated license key can be requested or is available, or (ii) for Online Services, the date of delivery of the Online Services as described in Section 4.2.

Licensed Program means (i) any data processing program for which a license is ordered by and provided to Customer pursuant to a Transaction Document and/or provided to Customer as part of the Online Services, consisting of a series of instructions or databases in machine readable form, (ii) associated Documentation, (iii) corrective patches and (iv) Releases to which Customer is entitled. A Licensed Program does not include new versions of a Licensed Program including any successor product which significantly differs in architecture, user interface or mode of delivery.

Online Services means online access to, and use of, Licensed Program and other related services, as may be updated by BIOVIA from time to time and ordered by Customer pursuant to a Transaction Document. Online Services may also include certain Licensed Program(s) for which on-premise installation may be required.

Packaged Offering means a BIOVIA Offering composed of several Licensed Programs and/or Online Services.

Release means a periodic update of the same version of a BIOVIA Offering if and when made generally available to the market.

Support Services means the maintenance, enhancement and other support services referred to herein.

Transaction Document means the form (which may be online) referencing this Agreement, signed or otherwise accepted by Customer and accepted by BIOVIA that identifies the BIOVIA Offering and/or Support Services ordered by Customer, the quantities and term thereof, fees payable (unless ordered through a Distributor), duration, geographical scope, BIOVIA serving as the licensor or service provider and Customer identification. Transaction Documents may be labeled "Attachment A."

Defined terms can be used in a singular or plural form.

2. License and Use Rights

2.1 Grant. BIOVIA grants Customer, from the Effective Date, a non-exclusive and non-transferable (except as expressly permitted herein) right, for the duration identified in the Transaction Document and solely for its internal business use, to:

- Make and install the number of copies specified on the Transaction Document of the applicable Licensed Program for which on premise installation is required;
- Use the BIOVIA Offerings according to the terms and conditions of this Agreement and their applicable Documentation;
- Allow its authorized users to access and use the BIOVIA Offering;
- Make one copy to be used solely for back-up purposes of each Licensed Program for which on premise installation is required.

2.2 Scope. Customer agrees to operate each BIOVIA Offering in accordance with the terms and provisions of this Agreement and the Documentation for such BIOVIA Offering and to ensure that its authorized users comply with such terms and provisions. License keys, license tokens or delivery of media do not by themselves grant the legal right to use any BIOVIA Offering. Except as expressly set forth in this Agreement, no other express or implied right or license is granted to Customer.

Except as specifically permitted in this Agreement, Customer agrees not to: (a) use any BIOVIA Offering to develop software applications for use by or distribution to any third party, whether in whole or part, whether as standalone products or as components, (b) rent, lease, sublicense, perform or offer any type of services to third parties relating to any BIOVIA Offering including but not limited to, consulting, training, assistance, outsourcing, service bureau, customization or development, (c) correct errors, defects and other operating anomalies of any BIOVIA Offering, (d) reverse engineer, decompile, disassemble, adapt or otherwise translate all or part of any BIOVIA Offering, (e) provide, disclose or transmit any results of tests or benchmarks related to any BIOVIA Offering to any third party, or (f) use any software that may be delivered with any BIOVIA Offering other than the BIOVIA Offerings ordered hereunder.

3. Support Services

Support Services for BIOVIA Offerings are detailed on the BIOVIA website and include support request management and, for Licensed Programs, Releases made available during the Support Services term. Support Services will be provided by BIOVIA or a BIOVIA authorized service provider as specified in the BIOVIA Support Services policies. Support Services policies are subject to change; however, any changes will not become effective until the commencement of the immediately following Support Services term. Customer should consult BIOVIA's Support Services policies on the BIOVIA website prior to renewal. To the extent applicable, unless Customer requests otherwise, or terminates Support Services, Support Services shall automatically renew on an annual basis and based on the then current Support Services policies. Fees associated with Support Services shall increase on an annual basis in accordance with the terms located on BIOVIA's website.

4. Delivery and Payment

4.1 Orders. Customer may order BIOVIA Offerings and related Support Services under this Agreement, by executing a Transaction Document. Customer agrees that the terms and conditions of this Agreement shall apply to all such Transaction Documents, BIOVIA Offerings and Support Services ordered thereunder.

4.2 Delivery. BIOVIA Offerings will be delivered to Customer or made available electronically. Electronic delivery will be made by providing Customer with necessary information to access the Online Services and/or download the Licensed Program. Customer is responsible for accessing

BIOVIA's website and downloading the Licensed Program. Licensed Programs delivered by BIOVIA will be delivered FCA (Incoterms 2010) BIOVIA's premises as designated by BIOVIA.

4.3 Payment

4.3.1 Payment Terms. In consideration of the rights, licenses and services provided hereunder, Customer shall pay the charges applicable to each BIOVIA Offering and Support Services at the price identified in the applicable Transaction Document. Unless otherwise agreed to in writing, (i) all charges will be invoiced upfront, and (ii) Customer shall pay all invoices within thirty (30) days from the date of invoice. BIOVIA shall be entitled to suspend the provision of Support Services or Online Services for which related payment has not been made.

BIOVIA may set a common renewal date with respect to any BIOVIA Offerings or Support Services with different renewal dates and will prorate the charges due for any period not covered as a result thereof.

4.3.2 Late Payments. Customer shall pay interest on late payments at the rate of 1.5% per month or the highest lawful rate on all sums unpaid at the due date, plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts.

4.3.3 Taxes. All prices are exclusive of taxes. Customer shall be responsible for payment of any and all taxes, including fees, duties, excises, import VAT, or similar charges of any nature whatsoever, now in force or enacted in the future, that are levied, assessed, charged, withheld, or collected for or in connection with the transfer or usage, to the extent authorized hereunder, of the BIOVIA Offerings provided hereunder or otherwise arising in connection with this Agreement, but excluding domestic taxes based on BIOVIA's net income. If Customer is required to withhold, deduct, or pay for any tax from the amount of fees to be paid under this Agreement, then Customer shall pay such additional amount to BIOVIA as is necessary to ensure that BIOVIA receives a sum equal to what would have been received had no such withholding, deduction or payment been required.

5. Intellectual Property

5.1 Ownership. BIOVIA and/or its suppliers retain ownership in all intellectual property rights in all BIOVIA Offerings and all modifications, enhancements or other derivative works thereof. Licensed Programs are licensed, not sold. Customer shall preserve and reproduce all copyright, patent and trademark notices which appear in any BIOVIA Offering on all partial or integral copies thereof. Customer recognizes that the methodologies and techniques contained in or expressed within the BIOVIA Offerings are proprietary information or trade secrets of BIOVIA or its suppliers, whether or not marked as "confidential". Customer shall treat them as confidential information and not disclose them.

5.2 Intellectual Property Indemnification. BIOVIA will defend Customer against any claims made by a third party that a BIOVIA Offering delivered under this Agreement infringes a copyright in any country or a patent of the United States, Japan, or a member state of the European Patent Organization, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by BIOVIA arising out of such claim, provided (i) Customer provides BIOVIA with prompt written notice of the claim, and (ii) Customer gives BIOVIA sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.

If such a claim is made, or in BIOVIA's reasonable opinion a BIOVIA Offering is likely to become the subject of such a claim (or likely to be made), BIOVIA may at BIOVIA's expense, either secure the right for

Customer to continue using the applicable BIOVIA Offering, modify it so that it is not infringing, or replace it with another program which is functionally equivalent. If none of the foregoing options is available on terms which are reasonable in BIOVIA's judgment, BIOVIA may terminate the licenses to the Licensed Program and/or terminate the Online Services. For perpetual licenses, BIOVIA shall either refund or provide a credit to Customer, at Customer's option, in an amount equal to the corresponding one-time fee paid for the licenses, depreciated on a straight-line over three (3) years upon return or destruction of all copies of the affected Licensed Program as certified by an officer of Customer. For Online Services or licenses that are not perpetual, BIOVIA shall refund all prepaid but unused fees paid hereunder for the affected Online Services or licenses.

BIOVIA shall have no obligation to defend or indemnify Customer against any claim related to (i) any modification of a BIOVIA Offering by anybody other than BIOVIA, (ii) the use of one or more BIOVIA Offerings in combination with other hardware, data or programs not specified by BIOVIA, or (iii) the use of corrective patches or Releases other than the most recent one.

This Section 5.2 states BIOVIA's entire liability and Customer's exclusive remedy for any claim of infringement of intellectual property rights.

6. Warranty

6.1 Warranty. BIOVIA warrants for ninety (90) days from the initial delivery of each Licensed Program that such Licensed Program will materially conform to its Documentation when used in the specified operating environment. If the Licensed Program does not conform, and Customer has so notified BIOVIA within this warranty period, BIOVIA will use commercially reasonable efforts to attempt to make it conform as warranted. This represents BIOVIA's sole liability and Customer's sole remedy for breach of warranty.

6.2 Disclaimers. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS FOR BIOVIA OFFERINGS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON INFRINGEMENT.

BIOVIA disclaims all liability for any use or application of any BIOVIA Offering or the results or decisions made or obtained by users of the BIOVIA Offering. BIOVIA does not warrant that (i) the functions of any BIOVIA Offering will meet Customer's requirements or will enable it to attain the objectives Customer has set for itself, (ii) the BIOVIA Offering will operate in the combination or environment selected for use by Customer, or (iii) the operation of the BIOVIA Offering will be uninterrupted or free of errors. In all instances, Customer shall be solely responsible for ensuring that the results produced by BIOVIA Offering comply with quality and safety requirements of Customer's products or services. No employee or agent of BIOVIA is authorized to give a greater or different warranty. Customer shall have exclusive responsibility for (a) selection of the BIOVIA Offering to achieve Customer's intended results, (b) installation of the Licensed Program, (c) taking adequate measures to properly test, operate and use each BIOVIA Offering, and (d) results obtained therefrom.

The disclaimers above apply to the maximum extent permitted by applicable law.

7. Limitation of Liability

EXCEPT FOR BIOVIA'S LIABILITY UNDER SECTION 5.2 HEREOF, BIOVIA'S MAXIMUM LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER FOR THE LICENSED PROGRAM OR THE ONLINE SERVICES WHICH CAUSED THE DAMAGES IN THE PRECEDING TWELVE (12) MONTH-PERIOD PRIOR

TO THE OCCURRENCE OF THE CAUSE OF ACTION GIVING RISE TO THE CLAIM.

BIOVIA SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION CLAIMS FOR LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF DATA, THAT IN ANY WAY RELATE TO THIS AGREEMENT, ANY BIOVIA OFFERING, DOCUMENTATION OR SERVICES, WHETHER OR NOT BIOVIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY.

THE LIMITATIONS STATED IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT (INCLUDING, BUT NOT LIMITED TO, BREACH OF WARRANTY), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

Customer waives any and all claims related to this Agreement or any BIOVIA Offerings or Documentation or services provided hereunder, for any direct, indirect, incidental or consequential damages, on any basis, against any BIOVIA licensors or any BIOVIA Affiliate other than BIOVIA.

Any legal action against BIOVIA must be filed with the appropriate judicial jurisdiction within two (2) years after the applicable cause of action has arisen.

8. Distributors

For any BIOVIA Offering which Customer obtains through a Distributor, Customer agrees that Distributor is responsible for pricing, payment collection and delivery of any orders it accepts. BIOVIA remains independent from the Distributor and is not responsible for the Distributor's actions or omissions.

9. Term and Termination

9.1 Term. This Agreement shall come into force on the Effective Date of the Agreement and shall remain in full force and effect until terminated as provided hereunder.

9.2 Termination for Breach.

9.2.1 Either BIOVIA or First Customer may terminate this Agreement and/or any BIOVIA Offering and/or Support Services if the other is in breach of any of its obligations relating thereto and has failed to remedy such breach within thirty (30) days of receipt of written notice.

9.3 Termination for Convenience.

9.3.1 Agreement. Unless otherwise agreed between the parties, BIOVIA or First Customer may terminate this Agreement for convenience by providing the other party with a ninety (90)-day prior written notice.

9.3.2 Licensed Program. Customer may terminate the license to any Licensed Program by providing written notice. Such notice may be provided at any time for perpetual licenses. Notices for term/subscription licenses must be provided thirty (30) days prior to the applicable renewal date. Absent such notification and unless otherwise stated in any applicable Transaction Document, the license shall automatically renew.

9.3.3 Support Services. Customer may terminate Support Services for a Licensed Program, subject to the following conditions: (i) Customer

provides BIOVIA with at least thirty (30) days prior notice, and (ii) such termination shall apply to Support Services covering all licenses of said Licensed Program held by Customer under any license agreement then in force between Customer and BIOVIA. Notwithstanding the above, if Customer has a current subscription to Support Services in place, any such termination of Support Services shall not be effective until the conclusion of the then-current subscription term.

9.3.4 Online Services. Customer or BIOVIA may terminate any Online Services by providing notice to the other party thirty (30) days prior to the renewal date of the Online Services. Absent such notification and unless otherwise stated in the applicable Transaction Document, the Online Services shall automatically renew.

BIOVIA may change or modify the Online Services at any time. BIOVIA will not materially diminish the Online Services during the term of the BIOVIA Offering obtained pursuant to the Transaction Document. Nothing in this Section 9.3.5 shall require BIOVIA to continue to provide any portion of the Online Services if this would result in BIOVIA violating the rights of any third party or any applicable law.

9.3.5 Packaged Offering. Customer may terminate any Packaged Offering by providing notice to BIOVIA thirty (30) days prior to the renewal date of the Packaged Offering. Absent such notification and unless otherwise stated in any applicable Transaction Document, the Packaged Offering shall automatically renew.

9.4 Effect of Termination. a) Unless otherwise specified hereunder, termination of this Agreement or any BIOVIA Offering or Support Services, shall not prejudice the rights (including without limitation all outstanding BIOVIA Offerings or Support Services, which shall continue in full force and effect for the term thereof and in accordance with the terms and conditions of this Agreement) and remedies that any party might have under this Agreement, and shall not relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement. Customer shall not be entitled to any refund or credit for early cancellation or termination of any BIOVIA Offering unless otherwise specifically provided in this Agreement.

b) Despite any termination by BIOVIA for convenience of this Agreement, Customer may order Support Services under this Agreement, at the then-current list price for any BIOVIA Offering for which the applicable use right is in effect. In such a case, this Agreement shall survive for the provision of such Support Services and for the duration thereof.

9.4.1 Agreement. Upon the effective date of termination of this Agreement, First Customer will not have the right to submit any further order under this Agreement other than for Support Services for any BIOVIA Offering for which the applicable use right is in effect and pursuant to the conditions specified in section 9.4 b) here above.

If this Agreement is terminated by BIOVIA for breach by Customer, BIOVIA reserves the right to terminate (i) Customer's right to use any BIOVIA Offerings for which payment has not been made, and (ii) Customer's right to use any or all BIOVIA Offerings ordered hereunder if such breach is for other than a failure to pay.

9.4.2 Licensed Program. Upon the effective date of termination or expiration of any license granted hereunder, (i) Customer shall immediately destroy or return all copies of all Releases of the terminated or expired Licensed Program and associated Documentation in their entirety and (ii) Customer shall duly certify the same in writing to BIOVIA.

9.4.3 Support Services. Upon the effective date of termination of Support Services, (i) Customer will have no further obligation to pay the Support Services fees for the corresponding Licensed Program, (ii) Customer shall

duly certify in writing to BIOVIA that all copies of all Releases of the Licensed Program other than those of the latest Release of the Licensed Program installed by Customer, have been duly destroyed or returned to BIOVIA in their entirety, and (iii) BIOVIA shall have no further obligation to provide any services or deliver any Release in support of any such licenses, except for providing license keys if necessary. Customer may reinstate Support Services, provided such reinstatement is activated for all licenses of a given Licensed Program held by Customer under any license agreement then in force between Customer and BIOVIA, and Customer pays all fees that would have been due in respect of Support Services from the date of termination of Support Services to the date of reinstatement of such Support Services, plus a reinstatement fee as specified by BIOVIA.

9.4.4 Online Services. Upon the effective date of termination or expiration of Online Services, (i) Customer shall no longer have access to the terminated or expired Online Services and (ii) if Customer terminates Online Services pursuant to Section 9.2, BIOVIA will reimburse Customer for any prepaid but unused recurring fees as of the termination date. This refund represents BIOVIA's sole liability and Customer's sole remedy in case of termination of Online Services.

9.4.5 Packaged Offering. Upon the effective date of termination or expiration of any Packaged Offering, Customer shall no longer have access to the terminated or expired Packaged Offering.

10. Additional Terms for Online Services

10.1 Additional Definitions

Applicable Data Protection Legislation means any applicable data privacy law and all other regulations that may apply to the Processing of Customer's Personal Data.

Customer Data means the data provided by Customer to BIOVIA, whether posted by Customer or any authorized users, through Customer's use of the Online Services, including Personal Data.

Data Controller refers to any entity in the public or in the private sector that determines the purposes and the means of the Processing of its Personal Data and has the bulk of compliance with all Applicable Data Protection Legislation.

Data Subject means an individual about whom Personal Data is collected and used.

Personal Data means any kind of information relating to an individual about whom information is collected which can, individually or together with other information on the individual, lead to directly or indirectly identifying such individual.

Processing refers to any operation or set of operations (including, without limitation, collection, organization, adaptation, deletion, storage, use, recording, interconnection, consultation, disclosure and transfer) that is performed upon Personal Data.

Service Level Agreement means the service level terms for the Online Services as available at the BIOVIA website.

10.2 BIOVIA Obligation. BIOVIA will provide Online Services in accordance with the then applicable Service Level Agreement.

10.3 Customer Data. All Customer Data will remain the sole property of Customer or the authorized users that posted such Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and obtaining copyright permissions for all Customer Data. Subject to the terms and conditions of this Agreement, Customer grants to BIOVIA a non-exclusive license to use, copy, store and transmit Customer Data to the extent reasonably necessary to provide and maintain the Online Services. Customer acknowledges and agrees that BIOVIA employees and BIOVIA subcontractors may have access to Customer Data in connection with the performance of this Agreement. Customer shall defend BIOVIA against

all third party claims arising from or relating to (i) Customer's use of the Online Services in violation of applicable laws or regulations, and/or (ii) any violation, infringement or misappropriation of the rights of a third party resulting from the Customer Data, and shall pay all costs, damages and expenses (including reasonable legal fees) finally awarded against BIOVIA by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Customer arising out of such claim, provided (i) BIOVIA provides Customer with prompt written notice of the claim, and (ii) BIOVIA gives Customer sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.

10.4 Customer Data Storage. As part of the Online Services, BIOVIA will provide storage of Customer Data for the duration of the Online Services and within the storage size limits defined in the Documentation. Should Customer exceed such storage limits, Customer shall remedy this situation within fifteen (15) days of notice from BIOVIA by ordering the necessary additional storage capacity or by reducing the size of the stored Customer Data.

10.5 Data Privacy. Customer acknowledges and agrees that it is and shall at all times remain the sole Data Controller of its Personal Data, and therefore, shall be responsible for complying with all Applicable Data Protection Legislation including, but not limited to, (i) transfer of Personal Data, (ii) information of Data Subjects and (iii) access, modification and deletion rights of Data Subjects.

10.6 Security. BIOVIA will make commercially reasonable efforts to implement security processes for the Online Services and Customer Data consistent with industry standards for similar services.

10.7 Confidentiality. Confidential Information means non-public information of a confidential nature that when disclosed in writing, is clearly marked with a restrictive legend, such as "Confidential". Confidential Information does not include ideas and concepts that may occur to individuals who have been exposed to Confidential Information.

During the period when the Online Services are provided, and for a period of one (1) year following termination or expiration thereof, the party receiving Confidential Information undertakes to protect the other party's Confidential Information received in the context of such Online Services by using the same degree of care that it uses with respect to its own confidential information of a similar nature to avoid disclosure, publication or dissemination of such Confidential Information. BIOVIA is authorized to disclose Customer's Confidential Information to third parties who have entered into an appropriate confidential disclosure agreement with BIOVIA to the extent necessary to provide the Online Services.

The obligation of confidentiality shall not apply to any information that: (i) is already in the possession of the receiving party without any obligation of confidentiality at the time the information was received from the disclosing party; (ii) is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; (iii) is or becomes publicly available without breach of this Agreement; (iv) is rightfully received by the receiving party from a third party without an obligation of confidentiality; (v) is released for disclosure by the disclosing party with its written consent; or (vi) is required to be disclosed in accordance with a judicial or administrative decision, provided that the receiving party provides prompt information to the disclosing party and reasonably cooperates with the disclosing party to limit the disclosure and use of the applicable information according to the decision.

Customer's exclusive remedy and BIOVIA's sole liability for any breach by BIOVIA of its confidentiality obligations pursuant to this Section is for Customer to terminate this Agreement in accordance with Section 9.2.

10.8 Third Party Content. BIOVIA exercises no control over, and assumes no responsibility or liability for any Customer content or third party content provided or published via the Online Services.

11. Additional Terms for Academics

11.1 Additional Definitions

Academic Use means any use of the BIOVIA Offerings by authorized users solely for education, institutional, instruction and/or research purposes. Academic Use can only be granted to a Customer that is an institution of education and/or research and that grants academic degrees (diploma or certificate) at any primary, secondary or higher education level.

11.2 License and Use Rights. Notwithstanding anything to the contrary in Section 2, Academic Use licenses shall not be used, directly or indirectly, for any commercial purpose of Customer or any third party.

11.3 Content Watermarking. Content produced using any BIOVIA Offerings for Academic Use may automatically contain a watermark identifying the BIOVIA Offering used. Customer shall not remove any such watermarking.

12. Export

Export to Customer of BIOVIA Offering and Documentation is subject to all applicable countries' export and re-export laws and regulations. BIOVIA and its licensors shall have no liability towards Customer if necessary authorizations, licenses or approvals are not obtained. Customer shall not export or re-export, either directly or indirectly, BIOVIA Offering when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. Customer hereby warrants to BIOVIA that all BIOVIA Offerings ordered hereunder shall not be used in violation of any applicable export laws, including for proliferation of any nuclear, chemical or biological weapons or missile delivery systems and shall not be diverted to any country, company or individual if prohibited by the applicable export laws of any country. Customer recognizes that Customer Data may be transferred to or stored in any country. Customer undertakes to abstain from, and shall ensure all users abstain from, processing, storing or uploading on its data sharing environment any information or data, the export of which is controlled, regulated or subject to any permit or license under any applicable law or regulation. Customer shall be deemed to be the exporter of Customer Data. BIOVIA may terminate this Agreement and all licenses and access to the Online Services hereunder upon written notice if Customer violates these provisions.

Unless provided for in a separate agreement, the parties shall not disclose or exchange any information that (a) is subject to the United States Government's International Traffic in Arms Regulations (ITAR) or (b) requires a license from the United States government under the Export Administration Regulations (EAR) for the export or re-export of such information to citizens of countries designated under the EAR as being in Group B, such as France, or Group D, such as China.

13. Software Compliance

13.1 Security Mechanisms. BIOVIA undertakes legal measures to eliminate unauthorized use of their software products. In this context, Licensed Programs may include a security mechanism that can detect the installation or use of illegal copies of a Licensed Program, and that is able to collect and transmit data about illegal copies only. Data collected will not include any data created by Customer with the Licensed Program. By using the Licensed Program, Customer consents to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. BIOVIA also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to

control access to, and use of, any BIOVIA Offering. Customer may not take any steps to tamper with, circumvent or disable any such measures. Use of any Licensed Program without any hardware lock device, license administration software and/or license authorization key provided by BIOVIA is prohibited.

13.2 Audit. During the term of this Agreement and for a period of three (3) years thereafter, Customer shall establish and maintain accurate information records relating to the use of each BIOVIA Offering including, without limitation, the list of users accessing and using such BIOVIA Offering. When applicable, such information shall include destruction of the Licensed Program and the measures put in place by Customer to protect the access to and the use of each BIOVIA Offering. BIOVIA shall have the right at any time, at its own expense and under reasonable conditions of time and place, to audit and copy these records and/or the Customer's use of each BIOVIA Offering. Customer also hereby authorizes BIOVIA to verify its compliance with the terms of the Agreement. For such purpose, BIOVIA may conduct an audit on Customer's premises during normal business hours, in a manner that minimizes disruption to its business. BIOVIA may require Customer to provide it, or any third party BIOVIA engages to conduct such verification, with machine access, copies of system tools outputs, or other electronic or hard copy system information as appropriate. If the audit reveals unauthorized use of any BIOVIA Offering, Customer shall promptly pay to BIOVIA any amounts owed as a result of such unauthorized use at the then current list price. If such unauthorized use is five percent or greater of Customer's authorized use for the applicable BIOVIA Offering, then in addition to Customer paying the applicable charges, Customer shall reimburse BIOVIA for the cost of such audit. By invoking the rights and procedures described above, BIOVIA does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

14. Miscellaneous

14.1 Purchase Orders. Customer's purchasing terms and conditions shall not in any way supersede, supplement or otherwise modify the terms of this Agreement. No orders shall be contingent on the issuance of a purchase order.

14.2 Notices. Unless otherwise provided herein, all notices required hereunder shall be in writing, in English, and shall be deemed to have been given on: (i) the date delivered in person or by express courier service, (ii) three (3) days after sending the notice if sent by certified or registered mail, or (iii) the date sent by confirmed facsimile, addressed to the parties at their address in the Transaction Documents, or at such other address as either party may designate to the other by notice served as hereby required, or contained in the relevant order form. For Online Services, notices may also be delivered by BIOVIA by email and will be deemed to have been given twenty-four (24) hours after the time such email is sent to Customer. For BIOVIA Offerings ordered on the BIOVIA web store, notices shall be delivered pursuant to the process defined on such BIOVIA web store.

14.3 Force Majeure. Neither party hereto shall be liable for any default in the performance of its obligations under this Agreement resulting from (i) a case of force majeure as defined by the law governing this Agreement and the courts in such jurisdiction, or (ii) the following causes: strikes (whether previously announced or not), war (declared or not), riots, governmental action, acts of terrorism, acts of God (fire, flood, earthquake, etc.), or any electrical, utility or telecommunication outages.

14.4 Third Party Hosting. Customer is authorized to install and use the Licensed Programs remotely on computers operated by a well-established, reputable third party service provider, and to appoint such service provider to operate the hardware and manage the Licensed Programs solely for and on behalf of Customer; provided however, that (i) only duly authorized users shall have the right to use the Licensed Programs; (ii) Customer shall enter

into a written agreement with such service provider under which the service provider agrees that its access to the Licensed Programs is solely for the purpose of providing the services mentioned above to Customer and is otherwise subject to all of the restrictions and limitations contained in this Agreement; and (iii) such service provider is not a competitor of BIOVIA. Customer acknowledges and agrees that the service provider shall be deemed an agent of Customer. If Customer becomes aware of any actual or suspected unauthorized access, use or disclosure of the Licensed Programs, Customer shall immediately terminate the service provider's access to the Licensed Programs. Customer shall defend and indemnify BIOVIA against any claim, expense, judgment, damage or loss (including reasonable attorneys' fees), which arises out of or in any way relates to any such service provider's access to or use of the Licensed Programs.

14.5 Severability. If any provision of this Agreement is found by a court of competent jurisdiction or arbitrator to be illegal, void or unenforceable, the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the original intent of the parties.

14.6 Transfer, Assignment & Subcontract. Any subcontract, assignment, delegation, or other transfer (including without limitation, by way of merger, acquisition, divestiture, or change of control or contribution in kind) of this Agreement, or any of Customer's rights, duties, benefits or obligations hereunder is subject to BIOVIA's prior written approval. Any attempt to do so without such consent is void. Any approved transfer of licenses may be subject to an adjustment charge. BIOVIA may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without Customer's consent. This Agreement shall be binding upon, and inure to the benefit of BIOVIA and its successors and assigns.

14.7 Amendments & Non-Waiver. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made by written amendment signed by both parties. A party's failure at any time to require performance of any provision hereof shall in no manner affect its right at a later time to enforce that or any other provision.

14.8 Entire Agreement; Order of Precedence. This Agreement comprises the complete agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements, understandings, representations, purchase orders and communications, whether oral or written. If there is a discrepancy, inconsistency or contradiction between any Transaction Document and these General Terms, the provisions of the corresponding Transaction Document shall prevail, but solely with respect to those BIOVIA Offerings described in such Transaction Document. Any future Transaction Document will not, on an overall basis, with respect to any BIOVIA Offerings obtained by Customer under this Agreement, result in a material increase in the Customer's liabilities and obligations under

these General Terms, or a material decrease in BIOVIA's liabilities or obligations under these General Terms. Customer confirms that it (i) has full knowledge of all terms herein and those incorporated herein by reference, (ii) agrees to be bound by and to comply with such terms, and (iii) in entering into this Agreement, has not relied upon the future availability of functionality or product updates with respect to any BIOVIA Offering. The terms of this Agreement shall have no force or effect with respect to any claim based on the use of any intellectual property rights of BIOVIA outside the scope of the rights expressly granted and/or provided herein.

14.9 Language. This Agreement is provided in English and may be provided, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of this Agreement.

14.10 U.S. Government Restricted Rights Legend. The BIOVIA Offerings, and any other technical data provided hereunder are commercial in nature and developed solely at private expense. The BIOVIA Offerings are delivered as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June 1995) or as a "Commercial Item" as defined in FAR 2.101(a) and, consistent with FAR 12.212 and DFARS 227.7202, as applicable, are licensed to Licensee only with those rights as are granted pursuant to this Agreement. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

14.11 Headers. Headings in this Agreement are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement.

14.12 Survival. The following sections of these General Terms shall survive termination thereof: Sections 1, 2.2, 4.3, 5, 6.2, 7, 8, 9.4, 10.1, 10.3, 10.5, 10.7, 10.8, 11, 12, 13 and 14.

14.13 Governing law and jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to any conflict of laws principles and excluding application of the United Nations Convention for the International Sale of Goods. The parties irrevocably waive all rights to trial by jury for any litigation between them. The courts of the Commonwealth of Massachusetts shall have exclusive jurisdiction to hear any dispute arising out of or in connection with the interpretation and/or performance of this Agreement. Customer acknowledges and agrees that the foregoing shall not prevent, restrict or otherwise limit in any manner, BIOVIA's rights to seek equitable remedies, including injunctive relief, before any competent court in any jurisdiction.

14.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 **"Agreement"** solely for purposes of this Professional Services Terms and Conditions means this document entitled "Professional Services Terms and Conditions," including any exhibits attached hereto, any subsequent amendments and all fully executed Statements of Work.
- 1.2 **"Deliverables"** means all tangible items delivered to Customer pursuant to this Agreement, including but not limited to computer software and its documentation and any other documentation specifically prepared in the course of performing Services. Deliverables are identified in the applicable Statement of Work as either BIOVIA Group Materials or Special Materials.
- 1.3 **"BIOVIA Materials"** means all materials other than Special Materials, provided by BIOVIA under a SOW, such as training manuals, self-study guides and documentation whether in machine readable form or not.
- 1.4 **"BIOVIA Software"** means any software owned or developed by BIOVIA, including any related maintenance and associated services.
- 1.5 **"Services"** means all services that are to be performed by BIOVIA under a fully executed Statement of Work, and may include software customization, training, technical assistance, consulting, software installation, configuration, and parameter set-up.
- 1.6 **"Special Materials"** means customized materials or software code prepared by BIOVIA specifically for Customer (excluding development on BIOVIA Software and development requiring access to BIOVIA Software source code).
- 1.7 **"Statement of Work"** or "SOW" means a document signed by Customer and BIOVIA designating their respective Project Coordinators, describing the Services to be performed by BIOVIA, identifying and classifying Deliverables, including any corresponding specifications and delivery dates, establishing price and payment schedule.

2. STATEMENT OF WORK

- 2.1 BIOVIA will furnish Services and Deliverables to Customer as set forth in a SOW. The following order of precedence shall control in the event of any conflict in terms and conditions: (1) this document and (2) the applicable SOW. Any purchase order or acknowledgement form issued by Customer or BIOVIA is for the limited purpose of internal accounting and shall not in any way modify or supplement the terms of this Agreement.
- 2.2 A SOW must be signed by an authorized representative of each party to become effective and may only be modified by a duly executed written amendment. This Agreement shall apply to any fully executed Statement of Work of even or subsequent date. Neither party shall have any obligation to accept any SOW as submitted or modified by the other party.
- 2.3 Each party shall appoint a Project Manager for each SOW.
- 2.4 BIOVIA shall deliver Services and Deliverables according to the

specifications in the SOW. BIOVIA shall use its reasonable commercial efforts, attention, knowledge and skill in the performance of the Services; provided, however, the parties understand and agree that any schedules and delivery dates set forth in an SOW are estimates only and may be subject to change; the time, scheduling, manner, method and place of performance of the Services by BIOVIA and the management and supervision of BIOVIA personnel pursuant to this Agreement shall be determined by BIOVIA in its discretion.

- 2.5 If Customer wishes to modify the Services set forth in an executed SOW, the following process will be used unless a different process is set forth in the applicable original SOW:
- Customer will provide BIOVIA with written notice of its requested changes to Services.
 - BIOVIA will evaluate Customer's request and provide a written response, including a description of affected personnel and resources, schedule, price and the impact on other terms of the SOW, if any.
 - The parties will discuss BIOVIA's response and document any agreed upon change in Services by preparing and executing an amended SOW or change order. BIOVIA is not obligated to perform any services requested by Customer that has not been confirmed by a fully executed amended SOW or change order.

- 2.6 BIOVIA agrees that its personnel will at all times comply with all generally applicable security regulations in effect at any Customer premises when providing Services at such Customer premises provided (i) Customer has provided BIOVIA with reasonable prior written notice of such security regulations; and (ii) such security regulations comply with the terms and conditions of this Agreement.

- 2.7 BIOVIA shall maintain such records as will adequately substantiate charges and hours worked and shall produce such records for Customer's inspection at BIOVIA's business office where such records are kept under reasonable conditions of time and place, but no more than once per twelve (12) month period, upon Customer's request and at Customer's expense, for a period of three (3) years following the furnishing of the relevant Services or Deliverables.

- 2.8 BIOVIA shall be entitled to (a) determine the assignment of BIOVIA personnel for performance under the SOW, (b) replace or reassign such personnel or (c) subcontract with qualified third persons for part or all of the performance of the Services required under the SOW and share with such subcontractor(s) any Confidential Information provided by Customer under this Agreement for the purposes of performance under this Agreement, without requiring further approval from Customer for such disclosure; provided that BIOVIA remains fully responsible for performance of its obligations hereunder. No person performing Services on behalf of BIOVIA hereunder shall be restricted or prevented from performing services for others that are similar to the Services provided under this Agreement.

3. PAYMENT

- 3.1 BIOVIA will submit invoices to Customer in accordance with each SOW. Payment shall be due within thirty (30) days from the date of receipt of the invoice. Customer shall pay interest for late payment at a rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), but in no event more than the highest amount allowed by applicable law, on all sums unpaid at due date, plus reasonable attorney's fees and other costs incurred by BIOVIA

in collecting unpaid amounts and in enforcing this Agreement.

3.2 Customer shall reimburse BIOVIA for reasonable travel and living expenses incurred by BIOVIA's personnel in the performance of any SOW. Travel and living expenses shall be detailed in the applicable SOW.

3.3 Customer shall pay, without recourse to BIOVIA, amounts equal to any taxes, howsoever designated, assessed or levied relating to this Agreement or the services or materials provided under SOWs by tax authorities, excluding taxes based on BIOVIA's net income.

4 INTELLECTUAL PROPERTY RIGHTS

4.1 BIOVIA shall have and retain exclusive ownership of (i) any inventions, discoveries, innovations, improvements, ideas, techniques or know-how conceived by BIOVIA during the performance of Services (ii) Special Materials and (iii) BIOVIA Materials. This ownership includes the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available for such items. BIOVIA hereby grants to Customer, for the duration of the license term for the associated BIOVIA Software, a limited license to use the Special Materials and BIOVIA Materials solely in conjunction with its use of the BIOVIA Software and for its internal business purposes.

4.2 Except as expressly provided herein, this Agreement does not grant or convey either directly, by implication or otherwise, any right or license to any invention, patent, copyright or other intellectual property of either party to the other party.

5. WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

5.1 BIOVIA warrants that the Services and Deliverables that BIOVIA provides Customer shall, for ninety (90) days from the date of delivery to Customer, materially conform as described in the applicable SOW, subject to the terms of this Section. BIOVIA does not, however, warrant or represent that Services and Deliverables will be error free. BIOVIA is not responsible for (i) any modification of a Deliverable made by Customer or a third party without BIOVIA's consent; or (ii) any use of a Deliverable in combination with items not provided by BIOVIA (but only to the extent such combination created the non-conformity). In the event of a non-compliance with this ninety (90) day warranty, BIOVIA shall promptly correct, replace or modify the applicable Service or Deliverable without charge. If BIOVIA fails to correct the non-complying portion of the applicable Service or Deliverable within sixty (60) days after notice of the non-conformity, as Customer's sole remedy for breach of the foregoing warranty, BIOVIA shall refund to Customer all fees paid to BIOVIA for the non-conforming portion of the applicable Service or Deliverable.

5.2 Unless expressly provided in a SOW, BIOVIA shall have no obligation to support, maintain or enhance any computer software, documentation, materials or Deliverable provided under this Agreement.

5.3 Any written or oral statements concerning results or goals that may be attained during the performance of Services and all surveys, forecasts, recommendations and opinions contained in any proposal, report, presentation, or Deliverable are made on the basis of then current information available to BIOVIA, including, but not limited to, information provided by Customer. Under no circumstances shall any such statement be deemed or construed as a representation, undertaking or warranty, whether express or implied, of achievable results or goals.

5.4 BIOVIA warrants that it, and not Customer, is responsible for the employer/employee relationship with its personnel assigned to provide Services and that it shall pay all related employment taxes, maintain any legally required employment-related insurance and take all other actions legally required as an employer.

5.5 THE WARRANTIES DESCRIBED IN THIS SECTION ARE EXCLUSIVE AND CUSTOMER HEREBY WAIVES ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

5.6 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOSS OF DATA) IN ANY WAY ARISING OUT OF THIS AGREEMENT OR ANY SOW, OR PERFORMANCE THEREUNDER, HOWEVER CAUSED, UNDER A CLAIM OF ANY TYPE OR NATURE, BASED ON ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR STRICT LIABILITY) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BIOVIA'S LIABILITY FOR DAMAGES EXCEED IN THE AGGREGATE THE AMOUNT CORRESPONDING TO CHARGES ACTUALLY PAID BY CUSTOMER FOR THE SERVICE OR DELIVERABLE INVOLVED IN THE DAMAGE IN THE PRECEDING TWELVE (12) MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE CAUSE OF ACTION GIVING RISE TO THE CLAIM FOR THE MATTER WHICH CAUSED THE DAMAGES.

5.7 Each party recognizes that the charges and fees hereunder are based in part on the limited warranty and limitation of liability set forth above.

6. CUSTOMER RESPONSIBILITIES

6.1 As a condition of BIOVIA's performance of Services, Customer shall perform certain tasks specified in the SOW at no charge to BIOVIA.

6.2 Customer shall reasonably cooperate with BIOVIA, including providing BIOVIA with safe and timely access to Customer's computer systems, personnel (executives and staff), facilities, utilities, any software program and information reasonably necessary for the performance of Services, whether or not defined or outlined in the SOW, at no charge to BIOVIA. Customer shall ensure that it has the appropriate licenses from third parties licensors for such third party's software programs, third party data and information in order to allow BIOVIA to perform Services for Customer. Customer is responsible for the accuracy and completeness of the information and data Customer supplies to BIOVIA for use hereunder and Customer hereby licenses BIOVIA to use such information and data solely for BIOVIA and its subcontractors, to perform its obligations under the applicable SOW.

6.3 While BIOVIA will use reasonable efforts to interpret Customer data, BIOVIA is dependent upon Customer for the accurate and complete provision of data. Customer is responsible for evaluating BIOVIA's SOW based upon those technical, price, performance and risk factors determined by Customer to be in its best interests. Customer must satisfy itself that BIOVIA fully understands Customer's requirements and that SOW addresses Customer's needs.

6.4 Customer shall maintain current and complete back up for any data and programs that may be affected by BIOVIA's performance of Services.

- 6.5 Customer shall defend and indemnify BIOVIA from any action brought against BIOVIA based on a claim that any materials or information provided by Customer to BIOVIA constitutes (i) an infringement of a third party's trademark, copyright of a country signatory to the Berne Convention; or United States, Canadian, European Union or Japanese patent, provided that the patent is registered as of the date of such material or information is delivered to BIOVIA; or (ii) a misuse of a third party's confidential, proprietary or trade secret information.
7. **TERM AND TERMINATION**
- 7.1 This Agreement shall become effective as of the date of the last signature entered below and shall continue in effect until either party terminates the Agreement by providing a one (1) month prior written notice to the other party. This Agreement shall remain in effect regarding any SOW already signed until such SOW is terminated or performance thereunder is completed.
- 7.2 Customer may terminate for convenience any SOW, or any portion thereof, by providing a thirty (30) day written notice to BIOVIA. Upon receipt of such notice, BIOVIA will immediately stop all activities associated with the terminated SOW and make no further deliveries. BIOVIA will be paid for Services performed through the date of termination, and any other unrecoverable costs and expenses that BIOVIA has paid or is obligated to pay relating to its performance for the term of the SOW or termination of the SOW. Such payment shall constitute Customer's entire liability in case of any such termination.
- 7.3 Either party may terminate any SOW for default by providing thirty (30) day prior written notice to the other party and the other party does not remedy the default within said thirty (30) day period. In the event of termination of a SOW other than for Customer's default, BIOVIA agrees to promptly provide Customer with all items of work in progress associated with the SOW upon payment by Customer of any amounts owed.
- 7.4 The rights and obligations of Sections 3, 4, 5, 6, 8 and 9 shall continue after expiration or termination of this Agreement and shall bind the parties and their legal representatives, successors and assigns.
- 8 **CONFIDENTIAL INFORMATION AND EXPORT CONTROLLED DATA**
- 8.1 Customer and BIOVIA may need to disclose Confidential Information during the performance of Services. "Confidential Information" means sensitive information which may include technical data, financial, business information or any other information which is considered as confidential by the disclosing party. Confidential Information does not include ideas and concepts that may occur to individuals who have been exposed to Confidential Information.
- 8.2 Confidential Information shall be disclosed either:
 (a) in writing and conspicuously marked as being the disclosing party's Confidential Information; or
 (b) orally, visually or by delivery of non-tangible items, which is identified as Confidential Information at the time of disclosure and confirmed and identified in writing within fifteen days of disclosure.
- 8.3 For a period of five (5) years from the date of receipt of Confidential Information, the receiving party will take the following actions:
 (a) use at least the same degree of care that it uses with respect to its own confidential information, but in no event less than a reasonable degree of care to avoid disclosure of the other party's confidential information;
- (b) disclose Confidential Information only to Customer or BIOVIA personnel, including its subcontractors and BIOVIA Affiliates who have a need to know with respect to the performance or receipt of Services; and
- (c) promptly report any loss of any Confidential Information to the disclosing party.
- 8.4 The receiving party may make a reasonable number of copies of tangible materials provided by the disclosing party and containing Confidential Information as necessary for the performance of Services.
- 8.5 The obligations of confidence in this Agreement will not apply to any information that:
 (a) is already in the possession of the receiving party without any obligation of confidence;
 (b) is independently developed by the receiving party without reference to Confidential Information of the disclosing party;
 (c) is or becomes publicly available without breach of confidentiality obligations; or
 (d) is required to be disclosed in accordance with a judicial or governmental order or decree.
- 8.6 Unless provided for in a separate agreement, the parties shall not disclose or exchange any information that (a) is subject to the United States Government's International Traffic in Arms Regulations (ITAR) or parties' applicable military export regulations or (b) requires a license from the United States government under the Export Administration Regulations (EAR) for the export or re-export of such information to citizens of countries designated under the EAR as being in Group B, such as France, or Group D, such as China. The export or re-export of Confidential Information or non-confidential information received from a party to this Agreement is subject to compliance with applicable export control laws and regulations.
- 9 **GENERAL**
- 9.1 Neither party shall be liable for failure to perform its obligations hereunder, if such failure results from causes beyond its reasonable control such as acts of God, fire, explosion, terrorism, strikes or labor disputes, delays by vendors and/or manufacturers, governmental acts, staff unavailability due to illness or airline flight delay or similar causes.
- 9.2 This Agreement shall not prevent either party from entering into similar agreements with others or from independently developing or acquiring materials or services that are similar to those provided under this Agreement.
- 9.3 With the exception of BIOVIA's right to subcontract under Section 2.8, any subcontract, assignment, delegation, or other transfer (including without limitation, by way of merger, acquisition, divestiture, or change of control or contribution in kind) of this Agreement, or any of Customer's rights, duties, benefits or obligations hereunder is subject to BIOVIA's prior written approval. Any attempt to do so without such consent is void. BIOVIA may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without Customer's consent. This Agreement shall be binding upon, and inure to the benefit of BIOVIA and its successors and assigns.
- 9.4 Nothing contained herein shall be deemed to authorize or empower either party to act as agent for the other party or to conduct business in the name of such other party. Nothing in this Agreement shall be

deemed to create between the parties hereto any joint-venture or partnership.

- 9.5 This Agreement shall be governed by and construed, and the legal relations between the parties shall be determined in accordance with the laws of the Commonwealth of Massachusetts, excluding application of any conflict of laws principles and excluding application of the United Nations Convention for the International Sale of Goods, and the parties irrevocably waive all rights to trial by jury for any litigation between them related to this Agreement.
- 9.6 In the event of a dispute concerning the execution, construction or interpretation of this Agreement, the parties shall meet to seek an amicable resolution of the dispute within three (3) months from initial notice thereof by either party to the other. Notwithstanding the foregoing, this paragraph will not be construed to prevent a party from instituting, and a party is specifically authorized to initiate, formal legal proceedings at any time to obtain or preserve a superior position (or maintain parity) with respect to other creditors, to include the other party in a third party action in which indemnification may be sought pursuant to this Agreement, to seek equitable relief to protect a party's Confidential Information or other intellectual property, or to avoid the expiration of any applicable limitations of actions or other similar period. Subject to the obligation to meet to seek an amicable solution as provided in the first sentence of this paragraph, Customer hereby irrevocably agrees to submit any dispute arising out of, or in connection with the validity, interpretation and/or performance of, this Agreement to the exclusive jurisdiction of the Courts of the Commonwealth of Massachusetts, and each party consents to the jurisdiction of said courts for any such dispute. Without prejudice to the foregoing, BIOVIA may, in its discretion, bring any claim or dispute (including but not limited to seeking injunctive relief and/or equitable remedies) arising out of, or in connection with, the validity, interpretation and/or performance of this Agreement before any courts and/or administrative authorities, in any jurisdiction, having jurisdiction over the subject matter of any such claim or dispute.

- 9.7 Failure of either party to require strict performance by the other party of any provision shall not affect the first party's right to require strict performance thereafter. Waiver by either party of a breach of any provision shall not waive either the provision itself or any subsequent breach.
- 9.8 In the event any part of this Agreement is invalid, illegal or unenforceable, the remaining provisions of the Agreement shall nevertheless be binding with the same effect as if the invalid, illegal or unenforceable part was never part of the Agreement.
- 9.9 All notices required under this Agreement shall be communicated in English and deemed effectively delivered upon personal delivery or three (3) days after deposit with a carrier by registered mail or other equivalent service, postage prepaid, return receipt requested, addressed as follows, or to such other address as either party may subsequently designate:
- For the Customer:
(insert info)
- For BIOVIA:
Dassault Systemes Biovia Corp.
5005 Wateridge Vista Dr.
San Diego, CA 92121
U.S.A.
Attn: Legal Dept.
- 9.10 This Agreement is the complete agreement between the parties relating to the subject matter hereof and supersedes all prior proposals, agreements, understandings, representations and communications, whether oral or written. This Agreement may be modified only by written amendment signed by the parties' duly authorized representatives.