

End-User License Agreement for Datamed® Software

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1.3. Additional Servers. You need a Hardware License Key or Software License Key for each computer that a Product is installed on and used in an operating environment. Datamed offers an Additional Software License ("ASL") for a fee that comes in a Hardware License Key or a Software License Key and contains a duplicate of the production server license. An ASL can be used for testing, hot backup, or disaster recovery

but cannot be used as a production server. You may install an inactive copy of a Product on an additional computer, as long as the Product is not used in an operating environment, unless and until you acquire another Hardware License Key or Software License Key or transfer a Hardware License Key or Software License Key in compliance with Section 1.2.

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1.5 License Grant for Documentation. Any documentation that accompanies the Product is subject to the license set forth in Section 1.1 and may only be used for internal, non-commercial reference purposes only.

1.6 Use of the Product. You and Your Authorized Users agree to use the Product in compliance with all applicable federal, state, and local laws, rules, and regulations. You are solely responsible for the adequacy and accuracy of all data, programs, procedures, and other information that you and/or your Authorized Users input into the Software and the results obtained therefrom. You are fully responsible for making all treatment decisions and providing medical care with respect to all patients whose data may be processed using the Product. Your use of the Product does not constitute the rendering of medical care or advice by Datamed, Datamed and its staff are not medical providers and are not intended to replace the relationship between patients and their healthcare provider(s).

1.7 Lifetime of the License. Unless the term of any license subject to this EULA is determined pursuant to another written license agreement between you and Datamed, (a) the subscription license is limited by the subscription period, and (b) the fully-paid license is time-limited and will terminate on the second anniversary of the expiration of your support plan. As long as Datamed offers support plans for the Product, you may (a) renew your support plan prior to the second anniversary of the expiration of your previous support plan, or (b) restore your license by both paying a reactivation fee (as identified on the then current published Price List), and renewing your support plan, either (a) or (b) result in extending the license for the duration of the current support plan and two years beyond.

1.8 Releases and Sunset of Product Versions. THE LATEST VERSIONS OF RELEASES OF ALL PRODUCTS ARE IDENTIFIED ON DATAMED’S WEBSITE (<http://www.datamed.com>). YOU ARE RESPONSIBLE FOR CHECKING TO SEE WHEN NEW RELEASES ARE AVAILABLE. Patch Releases (identified in Product version X.Y.Z by a change to the “Z” field) and Standard Releases (identified in Product version X.Y.Z by a change to the “Y” field) (individually, a “Release” and “collectively” Releases”), are created at Datamed’s discretion and are available at no cost (a) to subscription licensees, and (b) to fully-paid licensees as long as a support plan for the associated Product is in force. In the event that a Release is a result of a mandatory regulatory change or to correct or mitigate an infringement claim, you will be notified and to the extent such Release is made available to you, you are required to update the Product to the new Release. If you fail to install such Release within the period prescribed by Datamed, you shall be solely responsible for, and Datamed shall have no liability regarding, any liability or damages incurred by you in connection with or arising from your failure to install such Release. All Releases sunset no later than twenty-four (24) months after being replaced by new release and Datamed is under no obligation to support any version after it is sunset.

1.9 **Sunset of Product.** Notwithstanding the foregoing, Datamed reserves the right to sunset any Product without notice.

2. RESERVATION OF RIGHTS AND OWNERSHIP. Datamed reserves all rights not expressly granted to you in this EULA. The Product is protected by copyright and other intellectual property laws and treaties. Datamed or its Representatives own the title, copyright, and other intellectual property rights in the Product and any copies thereof or derivative works thereto. **The Product is licensed, not sold.** This EULA does not grant you any rights to trademarks or service marks of Datamed. Notwithstanding anything herein to the contrary, you agree to not use or exploit the Product as a source or reference to conceive, create, develop or offer any product or service similar in form, function or concept to the Product.

3. FEEDBACK. Datamed may provide you with a mechanism to provide feedback, suggestions and ideas, if you choose, about its products and services ("Feedback"). You agree that Datamed may, in its sole discretion, use the Feedback you provide to Datamed in any way, including in future modifications of the Product. You hereby grant Datamed a perpetual, worldwide, fully transferable, irrevocable, royalty free license to use, modify, create and own derivative works from, distribute and display any information you provide to Datamed in the Feedback.

4. RESTRICTIONS; LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY. You are not licensed or permitted to do, nor may you permit your Authorized Users to:

- (i) make additional copies of the Product except as provided herein;
- (ii) give copies to another person who has not purchased a license for the Product from Datamed;
- (iv) duplicate the Product by any other means including electronic transmission;
- (v) reverse engineer, decompile, or disassemble the Product;
- (vii) without the prior written consent of Datamed, transfer or assign the license and your rights to the Product under any circumstances including to an affiliate or any other entity under common ownership with you or under your control or upon a merger, change of control, reorganization, consolidation or sale of all or substantially all of your assets or seek to sublicense or assign the license of your rights hereunder;
- (viii) Distribute, rent, sell, loan, lease, sublicense, or otherwise deal in the Product and or any other component elements of the Product;
- (ix) use the Product to facilitate or perform bulk translations of any electrocardiogram data or any other data that may be processed through the Product; and/or
- (x) use the Product on or in connection with an application service provider platform or other hosted website, application or platform, or as a software as a service.
- (xi) disclose or allow the disclosure of Personally Identifiable Information, Personal Healthcare Information and/or Personal Data, as may be defined in any applicable law, except as expressed permitted pursuant to applicable law. Notwithstanding anything else to the contrary, you will never disclose such Personally Identifiable Information, Personal Healthcare Information and/or Personal Data to Datamed unless Datamed provides prior written consent to each such disclosure event.

You agree that in the event of actual or threatened breach of this Section by you, Datamed will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

5. TERMINATION. Without prejudice to any other rights, Datamed may terminate this EULA immediately and without notice if you fail to comply with any term or condition of this Agreement. Upon such termination your license is terminated immediately and you must immediately cease the use of and destroy all complete and partial copies of the Product, including all backup copies. Sections 4, 8, 9, 10, 11, 13, 14 and this Section 5 shall survive any expiration or termination of this EULA.

6. LIMITED WARRANTY FOR PRODUCT. Datamed warrants that the Product will perform substantially in accordance with the documentation thereof for a period of ninety (90) days from the date of receipt. If support is not provided through the party that distributed the Product to you, extended support and maintenance may be available for purchase from Datamed and shall be subject to such terms and conditions as Datamed may from time to time provide in a separate document or a support and maintenance plan; provided that Datamed's obligations related to the warranty provided herein or such additional support shall be expressly subject to your continued compliance with the terms and conditions of this EULA and the timely payment of any and all amounts owed to Datamed and its affiliates. **THE SOLE REMEDY FOR ANY CLAIMS UNDER THIS WARRANTY IS REPAIR OR REPLACEMENT OF THE PRODUCT, AS DATAMED'S OPTION.**

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Any supplements or updates to the Product, including without limitation, any updates provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

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9. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DATAMED OR ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXPECTATION, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE PRODUCT OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF DATAMED OR ANY REPRESENTATIVE, AND EVEN IF DATAMED OR ANY REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. LIMITATION OF LIABILITY AND REMEDIES. NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED HEREIN AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT OR ANYTHING ELSE), THE ENTIRE LIABILITY OF DATAMED AND ANY OF ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES UNDER ANY PROVISION OF THIS EULA AND YOUR EXCLUSIVE REMEDY HEREUNDER (EXCEPT FOR ANY REMEDY OF REPAIR OR REPLACEMENT ELECTED BY DATAMED WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY) SHALL BE LIMITED TO THE LESSER OF (I) THE ACTUAL DAMAGES YOU INCUR IN REASONABLE RELIANCE ON THE PRODUCT OR (II) THE LICENSE FEES ACTUALLY PAID BY YOU FOR THE PRODUCT. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING WITHOUT LIMITATION SECTIONS 8, 9, 10 AND 11) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. THE DISCLAIMERS AND LIMITATIONS ON LIABILITY SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN DATAMED AND YOU.

11. Export Restrictions. You acknowledge and agree that the Product is subject to restrictions and controls imposed by the Export Administration Act of 1979, as amended, and the Export Administration Regulations thereunder ("the Acts"). You agree and certify that neither the Product nor any direct product thereof is being or will be used for any

purpose prohibited by the Acts. You further agree and certify that neither the Datamed Product nor any direct product thereof will be exported to countries which are currently subject to U.S. trade embargoes or (ii) persons or entities on the U.S. "Denied Persons List", "Specially Designated Nationals List" and "Entities List".

12. U.S. GOVERNMENT LICENSE RIGHTS. All Product provided to the U.S. Government pursuant to U.S. Government solicitations, task orders, purchase orders, or other procurement are provided with the same (neither greater or lesser) commercial license rights and restrictions described elsewhere herein, except that, where the contract resulting from any such procurement contains the clause at FAR 52.227-19 (Commercial Computer Software License) (DEC 2007), the U.S. Government will have the rights set forth in paragraph (b) of that clause.

13. APPLICABLE LAW. This EULA is governed exclusively by the laws of the State of Tennessee, USA. The state and federal courts located in Davidson County, Tennessee shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement.

14. ENTIRE AGREEMENT; SEVERABILITY. This EULA (including any addendum or amendment to this EULA which is included with the Product) is the entire agreement between you and Datamed relating to the Product and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this EULA. This EULA sets forth the entire liability of Datamed and its representatives and your exclusive remedy with respect to the Product and services and their use. To the extent the terms of any Datamed policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. Any waiver of the terms herein by Datamed must be in a writing signed by an authorized officer of Datamed and expressly referencing the applicable provisions of this EULA. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, it shall be enforced to the extent permissible and all other provisions shall continue in full force and effect. Headings are included for convenience only, and shall not be considered in interpreting this Agreement. This EULA does not limit any rights that Datamed may have under trade secret, copyright, patent or other laws.

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Statutory rights not affected - The following guarantee is not restricted to any territory and does not affect any statutory rights that you may have from your reseller or from Datamed if you acquired the Product directly from Datamed. If you acquired the Product or any support services in Australia, New Zealand or Malaysia, please see the "Consumer rights" section below.

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Exclusion of All Other Terms - To the maximum extent permitted by applicable law and subject to the guarantee above, Datamed disclaims all warranties, conditions and other terms, either express or implied (whether by statute, common law, collaterally or otherwise) including but not limited to implied warranties of satisfactory quality and fitness for particular purpose with respect to the Product and any written materials that accompany the Product. Any implied warranties that cannot be excluded are limited to 90 days or to the shortest period permitted by applicable law, whichever is greater.

Limitation of Liability - To the maximum extent permitted by applicable law and except as provided in the Datamed Guarantee, Datamed and its Representatives shall not be liable for any damages whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information or other pecuniary loss) arising out of the use or inability to use the Product, even if Datamed has been advised of the possibility of such damages. In any case Datamed's entire liability under any provision of this EULA shall be limited to the amount actually paid by you for the Product. These limitations do not apply to any liabilities that cannot be excluded or limited by applicable laws.

Consumer Rights - Consumers in Australia, New Zealand or Malaysia may have the benefit of certain rights and remedies by reason of the Trade Practices Act and similar state and territory laws in Australia, the Consumer Guarantees Act in New Zealand and the Consumer Protection Act in Malaysia in respect of which liability cannot lawfully be modified or excluded. If you acquired the Product in New Zealand for the purposes of a business, you confirm that the Consumer Guarantees Act does not apply. If you acquired the Product in Australia and if Datamed breaches a condition or warranty implied under any law which cannot lawfully be modified or excluded by this EULA then, to the extent permitted by law, Datamed's liability is limited, at Datamed's option, to: (i) in the case of the Product: a) repairing or replacing the Product; or b) the cost of such repair or replacement; and (ii) in the case of support services: a) re-supply of the services; or b) the cost of having the services supplied again.

Should you have any questions concerning this EULA, or if you desire to contact Datamed for any reason, please use the address information enclosed in this Product to contact Datamed directly or visit Datamed on the World Wide Web at <http://www.datamed.com>.