

# End-User License Agreement

END-USER LICENSE AGREEMENT FOR PRODUCTS MANUFACTURED AND/OR SOLD BY ASCENDICA DEVELOPMENT Version: 18-Feb-2018

This End-User License Agreement (“EULA”) is a legal agreement between you (either an individual or, if purchased or otherwise acquired by or for an entity, an entity) and ASCENDICA DEVELOPMENT, (“Ascendica Development”) for the Ascendica Development equipment and/or software manufactured and/or sold by Ascendica Development that accompanies this EULA, which may include associated media, printed materials, “online” or electronic documentation, proprietary protocols and databases, and Internet-based services (“Equipment” and/or “Software”). An amendment or addendum to this EULA may accompany the Equipment and/or Software. A copy of this EULA is available to you on the Ascendica Development website ([www.ascendicadevelopment.com](http://www.ascendicadevelopment.com)) and available from Ascendica Development if requested in writing. In the event of any errors, omissions or other discrepancies between this EULA, and any amendments or addendums accompanying this EULA, and the EULA made available by Ascendica Development on its website, the terms of the latter shall control.

YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING OR IN ANY WAY USING ASCENDICA DEVELOPMENT EQUIPMENT AND/OR SOFTWARE. IF YOU DO NOT AGREE, DO NOT INSTALL OR IN ANY WAY USE THE EQUIPMENT AND/OR SOFTWARE; YOU MUST RETURN THE EQUIPMENT AND/OR SOFTWARE TO ASCENDICA DEVELOPMENT WITHIN SIXTY (60) DAYS. YOU MAY BE ELIGIBLE FOR A REFUND ACCORDING TO THE TERMS OF YOUR PURCHASE AGREEMENT.

1. LICENSE: Ascendica Development grants you a single non-transferable and non-exclusive license to use the Equipment and/or Software subject to all the terms and conditions of this EULA. All rights not specifically granted to you by this EULA shall remain with Ascendica Development. No rights are granted to you to sublicense, rent or market the Equipment and/or Software. No rights are granted to you under any patents, patent applications, trade secrets or other proprietary rights.

The Software accompanying this EULA is licensed by Ascendica Development, but Ascendica Development retains ownership of the Software itself, except for those parts which may be owned in whole, or in part by a third party. The rights granted under the terms of the EULA include any Software upgrades that replace and/or supplement the original Software, unless such upgrade contains a separate license. The provisions included in this EULA, including all reservations of rights and limitations of liabilities, extend to Software provided under this EULA by both Ascendica Development and any third-party provider.

## 2. LICENSE RESTRICTIONS:

You may not in any way clone, reverse engineer, decompile, or disassemble the Equipment and/or Software, except and only to the extent that such activity is expressly permitted by this EULA and by applicable law notwithstanding this limitation. Disassembly, changes or modifications to the Equipment and/or Software not expressly approved by Ascendica Development could void the user's warranty and authority to operate the equipment.

You may make one copy of the Software for backup purposes, but all copyright and proprietary notices in the original must be included in such copy.

3. SOFTWARE MAINTENANCE SERVICE: During any paid Maintenance Service term, Ascendica Development shall provide service for the Software consisting of: delivering subsequent releases of the Software, if any; exerting reasonable efforts to both (a) provide, within a reasonable time, workarounds for any material programming errors in the current release of the Software that are directly attributable to Ascendica Development, and (b) correct such errors in the next available release, provided you provide Ascendica Development with sufficient information to identify the errors (Maintenance Service). During this same paid Maintenance Service term, you shall also be entitled to receive technical support for the current release of the Software.

The fees for Maintenance Service for the period commencing on the delivery date specified in the original purchase invoice ("Initial Maintenance Period") shall be included as part of software purchase price and no separate fee for this Maintenance Service is payable by you to Ascendica Development. After the Initial Maintenance Period, you may purchase Maintenance Service from Ascendica Development, which shall be subject to an additional fee and mutual written agreement. Ascendica Development shall have no obligation to provide Maintenance Service to you after the Initial Maintenance Period unless it is purchased by you in accordance with the agreement. Further, Ascendica Development shall have the right to discontinue the use of any protocols and databases licensed on an annual basis if the Maintenance Service fee for said protocols and databases is not purchased.

4. CONFIDENTIALITY AND NON-DISCLOSURE: Provisions of this Article shall survive any termination of this EULA.

### (A) Equipment and/or Software

You acknowledge that all Equipment and/or Software accompanying this EULA are proprietary products of Ascendica Development or its suppliers. All Software shall remain the property of Ascendica Development. You will not disclose or otherwise make available to any third party the Equipment and/or Software, any modified or derived works therefrom, or information contained therein, in any form, except to your employees and users for purposes limited to and specifically related to your use of the

Equipment and/or Software in accordance with this EULA. You shall take appropriate action by instruction or signed agreements with such employees and users to satisfy your obligations under this EULA. If for any reason you or your employees or users gain access to Ascendica Development materials containing any confidential or proprietary marking, or Ascendica Development software source code to which you do not have a right of access under a written agreement between you and Ascendica Development, you agree to not examine, use, copy, or keep such items, but shall return them promptly to Ascendica Development. Your obligations of confidentiality and nondisclosure shall apply to all forms of Equipment and/or Software received.

#### (B) Injunctive Relief

Because harm not adequately compensable might result from unauthorized disclosure of proprietary or confidential information, Ascendica Development may seek injunctive relief if you breach your obligations of confidentiality and nondisclosure under this EULA.

5. **PATENT AND COPYRIGHT:** All or parts of the Equipment and/or Software may have been patented or copyrighted by Ascendica Development or third-party providers. Patent or copyright notices have been included in the Software for protective purposes and such notices shall not be construed as causing publication of the Software.

6. **CHARGES:** You agree to pay all charges arising from the license of the Equipment and/or Software. In addition, you agree to pay, or reimburse Ascendica Development for paying, all taxes (except incomes taxes) and other government charges based on or measured by the charges set forth in this EULA, or based on the Equipment and/or Software, its use, and any services provided herein, now or hereafter imposed by any governmental authority, including but not limited to Provincial or State Sales Tax, Goods and Services Tax, Harmonized Sales Tax, and Use or Gross Receipt taxes.

7. **LIMITED WARRANTY:** Ascendica Development warrants that all Ascendica Development products will be substantially free from defects in material and workmanship. In the event of a breach of this warranty, provided that Ascendica Development is notified of the defects within 12 months of shipment or before the expiry of any extended warranty purchased from Ascendica Development, Ascendica Development will exert reasonable efforts to correct the defects in materials and/or workmanship. These efforts will include repair or replacement of the defective part at customer's location or at Ascendica Development, such determination at Ascendica's discretion. Ascendica Development will cover shipping costs by ground courier to and from customer's location should Ascendica Development ask the customer to return the part to Ascendica Development for repair.

Ascendica Development warrants that all Software will conform in all material respects to its published specifications when operated on and with the Equipment specified. In the event of a breach of this warranty, provided that Ascendica Development is notified of the defects within the Initial Maintenance Period, Ascendica Development will, at its

option, exert reasonable efforts to correct the defects, replace the Software, or terminate the EULA and refund any charges paid by you for the Software.

8. **DISCLAIMER OF WARRANTIES, LIABILITIES, INDEMNIFICATION:** The limited warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations, if any, created by any advertising, documentation, packaging, or other communications.

ASCENDICA DEVELOPMENT MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ASCENDICA DEVELOPMENT WILL IN NO EVENT BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OF THIS EQUIPMENT AND/OR SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SPECIFICALLY, ASCENDICA DEVELOPMENT IS NOT LIABLE FOR ANY COSTS, SUCH AS LOST PROFITS OR REVENUE, LOSS OF EQUIPMENT, LOSS OF SOFTWARE, LOSS OF DATA, COSTS OF SUBSTITUTES, CLAIMS BY THIRD PARTIES, PERSONAL INJURY OR OTHERWISE, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE ASCENDICA DEVELOPMENT EQUIPMENT AND/OR SOFTWARE, HOWEVER CAUSED. ASCENDICA DEVELOPMENT DOES NOT WARRANT THAT THE OPERATION OF THE ASCENDICA DEVELOPMENT EQUIPMENT AND/OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ASCENDICA DEVELOPMENT OR A ASCENDICA DEVELOPMENT AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY BEYOND THAT SPECIFIED IN THIS EULA.

ASCENDICA DEVELOPMENT SHALL NOT BE LIABLE TO YOU FOR ANY CLAIM WHICH IS BASED UPON THE USE OF THE EQUIPMENT AND/OR SOFTWARE, OR ANY PART OF IT, IN CONNECTION WITH EQUIPMENT, SOFTWARE, OR DEVICES NOT FURNISHED BY ASCENDICA DEVELOPMENT, OR IN ANY MANNER FOR WHICH THE EQUIPMENT AND/OR SOFTWARE WAS NOT DESIGNED, OR IN ANY MANNER FOR WHICH THE EQUIPMENT AND/OR SOFTWARE HAS BEEN MODIFIED BY OR FOR YOU.

YOU ARE RESPONSIBLE FOR THE SELECTION OF EQUIPMENT AND/OR SOFTWARE TO ACHIEVE ITS INTENDED RESULTS, USE OF THE EQUIPMENT AND/OR SOFTWARE, AND THE RESULTS OBTAINED THEREFROM. YOU AGREE TO INDEMNIFY AND HOLD ASCENDICA DEVELOPMENT AND ITS SUPPLIERS HARMLESS WITH RESPECT TO ALL CLAIMS, INCLUDING THOSE BY THIRD PARTIES, ARISING OUT OF YOUR USE OF THE RESULTS OF OPERATION OF THE EQUIPMENT AND/OR SOFTWARE.

9. **TERM:** You shall have the right to use the Equipment and/or Software indefinitely, subject to the provisions of this EULA. You understand and agree that the Maintenance Service for any Software provided (which may include continuing access to protocols

and databases) will terminate automatically upon expiration of the Initial Maintenance Period included with the purchase of the Software. Thereafter, the Maintenance Service term may be renewed at the then current price and for the then-applicable term, as long as Ascendica Development offers such Maintenance Service, in accordance with the provisions of this EULA.

10. TERMINATION: This EULA is effective until terminated. Termination of this EULA shall not relieve you of any obligations under any invoiced fees.

This EULA may be terminated automatically without notice from Ascendica Development as follows:

(A) by you any time; or by either

(B.1) non-payment by you of any amount due under applicable invoices for the Equipment and/or Software, which non-payment continues for a period of sixty (60) days; or

(B.2) non-performance by you of any other term or condition of this EULA, or of any other agreement between you and Ascendica Development related to the Equipment and/or Software, subject to the provisions of this EULA.

11. ASSIGNMENT: You may not assign this EULA without the written consent of Ascendica Development.

12. APPLICABLE LAW: This EULA shall be deemed to have been made in Ontario and is governed by, and construed and enforced in accordance with, the laws of the Province of Ontario, Canada, and the federal laws applicable therein. You and Ascendica Development attorn to the non-exclusive venue and jurisdiction of the Courts of Ontario in respect of any matter or dispute arising from this EULA and its subject matter.

13. SURVIVAL OF AGREEMENTS: Notwithstanding the termination or completion of this EULA, all indemnities, warranties, restrictions and duties of confidentiality and non-disclosure in this EULA will continue in full force and effect to the extent required for their full observance and performance.

14. ENTIRE AGREEMENT; GOVERNING LANGUAGE: This EULA, including any amendments and addendums that may accompany it, constitute the entire agreement between you and Ascendica Development related to the Equipment and Software and any related support services, and supersedes all prior or contemporaneous oral and written communications, proposals and representations of any kind with respect to the Equipment, Software, and any other subject matter covered by this EULA. The terms and conditions of any subsequent invoice, waiver, amendment or other such agreement used by Ascendica Development in connection with this EULA shall be considered valid and enforceable to the extent that such terms and conditions can be interpreted as

consistent with this EULA. If such terms and conditions cannot be interpreted as consistent with this EULA, the terms of this EULA shall control. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern.