Cepheid C360 Support and Analytics Terms and Conditions– <u>United States Only</u>

Last Updated February 29, 2024

THESE CEPHEID C360 SUPPORT AND ANALYTICS TERMS AND CONDITIONS ("**AGREEMENT**") GOVERN THE USE OF CEPHEID C360 CLOUD SOFTWARE PLATFORM ("**SOFTWARE**") BY THE CUSTOMERS LOCATED IN THE UNITED STATES ONLY ("CUSTOMER", "YOUR", "YOU") THAT EXECUTED OR OTHERWISE ENTERED INTO A PRODUCT AGREEMENT (DEFINED BELOW) WITH CEPHEID (DEFINED BELOW) THAT REFERENCES THIS C360 AGREEMENT, OR CLICKED A BOX OR OTHERWISE INDICATED ACCEPTANCE, OR USES THE SOFTWARE. CUSTOMER AND CEPHEID MAY BE REFERRED TO HEREIN AS "**PARTY**", OR COLLECTIVELY "**PARTIES**".

BY EXECUTING OR OTHERWISE ENTERING INTO THE PRODUCT AGREEMENT THAT REFERENCES THIS AGREEMENT, OR CLICKING A BOX OR OTHERWISE INDICATING ACCEPTANCE OR USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS C360 AGREEMENT. THE EFFECTIVE DATE ("**EFFECTIVE DATE**") OF THIS AGREEMENT IS THE EFFECTIVE DATE OF THE PRODUCT AGREEMENT. IN CASE OF ACCEPTANCE BY CLICKING A BOX, THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE WHEN CEPHEID APPROVES THE ACCEPTANCE IN WRITING.

BY AGREEING TO THESE TERMS ON BEHALF OF AN ORGANIZATION, YOU AGREE THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON ORGANIZATION'S BEHALF AND THAT CUSTOMER, AS USED HEREIN, REFERS TO YOUR ORGANIZATION.

THIS AGREEMENT DOES NOT APPLY TO THE CUSTOMERS OR CEPHEID SYSTEMS LOCATED OUTSIDE OF THE UNITED STATES TERRITORY.

1. Definitions

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For this purpose, the term "control" means the possession of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of at least fifty percent (50%) of the outstanding voting stock securities or by contract

"Institution Administrator" means your employees designated by you, who configure, manage and use the Software.

"Applicable Data Protection Law" means the privacy and data protection legislation and regulations in force during the Term applicable to Personal Data (defined below) processed under this Agreement.

"Authorized Users" means your or your Affiliates' employees or agents authorized by you to use the Software and access your or your Affiliates' data via the Software in accordance with this Agreement.

"C360 Data" means electronic data (a) collected by your Cepheid Systems and submitted to the Software, and/or (b) generated or encountered through the use of the Software by your Authorized Users.

"Cepheid", "**we**", "**us**", or "**ours**" mean the California corporation with a principal place of business is at 904 E. Caribbean Drive, Sunnyvale, CA 94089, U.S.A., including its subsidiaries.

"Cepheid Service Provider" means our vendors, contractors, sub-contractors, business and service partners, developers, or other third parties that perform services for, on behalf of or jointly with Cepheid.

"Cepheid Systems" includes the GeneXpert family of systems which are comprised of analytical equipment, computers, including hubs and mobile devices, and software controlling the analytical equipment.

"Confidential Information" means any non-public information disclosed or made available directly or indirectly by one Party (the "**Discloser**") to the other Party (the "**Recipient**") in connection with this Agreement, however such information is disclosed, including, without limitation, in writing, orally or electronically. Cepheid's

Confidential Information includes, without limitation, the Software and its functionality, usability and performance and the Documentation. Customer's Confidential Information includes C360 Data.

"**Documentation**" means any Cepheid technical and other information such as manuals, guides, technical instructions and any other user or administrative support materials that Cepheid provides to you, and any analytics, reports or documentation produced by Cepheid.

"**Feedback**" feedback provided by you or your Affiliates regarding experiences with the Software, the Documentation, training, sign up, and support.

"**Intellectual Property Rights**" means copyright, patents, trademarks, design rights, database rights, trade secrets, know-how and all other similar rights anywhere in the world whether or not registered, including applications for any of the foregoing rights, as applicable.

"**Malware**" means viruses, malware or any other thing or device (such as software, code, file or program) including worms, trojan horses, viruses and other devices.

"**Personal Data**" as used herein, shall have the same meanings given in the Applicable Data Protection Law (which may be regarded as personal data or personal information therein). If Personal Data (or personal information) is not defined in the Applicable Data Protection Law, it shall mean any information that relates to an identified or identifiable natural person; an identifiable natural person being one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"**PHI**" means protected health information as defined in 45 C.F.R. § 160.103.

"**Product Agreement**" means the agreement entered into between Customer and Cepheid pursuant to which Customer acquires or has acquired use of or service for the Cepheid Systems, or other Cepheid products or services, and references to this Agreement, including, without limitation, Cepheid quotes, purchase orders, order forms, and letter agreements.

2. Term

2.1 This Agreement commences on the Effective Date and will continue in force unless terminated as permitted below.

3. Ownership

3.1 We own or are permitted to use all Intellectual Property Rights in our systems, including the Cepheid Systems, the Software, and the Documentation. The Software and all Intellectual Property Rights licensed to you under this Agreement remain our property or that of our licensors.

3.2 Between the Customer and Cepheid, Customer owns the C360 Data subject to Cepheid's rights to use the C360 Data as set forth in this Agreement.

4. License

4.1 The Software provides Internet services, including management, aggregation, sharing, alerting, and reporting data from Cepheid's compatible and connected Cepheid Systems. Customer understands that the Software is intended to transmit data from the connected Cepheid Systems to the Software. The Software may also be used to send Cepheid system and software updates to Customer.

4.2 Subject to your compliance with the terms and conditions of this Agreement, we grant you and your Authorized Users a limited, non-exclusive, non-sub-licensable, non-transferable license to access and use

the Software and Documentation, solely for your internal use during the Term for the purpose of the Software as described in the Documentation and as permitted in this Agreement.

4.3 You grant Cepheid and its Affiliates a worldwide, royalty free, perpetual, and irrevocable license in the Feedback to use, distribute, disclose, and make and incorporate into the Software, and improve, and enhance our and our Affiliates' products and services.

4.4 You grant Cepheid and its Affiliates a worldwide, royalty free, perpetual and irrevocable license to use and disclose C360 Data to support your use of the Software, Cepheid Systems and Cepheid's products and services as described in Section 9.

4.5 You grant Cepheid and its Affiliates a worldwide, royalty free, perpetual and irrevocable license to use and disclose anonymized and de-identified C360 Data that does not contain Personal Data or PHI to improve and enhance our products or services, develop new products or services, or for our operational planning and performances.

5. Software

5.1 In consideration of your undertakings as set forth in this Agreement, we will provide you with access to the Software and Documentation for use during the Term. The Software shall substantially conform to the descriptions provided in the Documentation.

5.2 We will provide access to the Software to the Institution Administrator using a username and password system. The Institution Administrator may create multiple Authorized User accounts. You shall keep the Institution Administrator's information, including email address up to date.

6. Your Responsibilities

6.1 You shall:

(a) be responsible and liable for your Affiliates and all Authorized Users, including Institution Administrator's, compliance with this Agreement and Documentation;

(b) provide us with all necessary cooperation in relation to this Agreement and access to such information as we require to enable proper operation of the Software, including but not limited to C360 Data;

(c) comply with all applicable laws and regulations with respect to your activities under this Agreement; and

(d) ensure that your network and systems are appropriate for your use of the Software pursuant to the Documentation.

6.2 You agree that you shall not (and shall ensure that your Authorized Users do not):

(a) sublicense your rights in the Software, Documentation, or any other Intellectual Property Rights licensed to you under this Agreement, or grant or purport to grant to any third party any right in or to same; or

(b) allow access or use of the Software, Documentation, or any other Cepheid Confidential Information by anyone other than your Authorized Users and Affiliates, existing employees or agents, who are bound by confidentiality obligations at least as restrictive as those in this Agreement.

6.3 You shall not, and you shall ensure that the Authorized Users shall not, directly or indirectly:

(a) modify, reverse engineer or attempt to obtain any source code or create derivative works of the Software or Documentation;

(b) use the Software, Documentation and/or any other Cepheid Confidential Information to build a similar or competitive product or service; or

(c) use the Software, Documentation and/or any other Cepheid Confidential Information in a manner inconsistent with applicable law or this Agreement.

6.4 If requested by Cepheid, you agree to provide Feedback to us at mutually agreeable times and in formats as we may reasonably request.

7. Malware

7.1 Both Parties shall take reasonable steps to ensure that the Institution Administrator and all Authorized Users shall not access, store, distribute or transmit any Malware which may adversely affect: (i) the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) access to or the operation of any program or data, including the reliability of any program or data; (iii) the confidentiality, security, integrity, or availability of data, or (iv) the user experience. We reserve the right, without liability or prejudice to our other rights, to temporarily disable your access to the Software in the event that Malware is introduced to the Software until the problem is resolved.

8. Termination

8.1 Each Party may terminate this Agreement for any reason or no reason, upon thirty (30) days' prior written notice to the other Party.

8.2 Either Party may terminate this Agreement immediately upon giving written notice to the other Party if:

(a) the other Party is in breach of any of the terms of this Agreement and such breach is incapable of being remedied;

(b) the other Party is in breach of any of the terms of this Agreement and, the breach being remediable, fails to remedy the breach within thirty (30) days from the date of a written request to do so; or

(c) the other Party files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.

8.3 Termination of this Agreement shall not affect a Party's accrued rights and remedies.

8.4 On termination of this Agreement, you shall immediately take necessary steps to disable the connection between your Cepheid Systems and the Software and cease using the Software.

8.5 Within the 30-day period upon notice of termination of this Agreement, Customer may ask Cepheid to export C360 Data in already available formats as provided in the Documentation to provide to the Customer. After such 30-day period, we will have no obligation to maintain any C360 Data, and subject to our rights set out in Sections 4, 9.1 and 9.2 shall delete or otherwise dispose of any of the Personal Data in our possession unless (i) we are required by applicable law to retain some or all of the Personal Data, or we reasonably believe that such retention is necessary to comply with applicable laws and regulations, or to comply with

a legal process or request; (ii) to the extent we reasonably believe that retention of some or all of the Personal Data is appropriate or necessary to take precautions against liability or to protect the rights or safety of us, or you, (iii) to the extent we reasonably believe that it is appropriate or necessary to detect, prevent or otherwise address security, fraud or technical issues, or (iv) to the extent it is infeasible.

9. Data Rights and Responsibilities

9.1 We may share the C360 Data:

(a) with our Affiliates and the Cepheid Service Providers that are bound with the confidentiality obligations set forth in Section 11;

(b) when we are required by law or regulation, or we reasonably believe that disclosure is necessary to comply with applicable laws and regulations, or to comply with a legal process or request;

(c) when we reasonably believe that it is appropriate or necessary to take precautions against liability or to protect the rights or safety of us, or you;

(d) when we reasonably believe that it is appropriate or necessary to detect, prevent or otherwise address security, fraud or technical issues, or

(e) when it is necessary if we are acquired by or merged with a third-party entity, in which case, we reserve the right to transfer or assign the C360 Data, as part of such merger, acquisition, sale, or other change of control.

9.2 To the extent C360 Data contains any Personal Data, you and we acknowledge and agree that:

(a) you are responsible for ensuring that the collection, processing and sharing of such Personal Data in the context of the Software complies with the requirements of Applicable Data Protection Law that may affect this Agreement, and to provide adequate notice to and, if necessary based on the data stored, obtain express consent from individuals so that you and we can lawfully use, process, store and transfer any such Personal Data in accordance with this Agreement;

(b) we shall ensure that any person we authorize to process Personal Data has committed themselves to keep such Personal Data confidential or are under an appropriate statutory obligation of confidentiality;

(c) we shall process Personal Data per the terms of Agreement, our C360 Privacy Policy available on Cepheid C360 website at https://c360.cepheid.com (terms of which may be changed by Cepheid in its sole discretion and such update shall be notified to the Customer), and our statutory obligations under the Applicable Data Protection Law;

(d) we shall apply to such Personal Data appropriate technical and organizational security measures as required by Applicable Data Protection Law to protect against unauthorized or unlawful processing, accidental loss or destruction of, or damage to, such Personal Data;

(e) If C360 Data contains PHI, use and sharing of such PHI shall be subject to Business Associate Agreement ("**BAA**") at https://www.cepheid.com/en_US/systems/business-associates-agreement. To the extent any provision herein conflicts with a provision of the BAA, the provision in the BAA shall prevail. This Agreement and the BAA shall supersede all earlier versions of the C360 User Agreements or terms of use and BAAs entered between the Customer and Cepheid.

10. Liability

10.1 Access to the Software is being provided to you solely for use in accordance with this Agreement. While we will use reasonable skill and care in making the Software available to you, we exclude, to the fullest extent permissible by law, all warranties, representations, conditions or terms which may be implied. Except as expressly provided otherwise in this Agreement, the Software and supporting Documentation are provided to you on an "as is" basis, and we disclaim and do not accept any liability to you or any patients or other third parties in connection with this Agreement. We do not warrant (i) the accuracy or completeness of any data accessed, tracked, collected or otherwise provided to you as part of the Software; or (ii) that the Software is free of bugs, speed issues or performance issues. You acknowledge and agree that the operation of the Software is dependent upon the proper and effective functioning of the Internet, your own and third-party equipment and services, your own configuration of the Software functionalities and your own usage of the data made available, and that we do not guarantee and shall not be liable for these in any way for these services. If you transmit or export any of the C360 Data to third-party equipment, you acknowledge and agree that we will not be liable for processing, use, retention or deletion of the transmitted/exported data.

10.2 Neither Party shall be liable to the other for any special, indirect or consequential losses or damages except the indemnification claims set forth below.

10.3 You are liable for, and shall indemnify and keep us (together with our affiliates, employees, directors, sub-contractors and agents) indemnified from and against any and all claims, demands, proceedings, costs, charges, damages, loss and liability whatsoever incurred or suffered by us whether direct, indirect or consequential (including without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute, claims or proceedings brought against us arising out of your use of the Software, Documentation and/or any other Cepheid Confidential Information otherwise than in accordance with the terms of this Agreement and/or your breach of Applicable Data Protection Law.

10.4 No term of this Agreement shall restrict or exclude any liability which by applicable law cannot be so restricted or excluded.

11. Confidentiality and Publicity

11.1 Each Party agrees: (i) not to disclose the Confidential Information of the other Party to anyone except Recipient's and its Affiliates' employees, contractors and agents, and in Cepheid's case when Cepheid is the Recipient, to Cepheid Service Providers, on a strict need to know basis and subject to a written duty of confidentiality; (ii) to use the Confidential Information strictly for the performance of and as provided for in this Agreement; and (iii) to use all commercially reasonable endeavors to protect the confidentiality of the other Party's Confidential Information, applying at least the same care that it applies to protect its own similar information, but in no event less than reasonable care.

11.2 Section 11.1 shall not apply if Confidential Information (i) is or becomes publicly available through no fault of the Recipient, (ii) is already in the Recipient's possession at the time of its disclosure without any duty of confidentiality, or (iii) is independently developed by the Recipient without use of the Discloser's Confidential Information.

11.3 Each Party may disclose Confidential Information of the other Party to the extent required (i) by applicable law or court or governmental order, (ii) to exercise its rights under this Agreement, or (iii) to establish or preserve its rights under this Agreement (collectively "**Compulsory Disclosure**"), provided that a Party who is subject to such a Compulsory Disclosure shall provide prompt prior notice to the other Party as soon as possible of the purported obligation to make such Compulsory Disclosure so that a Party can seek to

prevent and/or limit the potential disclosure of its Confidential Information, and provided that if Compulsory Disclosure is required despite a Party's efforts to prevent it, then the disclosing Party shall disclose no more than is legally required and shall make best efforts to maintain the confidentiality of the Confidential Information.

11.4 The Parties agree that any actual or threatened breach of this Section may constitute immediate, irreparable harm to the innocent Party for which monetary damages may be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

12. Miscellaneous Provisions

12.1 **Assignment:** Neither Party may assign, transfer or novate this Agreement or any of its rights and obligations under it, except to a successor, without the express written consent of the other Party.

12.2 **Entire agreement:** This Agreement sets out the entire agreement between you and us and supersedes all previous or contemporaneous understandings, communications, agreements or representations in relation to its subject matter, whether written or oral. If this Agreement is translated into a language other than English and there are conflicts between the translations, to the extent allowed by the applicable law, the English version shall prevail and control.

12.3 **Severability:** Any provision of this Agreement that is unenforceable shall be severed and the remaining provisions shall continue in full force and effect.

12.4 **Survival:** Any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. For clarity purposes, Sections 3, 4, 6, 9, 10, 11 and 12 shall survive termination of this Agreement.

12.5 **Changes:** Cepheid reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of the Software. In such case, Cepheid will give you notice of any material adverse change to this Agreement, unless it would not be reasonable to do so due to circumstances arising from legal, regulatory, or governmental action; to address user security, user privacy, or technical integrity concerns; to avoid service disruptions to other users; or due to a natural disaster, catastrophic event, war, or other similar occurrence outside of Cepheid's reasonable control. In the event that Cepheid does make material adverse changes to the terms of use, you will have the right to terminate this Agreement immediately.

12.6 **Waiver:** Any waiver (which must be in writing) on a particular occasion by either you or us of any rights under this Agreement does not imply that other rights are or will be waived.

12.7 **Force Majeure:** Neither Party shall be in breach of this Agreement or liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for sixty (60) days, the non-delaying Party may terminate this Agreement by giving thirty (30) days' written notice to the delaying Party.

12.8 **Notices:** All notices required to be given to the other Party under this Agreement shall be in writing and shall be sent to the addresses below, or such alternative address as each Party may notify to the other in writing from time to time. Such notices shall be deemed effective upon receipt.

For Cepheid

Cepheid
Attn: Legal/Privacy
904 Caribbean Drive
Sunnyvale, CA 94089
Phone: 408-541-4191
Email: cepheid.legal@cepheid.com

For Customer

Customer's Institution Administrator(s) email addresses entered in the Software.

12.9 **No partnership or agency:** Nothing in this Agreement shall be deemed to establish any agency, partnership or joint venture relationship between us and you.

12.10 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code § 1633.1, et seq.) or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

12.11 **Updates**. Cepheid may update the Software from time to time in its sole discretion without notice to you. However, Cepheid will give you prior notice of any material adverse change to the Software functions such that the updated functions materially change the data collection or modify our data use outlined in this Agreement or Documentation unless: a change is reasonably necessary to address legal, regulatory, or governmental action; to address your or other users' security, your or other user's privacy, or technical integrity concerns; to avoid service disruptions to other users; or to avoid issues resulting from a natural disaster, a catastrophic event, war, or other similar occurrence outside of Cepheid's reasonable control.

12.12 **Governing law and jurisdiction:** The laws of the State of California, excluding its conflicts of law provisions, shall govern the validity, construction and effect of this Agreement and the relationship between the Parties. The Parties agree to submit to the personal and exclusive jurisdiction and venue of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement.