

END USER LICENSE AGREEMENT

Please read this End-User License Agreement (“Agreement”) carefully before using the Sm@rtLine Data Cockpit® (“SDC”).

By using the SDC, you are agreeing to be bound by the terms and conditions of this Agreement.

If you do not agree to the terms of this Agreement, do not download or use the SDC.

The terms and conditions contained herein apply to (a) the license of the Sm@rtLine Data Cockpit® (SDC) software, client and server licenses, SDC Gateway (the personal computer with SDC software installed and configured for use) with compliance packages and the interfaces to support different analyzers such as Cedex BIO, Cedex HiRes, Cedex BioHT, including the user instructional information contained in the HELP files and (b) the initial and supplemental support services described below and any other services purchased by Purchaser (collectively, “Services”). Any terms and conditions in a Purchaser purchase order which are in addition to, or conflict or are inconsistent with, these terms are hereby rejected and superseded by the terms contained herein.

1. Shipping. All SDC Gateway shipments are by freight carriers of Supplier’s choice. Risk of loss and title (except for Software) passes to Purchaser upon delivery. Purchaser represents and warrants to AGU that Purchaser will not export or import the SDC Gateway or any portion thereof or any AGU confidential information or related technical data in violation of applicable laws or regulations, including without limitation U.S. export restriction laws and regulations relating to sales to nationals or residents of foreign nations, and Purchaser agrees to indemnify, defend and hold AGU harmless from and against all claims, losses, costs, or liability due to Purchaser’s breach of this warranty.

2. License Grant.

(a) License Grant. Subject to Purchaser’s compliance with the terms of this Agreement (including payment of all applicable fees), AGU grants Purchaser a nonexclusive, nontransferable license to use the SDC Gateway solely for Purchaser’s internal business purposes (which do not include Purchaser offering the SDC for timesharing, service bureau, subscription or managed service, hosting, outsourcing, or rental use of the SDC) with hardware. Purchaser may not permit use of the SDC, or any portion thereof, by another party or permit any publication of the results of benchmark tests run on the SDC without, in either case, obtaining AGU’s prior written consent. AGU (and its licensors) retains all right, title and interest, including all intellectual property rights, in the SDC. Purchaser may reproduce one copy of the SDC solely for back-up purposes, and Purchaser will ensure that no proprietary notices affixed to or displayed on the SDC will be removed or modified.

(b) Restrictions. Except as expressly set forth herein, Purchaser may not copy, translate, modify or adapt the SDC, or any portion thereof, or incorporate it, in whole or any part, in any other product, create derivative works based on the SDC, or any portion thereof, or license others to reproduce any copies of the SDC, or any portion thereof, and may not decompile, disassemble or reverse engineer the SDC, or any component thereof except as permitted by law, and then only after having prior requested in writing from AGU the interoperability information Purchaser is attempting to obtain.

3. Confidentiality.

(a) Each party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to (i) prevent use of the other party's Confidential Information for any purpose other than to carry out its rights and obligations hereunder, and (ii) prevent the disclosure of the other party's Confidential Information other than to its employees or contractors who must have access to such Confidential Information for such party to exercise its rights and perform its obligations hereunder and who each agree to be bound by agreements with a duty of confidentiality no less protective of confidential information than provided herein, and each party shall be responsible to ensure that its employees and consultants comply with the restrictions set forth herein. "Confidential Information" shall mean information furnished or made available directly or indirectly by the disclosing party to the receiving party which is marked or identified at the time of disclosure as confidential, proprietary, or with a similar designation or which should be reasonably understood by the receiving party to be the confidential or proprietary information of the disclosing party; without limiting the foregoing, the SDC shall be deemed to be AGU's Confidential Information.

(b) The parties' obligations set forth in this section shall not apply with respect to any portion of the Confidential Information that: (i) was in the public domain at the time it was communicated to the receiving party; (ii) entered the public domain through no fault of the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) is independently developed by the receiving party; (v) consists of generalized ideas, concepts, know-how or techniques in intangible form that is incidentally retained in the unaided memories of persons who have had authorized access to Confidential Information (provided that this exception shall not be construed to grant to either party a license to the other party's copyrights or patents beyond those otherwise granted in this Agreement); (vi) is disclosed under operation of law, except that the receiving party will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and will provide the other party prompt notice of such possible disclosure prior to disclosure in order to allow an opportunity to contest such disclosure; or (vii) is disclosed with the other party's prior written approval.

4. AGU Warranty.

(a) AGU warrants (i) that the SDC will conform substantially to AGU's published user documentation, as of the date of the SDC shipment, for a period of one (1) year from delivery to Purchaser and (ii) that it will provide any Services in a good and workmanlike manner consistent with industry standards. AGU will have no obligation hereunder if the alleged defect is due to causes not within AGU's reasonable control. AGU's sole liability, and Purchaser's sole and exclusive remedy, for any breach of the foregoing SDC warranty, is that AGU shall, at its option, repair or replace the SDC so that it conforms to the limited warranty set forth above or terminate this Agreement and the licenses granted hereunder and AGU shall refund to Purchaser the price paid therefore and, for any breach of the foregoing Services warranty, is that AGU shall re-perform such Services provided Purchaser notifies AGU in writing of any such breach within thirty (30) days after the performance of any nonconforming Services.

(b) AGU MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO THE SDC OR THE SERVICES AND ALL OTHER WARRANTIES AS TO QUALITY, CONDITION, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. The SDC is not warranted to be error free. Purchaser will have sole responsibility for the adequate protection and backup of Purchaser data used with the SDC.

5. SDC Ongoing Software Maintenance.

Ongoing software maintenance is available for a period of 3 years. Software hot fix upgrades shall not include AGU's service time to perform the upgrade. AGU shall not be required to provide Support for any SDC Gateway for more than three (3) years. Any software provided to Purchaser pursuant to Support shall be provided as SDC-licensed under the terms of this Agreement.

6. Supplemental Gateway Hardware Support.

One (1) year from the date of delivery of the Appliance, Purchaser may purchase Appliance hardware supplemental support ("Support") for two (2) year period, which cannot be renewed. Purchaser will be invoiced for the Support not less than thirty (30) days prior to the end of the one (1) year warranty period; payment will be due as of the commencement of the purchased supplemental Support period and Support may be terminated if Purchaser fails to make the applicable payment within thirty (30) days thereafter. While Purchaser participates in Support, Purchaser will be provided with telephone and email based technical support during standard business hours. At the end of the Support, Purchaser shall be eligible to receive a partial credit towards the purchase of a new SDC Gateway.

The Appliance is a computer. The computer must be placed in a location for adequate power, airflow and cannot be repeatedly removed from a consistent power source. Repeated power cycles will invalidate any warranties of the Appliance. The Appliance is designed to work with one or two Roche analyzers concurrently and it is not designed to

be moved around to additional analyzers. The Appliance has space limitations to hold data and this is not a defect of the Appliance or its designed usage.

7. Limitation of Liability. EXCEPTING ONLY IN THE EVENT OF A BREACH BY PURCHASER OF SECTION 3(b) ("LICENSE GRANT – RESTRICTIONS") OR A BREACH BY EITHER PARTY OF SECTION 4 ("CONFIDENTIALITY"), NEITHER PARTY IS LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS, FORESEEABLE OR UNFORESEEABLE, OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOST OR DAMAGED DATA OR SOFTWARE, LOSS OF USE OF PRODUCTS, OR DOWNTIME) ARISING FROM THE SALE, DELIVERY OR USE OF THE SDC, PERFORMANCE OF ANY SERVICES OR ANY OTHER ACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AGU'S MAXIMUM LIABILITY TO PURCHASER, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE FEES PAID AND PAYABLE BY PURCHASER DURING THE PRECEDING TWELVE (12) MONTH PERIOD. MONETARY DAMAGES AS LIMITED BY THIS SECTION SHALL SERVE AS PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS AGREEMENT FOR WHICH AN EXCLUSIVE REMEDY IS NOT PROVIDED, AND AS PURCHASER'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY SHOULD ANY EXCLUSIVE REMEDY HEREUNDER BE FOUND TO FAIL OF ITS ESSENTIAL PURPOSE. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY IS HEREBY INTENDED.

8. Infringement. AGU will defend Purchaser from and against third party claims (and will pay any resulting damages, costs or liabilities awarded by a court of final jurisdiction) arising solely from a claim that the SDC infringes any United States or Canadian patent or any copyright rights (in or of countries that are signatories to the Berne Convention) of a third party. AGU's obligation is subject to Purchaser's compliance with the following procedures: (a) Purchaser will promptly notify AGU in writing of any claim or the commencement of any suit, action, proceeding or threat that Purchaser believes will result in losses for which it will be entitled to defense, provided however, that the failure to give such prompt written notice shall not affect the indemnification provided hereunder except to the extent that such failure shall have actually prejudiced AGU; (b) Purchaser will tender to AGU (and its insurer) full authority to defend or settle any such claim; and (c) Purchaser shall cooperate in the defense of such claim. AGU has no obligation to indemnify Purchaser in connection with any settlement made without AGU's prior written consent. AGU will defend Purchaser against any such claim brought against Purchaser by counsel retained at AGU's own expense and of AGU's own choosing. This section shall not apply to infringement claims arising in whole or in part from (2) the combination of the SDC or any part thereof with other equipment, software or products not supplied by AGU if such infringement or misappropriation would not have occurred but for such combination, or (b) Purchaser's failure to install an update, where same would have avoided such claim. In the event that the use or sale of the SDC is enjoined, or, in AGU's judgment, may be enjoined, AGU will either: (i) procure for Purchaser the right to continue to use the SDC, (ii) replace the infringing portion of the SDC with a functionally equivalent product or modify it so that it becomes non-

infringing without materially compromising functionality, or (iii) terminate the license granted hereunder and reimburse Purchaser for the price originally paid by Purchaser therefore, reduced by five year straight line depreciation. Upon AGU's fulfillment of the alternatives set out in this section, AGU shall be relieved of any further obligation or liability to Purchaser as a result of any such infringement. THIS SECTION STATES AGU'S ENTIRE LIABILITY TO PURCHASER AND PURCHASER'S SOLE REMEDY FOR ANY INFRINGEMENT CLAIMS CONCERNING THE SDC.

9. Term and Termination.

(a) Term. This Agreement shall be effective until terminated by either party as follows: Purchaser may terminate the Agreement at any time by providing AGU with written notice thereof; AGU may terminate the Agreement at any time but only if Purchaser breaches Section 3(b) (License Grant – Restrictions) or Section 4 (Confidentiality). Upon any such termination, all licenses granted herein shall become null and void and Purchaser shall return to AGU any and all software program documentation or any other materials, copies or reproductions of the foregoing, relating to the SDC, and upgrade(s), update(s) and enhancements thereto.

(b) Effect of Termination. The termination of this Agreement shall not relieve either party from its obligation to pay any sums accrued under this Agreement prior to such termination and the parties' rights and obligations under any provisions hereof that contemplate performance subsequent to any termination of this Agreement, shall survive termination of this Agreement. Upon the termination of this Agreement, both parties shall promptly, and in any event within thirty (30) days following termination, return to the other party all property and Confidential Information belonging to the other, in all forms partial and complete, in all types of media and computer memory, and whether or not merged with other materials, or, to the extent such return is not reasonably practical, will destroy the foregoing and provide the originating party with a certificate by an officer of the company certifying destruction.

10. Government Use. US Government Restricted Rights Notice – The SDC is a “commercial item,” as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting in part of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the SDC with only those rights set forth herein. Contractor/Manufacturer is: AGU, Von-Ketteler-Str. 1, 51371 Leverkusen, Germany.

11. Injunctive Relief. Because of the proprietary nature of the SDC, AGU's remedies at law for a breach by Purchaser of Purchaser's obligations hereunder will be inadequate and AGU shall, in the event of such breach, be entitled to, in addition to any other remedy available to it, seek equitable relief, including injunctive relief, without the posting of any bond and in addition to all other remedies provided under this Agreement or available at law.

12. General.

(a) This Agreement (and any purchase orders) contains the entire agreement of the parties with respect to the transactions contemplated by this Agreement and

supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral. No modification or waiver of any provision hereof is effective unless in writing and signed by each party. No failure or delay by either party in exercising any right or remedy hereunder will operate as a waiver of same.

(b) This Agreement is binding upon and inures to the benefit of the parties, their successors and permitted assigns. Neither party may assign or transfer its rights hereunder without the other party's prior written consent, provided that AGU may assign this Agreement in connection with a merger or consolidation or the sale of all or substantially all of its assets or stock.

(c) This Agreement and the rights and obligations of the parties will be governed by and construed in accordance with the laws of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) as adopted by any state are specifically excluded from application hereunder.

(d) The failure of either party to enforce any of the terms hereof will not be construed as a waiver of future enforcement of that or any other term. Neither party is responsible for any delays or failure in performance (except for payment of money) due to any cause beyond the party's reasonable control. If any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, now or hereafter be or become invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Section headings used in this Agreement are intended for convenience only and shall not affect the interpretation or construction of this Agreement

(e) The parties acknowledge that AGU is an independent contractor of Purchaser. In no event will AGU or any of its employees be deemed a joint venture party, partner, employee, or agent of Purchaser by virtue of this Agreement.

(f) AGU may from time to time, prior to or during the term of this Agreement, disclose to Purchaser information related to planned future products, features or enhancements. AGU's development efforts and plans are subject to change at any time, without notice; AGU provides no assurances that AGU will introduce any such future products, features or enhancements and assumes no responsibility to introduce such products, features or enhancements. Purchaser acknowledges that its current purchasing decisions are not made based on the reliance on any such future timeframes or specifics described to Purchaser.

13. Responsibility of the purchaser.

(a) The purchaser is responsible for checking the functionality of the gateway.

(b) IQ (installation qualification) After initialization of the gateway, the purchaser checks the functionality of the gateway according to the IQ test plan. This test plan must be supplemented by the customer in individual cases if the end customer's use cases are not covered by the test plan.

(c) IQ (Periodic Test) The purchaser must check the functionality of the gateway at regular intervals (e.g. 12 month).

(d) The purchaser must report any problems that are discovered during testing or operation of the gateway directly and may then no longer operate the gateway.

13. Contact Information

If you have any questions about this End User License Agreement, please contact sdcsupport@agu.de