



PACSCUBE TERMS AND CONDITIONS

This agreement provides the terms and conditions for the purchase and license of PacsCube devices. This agreement governs all purchases of PacsCube devices by a purchaser (hereinafter "Purchaser") from DatCard Systems, Inc. ("DatCard"). This agreement pertains only to the purchase of a PacsCube device by Purchaser and does not pertain to any Maintenance Agreement or Service Contract between the parties, or any VIE license or products.

Definitions.

The following terms, when used in this Agreement, shall have the following meanings:

"Agreement" shall mean this Agreement, together with any and all Exhibits, Schedules, all documentation incorporated herein by reference, each purchase order between Purchaser and DatCard relating to the purchase of a PacsCube device (each a "Purchase Order") and any amendments to this Agreement.

"Documentation" shall mean the manuals, technical specifications, integration documentation, user instructions and any other materials generally made available to licensee, or in the case of hardware components, made available on the manufacturers' websites.

"Products" shall mean the Products described on the Purchase Order relating to the Purchaser's purchase of PacsCube devices, together with any license thereto as described in Section 3 of this Agreement.

"Software" shall mean the software that enables, runs, and/or otherwise operates or permits Purchaser to use the Products, including all Updates, Upgrades, hardware, and modifications thereto, and may include software installed on hardware components manufactured by third parties and viewing tool software embedded on removable media.

"Software License" shall mean the license referred to in paragraph 3 of this Agreement and subject to the terms and conditions of this Agreement, which license shall become effective only upon Purchaser receiving an activation key code from DatCard.

1. **Products.** Subject to the terms and conditions of this Agreement, DatCard agrees to sell Purchaser the Products.
2. **Payment Terms.** In return for the Products, Purchaser shall pay DatCard the prices for the Products listed on each Purchase Order. DatCard will invoice Purchaser for the amounts set forth on each Purchase Order prior to delivery of the Products. Payment of the above amount shall be due and payable thirty (30) days after the date appearing on the invoice. All other payments for amounts which become due under this Agreement are due thirty (30) days from the date of the invoice. In addition to the amounts set forth on each Purchase Order, Purchaser shall be responsible for payment of all applicable Taxes, as defined below, and third party charges such as hardware, software, and/or installation. Late charges will be assessed at the rate of one percent (1 %) per month for unpaid invoices over 30 days past due, or the highest rate permitted by applicable law, whichever is lesser. As applicable, DatCard reserves the right to terminate this Agreement if any invoice remains unpaid after thirty (30) days. "Taxes" means any applicable foreign, federal, state, or local taxes and charges assessed or incurred in connection with the Purchaser's purchase of the Products, including without limitation, all governmental franchise, excise, use, sales, transaction, value-added, environmental assessments or charges, and occupational taxes and other fees, or penalties, or other similar surcharges and levies, but excluding any taxes based on DatCard's net income or capitalization. To the extent allowed by law, DatCard will rely on any tax-exempt certificates or statements provided to DatCard by Purchaser, but any such reliance will not relieve Purchaser of payment of any Taxes which may be assessed by taxing authorities.
3. **Software License**
 - 3.1 For all Products described on each Purchase Order, DatCard grants Purchaser, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, paid up, royalty free license to access, operate, use and maintain the Products. Purchaser may install, use, and display the Products for its internal business purposes in support of this Agreement, including without limitation, training of Purchaser personnel in the use and operation of the Software.



3.2 Subject to the rights granted to Purchaser under this Agreement, all right, title, and interest in and to the intellectual property related to and/or associated with the Products, Software and Documentation are and shall remain the sole and exclusive property of DatCard. Purchaser agrees that it shall not decompile, disassemble, copy, duplicate, or reverse engineer the Software or otherwise attempt to derive or obtain any source code, structure, algorithms, process, technique, technology, know how or ideas underlying or contained in the Software. Purchaser agrees that it will not copy, alter, use, modify or create derivative works of any portion or component of the Software and Documentation.

3.3 Purchaser shall not use the Software or its output to create, modify, or simulate products for third parties or to develop or enhance any product that competes with the Products; modify or create a derivative work of any part of the Software or Products; disclose the results of any benchmarking of the Software (whether or not the results were obtained with assistance from DatCard) to any third party; or use the Software in the development of any product if the failure or malfunction of that product could reasonably be expected to result in personal injury, death, or catastrophic loss. Purchaser is not entitled to receive any source code, source information or source Documentation, or similar materials relating to the Software. Purchaser shall not install the Software on any servers or devices other than on the Products originally delivered with the Software or Replacement Products provided to Purchaser by DatCard. Purchaser shall not remove, alter, obscure, or obliterate any proprietary notices or marks on the Software and Documentation.

3.4 All rights not expressly granted in this Agreement by DatCard are reserved to DatCard.

4. Support Services, Warranty, Indemnification.

4.1 During the one year period following delivery of the Products to Purchaser, DatCard will provide the support services for the Products in accordance with the Maintenance Agreement attached as Exhibit 1 in accordance with its standard warranty.

4.2 Acceptance of Products and Limited Warranties. Following delivery of the Products, Purchaser will have fifteen days to inspect and test the Products (“Inspection Period”). The Products will be deemed accepted by Purchaser if Purchaser does not notify DatCard of any non-conforming Products within the Inspection Period. DatCard warrants that the Products as delivered will, for a period of one year after the Products are initially purchased by Purchaser, operate materially in accordance with its Documentation.

4.3 BOTH PARTIES AGREE AND ACKNOWLEDGE THAT, EXCEPT AS EXPRESSLY STATED HEREIN, THE PRODUCTS, SOFTWARE, AND SERVICES, SUBJECT TO DATCARD’S OBLIGATIONS UNDER THE MAINTENANCE AGREEMENT ATTACHED AS EXHIBIT 1, ARE BEING PROVIDED ON AN “AS AVAILABLE” AND “AS IS” BASIS, WITH ALL FAULTS ACCEPTED, AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR DURABILITY, ACCURACY, COMPLETENESS OR ANY RESULTS TO BE ACHIEVED THEREFROM. OTHER THAN STATED IN SECTION 4.2, DATCARD MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO THIS AGREEMENT AND THE DATCARD PRODUCTS, SOFTWARE, AND SERVICES. DATCARD FURTHER DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO THE INTERNET AND INFORMATION DERIVED THEREFROM OR THEREOVER, OR THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF ANY THIRD PARTY TECHNOLOGY, ANY THIRD PARTY ACTION SUCH AS HACKING, OR ANY ACT OR OMISSION OF THE PURCHASER, INCLUDING FAILURE TO ENCRYPT. DATCARD DOES NOT WARRANT THAT THE PRODUCTS, SOFTWARE, AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF DELAYS, WITHOUT FAILURE OF PERFORMANCE, FREE FROM VIRUSES OR OTHER HARMFUL CONTENT (OTHER THAN WHEN THE PRODUCTS ARE FIRST DELIVERED TO PURCHASER BY DATCARD), OR NOT ACCESSED BY UNAUTHORIZED THIRD PARTIES, AND IT IS PURCHASER’S SOLE RESPONSIBILITY TO PERFORM ANTI-VIRUS SCANS ON ITS SYSTEMS AND OTHERWISE MONITOR WHAT CONTENT IS TRANSFERRED IN UTILIZATION OF THE DATCARD PRODUCTS AND SERVICES. PURCHASER’S USE OF THE DATCARD PRODUCTS AND SERVICES IS AT THE PURCHASER’S OWN RISK. DATCARD MAKES NO WARRANTY WITH RESPECT TO THE ACCURACY OF ANY CAPTURED STUDY. ANYTHING IN THIS AGREEMENT TO THE CONTRARY



NOTWITHSTANDING, PURCHASER ACKNOWLEDGES AND AGREES THAT DATCARD IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND IS NOT DETERMINING APPROPRIATE MEDICAL USE OF THE PRODUCTS. PURCHASER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL DIAGNOSES, PROGNOSSES OR OTHER MEDICAL ADVICE RENDERED IN RELIANCE ON ANY CAPTURED STUDY OR ANY COMPONENT OF THE PRODUCT, AND USES THE PRODUCTS AND SERVICES WITH THE EXPRESS UNDERSTANDING THAT THE IMAGES TRANSMITTED AND VIEWED ARE CLINICAL REFERENCE IMAGES ONLY.

5. Third Party Manufacture of Hardware. Purchaser understands and acknowledges that any hardware components being sold by DatCard under this Agreement, and all electrical components thereof, have been manufactured by third parties. DatCard has been advised that each such manufacturer has either tested such hardware components for electrical safety or submitted such components to an independent testing laboratory for electrical safety testing and compliance. Purchaser is advised to inspect the hardware components, and to review the equipment manuals and documentation and manufacturers' websites to determine to what standards the equipment has been tested and/or certified. DatCard makes no representations in this regard. Purchaser should further consult the manufacturers' manuals and documentation and manufacturers' websites to determine recommendations and representations concerning the use and/or placement of the equipment. DatCard makes no representations in this regard.

6. Proprietary Rights. Title to all documentation and Software, including all upgrades and enhancements, relating to the Products shall remain with DatCard. Purchaser agrees and acknowledges that Purchaser has no proprietary rights whatsoever in any intellectual property relating to the Software, Products and Services or any component thereof. Without limitation of the forgoing, Purchaser acknowledges that it has not paid consideration for the use of DatCard's or DatCard trademarks, logos, copyrights, trade secrets, patents or know-how relating to the design, function or operation of the Products and Software or the hardware and software systems and resources necessary to provide the individual service elements thereof (collectively, the "DatCard Proprietary Materials"), and nothing contained in this agreement shall give Purchaser any right, title or interest in or to any of the DatCard Proprietary Materials whatsoever. Purchaser agrees and acknowledges that DatCard owns and retains all right, title and interest in the Products, Software, and Proprietary Materials. At no time during or after the term of this Agreement shall Purchaser challenge or assist others to challenge the patents, copyrights, trademarks, marks or trade names of DatCard or the registration thereof or register any trademarks, marks or trade names confusingly similar to those of the other party. Purchaser further agrees and acknowledges that any good will arising from Purchaser's use of the Products, Software, and Proprietary Materials will inure solely to the benefit of DatCard. Purchaser hereby agrees to execute in the future such documents as DatCard may request from time to time to record or effectuate DatCard's ownership of DatCard's Products, Software, and Proprietary Materials and related good will.

7. Limitation of Liability

NEITHER DATCARD NOR ANY OF ITS LICENSORS, SHAREHOLDERS, DIRECTORS, EMPLOYEES OR AGENTS (HAS OR SHALL HAVE ANY LIABILITY TO PURCHASER, ANY CLIENT, CUSTOMER, END USER, OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTIONS, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, COMPUTER MALFUNCTION, COST OF PROCURING OR TRANSITIONING TO SUBSTITUTE SERVICES OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE DATCARD PRODUCTS AND SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSIVE OBLIGATION OF DATCARD SHALL BE, AT DATCARD'S OPTION DURING THE WARRANTY PERIOD, TO EITHER (A) REPAIR OR REPLACE THE SOFTWARE AND/OR OTHER PRODUCTS, OR (B) RETURN THE FEES PAID WITH RESPECT TO ANY PRODUCTS WHICH FAILS TO CONFORM TO THE WARRANTY MADE HEREIN.

8. Miscellaneous.

8.1 Equitable Relief. Both Parties hereby acknowledge that a breach of the provisions 3 of this Agreement cannot reasonably or adequately be compensated in damages in an action at law and that a breach of any of the provisions contained in such Sections may cause irreparable injury and damage. By reason thereof, both Parties hereby agree that the non-breaching party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to



prevent or curtail any actual or threatened breach of the provisions of Sections 3 of this Agreement by the breaching Party, and both Parties hereby agree that the non-breaching party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of the provisions of Sections 3 of this Agreement and in the event of an actual breach, to an accounting and reimbursement to the non-breaching Party of all compensation, profits, monies, accruals or other benefits of any kind or form whatsoever received by the breaching Party as the result of any transaction or transactions constituting a breach of Section 3, provided, however, that no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against the pursuing of other legal or equitable remedies in the event of such a breach. The non-breaching Party shall also be entitled to reasonable attorneys' fees and court costs incurred in any such action.

8.2 Assignment. Neither this Agreement nor any right or obligation arising hereunder may be assigned by either party, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party. Any attempted assignment in violation of the terms hereof will be null and void and of no force or effect.

8.3 Binding Effect. This Agreement and the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but subject to the limitations on assignment set forth above.

8.4 Severability. If it is determined by a court of competent jurisdiction that any provision contained in this Agreement is illegal or unenforceable, such determination shall solely affect such illegal or unenforceable provision and shall not affect the validity or enforceability of the remaining provisions of this Agreement.

8.5 Further Acts. Each party agrees to perform such reasonable further acts and to execute and deliver to the other party any and all further documents which are reasonably required to carry out the purpose and intent of this Agreement or any of the provisions contained herein.

8.6 Relationship of the Parties. The relationship between DatCard and Purchaser is that of vendors and vendees, and it shall not be construed as being a partnership, joint ventures, franchiser/franchisee, or employer/employee. This Agreement is a commercial agreement between businesses, not a consumer agreement. Purchaser has no authority, apparent or otherwise, to contract for or on behalf of DatCard, or in any other way legally bind DatCard in any fashion, nor shall Purchaser be authorized to make any representations about DatCard or DatCard Products and Services other than to set forth DatCard's responsibilities as outlined in this Agreement.

8.7 Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard to conflict of law principles. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA) will apply in any respect to this Agreement.

8.8 Notices. Except as otherwise provided herein, all notices, payments, or any other communications provided for herein shall be in writing and shall be given by personal delivery, delivery by a nationally recognized overnight courier, or by U.S. mail, certified or registered, postage prepaid, return receipt requested, sent to the other party to this Agreement to whom it is given at the address as either party to this Agreement may direct by notice given in accordance with the provisions of this Section.

8.9 Entire Agreement and Modifications. This Agreement, together with the attachments hereto, sets forth the entire agreement and understanding between the parties and merges all prior discussion between them, and supersedes all prior negotiations, understandings and agreements between the parties hereto concerning the subject matter hereof. Except as provided in this Agreement, this Agreement may not be modified except by the written agreement of both parties.

8.10 Headings. The headings used in connection with the paragraphs and subparagraphs of this Agreement are inserted only for purposes of reference. Such headings shall be not deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement, nor shall such headings otherwise be given any legal effect.

8.11 Waiver. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision, and the single or partial exercise of any right hereunder by any party shall not preclude any other or further exercise of such right or any other right by such party or the other party.



8.12 Attorneys' Fees. If either party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration, or mediation for any relief against the other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an "Action"), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs (at the prevailing party's attorneys' then prevailing rates as increased from time to time by the giving of advance written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) post judgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examination; (4) discovery; and (5) bankruptcy litigation.