

Data Protection Agreement (Annexed to the Distribution Agreement)

This Data Protection Agreement and its annexes (“**DPA**”) establishes minimum data protection and cyber-security standards and related requirements and forms part of the Distribution Agreement (the “**Agreement**”) entered into by and between the Distributor (as defined in the Agreement) and Cepheid (as defined in the Agreement) and shall continue in full force and effect for the duration of the Agreement. Cepheid and Distributor are hereinafter individually referred to as a “**Party**” or collectively as the “**Parties**”.

The Parties agree that where there is Processing of Personal Data under the Agreement, the terms of this DPA will apply to that Agreement, whether or not expressly referenced in that Agreement.

WHEREAS, the Parties have entered into a Distribution Agreement, effective from the “**Effective Date**” to the “**Expiration Date**”, as defined in said Agreement.

WHEREAS, the Parties seek to add certain data privacy and security terms to the Agreement.

THEREFORE, in consideration of the premises set forth hereinabove and of the mutual covenants herein contained, the parties agree as follows:

1. Definitions

- (A) “**Applicable Law**” means any law (including all worldwide data protection and privacy laws and regulations applicable to the Personal Data in question, including, where applicable, EU Data Protection Law or POPIA), rule or regulation applicable to the Agreement, the Services, or Parties, and applicable industry standards concerning privacy, data protection, confidentiality, information security, availability and integrity, or the handling or Processing (including retention and disclosure) of Personal Data, as may be amended, regulated, restated or replaced from time to time.
- (B) “**Controller**”, “**Processor**”, “**Data Subject**”, “**Personal Data**”, or “**Personal Information**” “**Process**”, “**Processing**”, “**Special Categories of Personal Data**” and “**Sensitive Personal Information**” shall have the meanings given in Applicable Law.
- (C) “**Cepheid Data**” means any Personal Data set out in Annex 1 of the Agreement, Processed by Cepheid as a Controller pursuant to or in connection with the Agreement.
- (D) “**Customer**” means the Distributor’s customers using or requesting Cepheid Systems, products or services and being in a direct Contractual relationship with the Distributor.
- (E) “**Data Breach**” means, (i) the loss or misuse (by any means) of Personal Data; (ii) the inadvertent, unauthorized, and/or unlawful disclosure, access, alteration, corruption, transfer, sale, rental, destruction, or use of Personal Data; (iii) any other act or omission that compromises or may compromise the security, confidentiality, or integrity of Personal Data or (iv) any breach of security safeguards.
- (F) “**Data Protection Agreement**” or “**DPA**” means the present Annex to the Agreement.
- (G) “**Distributor Personal Data**” means any Personal Data, including confidential information Processed by Cepheid on behalf of Distributor and its Customer, as the Controller, pursuant to or in connection with the DPA as set out in Annex 1. For clarity, Personal Data also means Personal Information.
- (H) “**EU / UK / Swiss Data Protection Law**” means (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation (“**EU GDPR**”)); (ii) the EU GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (the “**UK GDPR**”); (iii) in Switzerland the Federal Act on Data Protection of 19 June 1992 (revised version) (the “**FADP**”); (iv) the EU e-Privacy Directive (Directive 2002/58/EC); and (v) any and all applicable national data

protection laws made under or pursuant to (i), (ii) or (iii); in each case as may be amended or superseded from time to time.

- (I) “**POPIA**” means the Protection of Personal Information Act, South Africa, an Act dealing with the protection and regulation of processing personal information within the Republic of South Africa, assented to on November 13, 2013 and commenced application on July 1, 2020.
- (J) “**Restricted Transfer**” means (i) where the EU GDPR applies, a transfer of Personal Data to a country outside of the European Economic Area which is not subject to an adequacy determination by the European Commission; (ii) where the UK GDPR applies, a transfer of personal data to any other country which is not based on adequacy regulations pursuant to Section 17A of the United Kingdom Data Protection Act 2018; (iii) where the FADP applies, a cross-border disclosure in the absence of legislation that guarantees adequate protection pursuant to Article 6 of the FADP; and (iv) where the POPIA applies, a cross border transfer, disclosure or exchange of information outside the Republic of South Africa.
- (K) “**Standard Contractual Clauses**” means (i) where the EU GDPR applies, the contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council (“**EU SCCs**”); (ii) where the UK GDPR applies, the “International Data Transfer Addendum to the EU Commission Standard Contractual Clauses” issued by the Information Commissioner under s.119A(1) of the Data Protection Act 2018 (“**UK Addendum**”); (iii) where the FADP applies, the model contracts and standard contractual clauses recognized per the Swiss Federal Data Protection and Information Commissioner (“**FDPIC**”) pursuant to Article 6 paragraph 2 letter a of the FADP in accordance with the statement of the FDPIC of 27 August 2021 (originally available at <https://www.edoeb.admin.ch/dam/edoeb/en/dokumente/2021/Paper%20SCC%20def.en%2024082021.pdf.download.pdf/Paper%20SCC%20def.en%2024082021.pdf>) (“**Swiss Addendum**”); and (iv) where the POPIA applies contractual clauses related to protection, processing and transfer of personal information executed by two or parties in relation to such information.
- (L) “**Services**” means those services that Cepheid performs pursuant to the Agreement.
- (M) “**Cepheid Sub-Processor**” means any entity or person to whom the Processor sub-contracts its responsibilities.
- (N) Other capitalized terms as defined by the Agreement.

2. Relationship of the Parties:

- 2.1 As Processor for a Customer (the “Controller”) Distributor appoints Cepheid as a Sub-Processor to Process the Distributor Personal Data described in Annex 1 to this DPA for the purposes described therein (or as otherwise agreed in writing by the Parties) (the “Processor Permitted Purpose”). Each party shall comply with the obligations that apply to it under Applicable Law.

The Distributor acknowledges and agrees that Cepheid may engage its affiliates and/or third-party Cepheid Sub-Processors in connection with the provision of the Services. Cepheid remains fully liable to Distributor for such third party and enters into a written and enforceable agreement with such third party that includes terms that are no less restrictive than the obligations applicable to Distributor under this DPA.

- 2.2 The Distributor acknowledges and agrees that during and after the term Cepheid is a Controller of the Cepheid Data and that Cepheid will process the Cepheid Data as a separate and independent Controller strictly for the following purposes:
- to support Cepheid Systems, other products and services,
 - to improve and enhance Cepheid products/services or develop new products/services,
 - to use Cepheid Data for marketing purposes, including directly sending marketing information such as offers regarding Cepheid related products and services, invitations to participate in surveys about Cepheid’s products and services. In order for Cepheid to send direct marketing communication to the Customers, the Distributor agrees to request to obtain consents from the Customers that may be required under the Applicable Law,

- to conclude and perform the Agreement, and more broadly for the management of their business relationship, and for sending information on products, goods and services or related products, goods, or services from affiliates. Distributor and its employees have different rights on their Personal Data including a right to access, rectify, erase, restrict or object to the processing of their personal data and can exercise these rights at any time by sending a request to this email address: privacy.officer@cepheid.com. For more information about how Cepheid handles Personal Data, Cepheid's Privacy Policy is available on Cepheid website. Distributor commits to inform their employees of Cepheid's data processing of their identification Data and provide Cepheid's privacy notice accordingly.

3. General Requirements.

3.1 Where Cepheid Processes Distributor Personal Data, Cepheid shall:

- i) comply with all applicable laws, including Applicable Law, when Processing Distributor Personal Data;
- ii) except as required by applicable law, process Distributor Personal Data only on behalf of Distributor and solely to the extent necessary to provide the Services to Distributor and in accordance with all applicable laws, including Applicable Law, and the documented instructions of Distributor;
- iii) implement and maintain appropriate and reasonable technical and organizational security measures to ensure a level of security appropriate to the risk, including, as appropriate, the measures referred in Article 32(1) of the EU and UK GDPR (including the Payment Card Industry Data Security Standard requirements if Cepheid Processes cardholder or other financial account data) to protect the Distributor Personal Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorized disclosure of, or access to the Distributor Personal Data; at a minimum, such measures shall include the measures identified in Annex 2;
- iv) only permit access to Distributor Personal Data by Cepheid personnel who need to access the relevant Distributor Personal Data as reasonably necessary for the purposes of the Agreement, with all such individuals being subject to a duty of confidentiality;
- v) provide all reasonable and timely assistance (including by implementing appropriate and reasonable technical and organizational measures) to assist Distributor in responding to: (i) any request from a Data Subject to exercise any of its rights under Applicable Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a Data Subject, supervisory authority or other third party in connection with the Processing of the Distributor Personal Data. If any such request, correspondence, enquiry or complaint is made directly to Cepheid, Cepheid shall promptly inform the Distributor providing full details of the same;
- vi) promptly notify Distributor of:
 - a) any request, inquiry, complaint, notice or communication received from any third party, including a Data Subject or a supervisory authority, with respect to any Distributor Personal Data and comply with instructions of Distributor in responding to such request, inquiry, complaint, notice or communication; and
 - b) any instruction by Distributor that Cepheid believes to be in violation of applicable laws, including Applicable Law;
- vii) upon Distributor's reasonable request and with reasonable advance notice, submit the facilities it uses to Process Distributor Personal Data and/or the Distributor Personal Data for audit which shall be carried out by Distributor representatives, or an auditing body agreed to by both Parties, with the cost associated therewith being borne exclusively by the Distributor;
- viii) keep appropriate records that support its compliance with its obligations under this DPA and make them available to Distributor in connection with any audit referred to in (viii) above;

- ix) except where Cepheid has put in place Standard Contractual Clauses in respect of any Restricted Transfer of Distributor Personal Data not transfer any Distributor Personal Data from any jurisdiction to any other jurisdiction without Distributor's prior written consent;
- x) reasonably assist and cooperate with Distributor, including assisting Distributor with any data protection impact assessment or privacy impact assessment (as required by Applicable Law) and prior consultations with applicable authorities, to assist Distributor to comply with its obligations under Applicable Law;
- xi) retain Distributor Personal Data only for as long as necessary to perform the Services, and at the end of the provision of the Services at Distributor's choice delete or return the Distributor Personal Data to Distributor (unless expressly required otherwise by applicable law) and provide written certification, if requested, to Distributor that it has complied with this section;
- xii) if Cepheid reasonably suspects or becomes aware of a Data Breach:
 - a) provide Distributor written notice of the same without undue delay and in no event later than twenty-four (24) hours after becoming aware of such suspected or confirmed Data Breach;
 - b) provide Distributor with information to allow it to report or inform data subjects of the Data Breach, as necessary;
 - c) undertake an investigation of such Data Breach and reasonably cooperate with Distributor, regulators and law enforcement agencies;
 - d) not make any public announcements relating to such Data Breach without Distributor's prior written approval, which shall not be unreasonably withheld; and
 - e) take reasonable corrective action in a timely manner to assist in the investigation, mitigation and remediation of a Data Breach, to remediate and mitigate the risk of a recurrence of such Data Breach; and
- xiii) submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity or termination or the consequences of its nullity; and this DPA and all non-contractual or other obligations arising out of or in connection with it are governed by the law of the country or territory stipulated for this purpose in the Agreement.

3.2 The Parties shall not participate in (nor permit any sub-processor to participate in) any other Restricted Transfers of Personal Data (whether as an exporter or an importer of the Personal Data) unless the Restricted Transfer is made in full compliance with Applicable Law and pursuant to Standard Contractual Clauses implemented between the relevant exporter and importer of the Personal Data as set out in the Annex 3 and 4.

3.3 The Distributor authorizes Cepheid to appoint Cepheid Sub-Processors (and permit each Cepheid Sub-Processor appointed to appoint other Processors) in accordance with this Section 3.3 and any restrictions in the Agreement.

Distributor hereby provides a general consent for Cepheid to use Cepheid Sub-Processors already engaged as of the date of this DPA provided that Cepheid remains fully liable to Distributor for such third party and, in each case as soon as practicable, enters into a written and enforceable agreement with such third party that includes terms that are no less restrictive than the obligations applicable to Cepheid under this DPA.

Cepheid maintains a list of its authorized sub processors available upon request

4. Miscellaneous.

If applicable, the Standard Contractual Clauses, including Annexes 1-5, shall govern and control in the event of any conflict or inconsistency between the terms of this DPA and the Standard Contractual Clauses.

IN WITNESS WHEREOF, the Parties have executed this DPA as of the Effective Date of the Agreement.

The Distributor indicates the acceptance of this DPA and accepts its terms by signing or executing the Agreement that references this DPA.

Annex 1 to the DPA
Data Processing Description

List of Parties:

The “Customer”	
Name:	Company Name of “Distributor”, as defined in the Agreement
Address:	Address of “Distributor”, as defined in the Agreement
Contact person’s name:	Primary Point of Contact of “Distributor”, as defined in the Agreement
Contact person’s position:	Position of Primary Point of Contact of “Distributor”, as defined in the Agreement
Contact person’s phone number for Primary Point of Contact:	Phone Number for Primary Point of Contact of “Distributor”, as defined in the Agreement
Contact person’s e-mail address:	E-mail Address for Primary Point of Contact of “Distributor”, as defined in the Agreement
Activities relevant to the data transferred under these Clauses:	Described in Annex 1
Role (Controller/Processor):	Processor of Customer Personal Data Controller of Cepheid Data

“Cepheid”	
Name:	“Cepheid”, as defined in the Agreement.
Address:	Address of “Cepheid”, as defined in the Agreement.
Contact person’s name:	Primary Point of Contact of “Cepheid”, as defined in the Agreement.
Contact person’s position:	Position of Primary Point of Contact of “Cepheid”, as defined in the Agreement.
Contact person’s phone number for Primary Point of Contact:	Phone Number for Primary Point of Contact of “Cepheid”, as defined in the Agreement.
Contact person’s e-mail address:	E-mail Address for Primary Point of Contact of “Cepheid”, as defined in the Agreement.
Activities relevant to the data transferred under these Clauses:	Described in Annex 1.
Role (Controller/Processor):	Sub-processor of Distributor Personal Data Controller of Cepheid Data

DISTRIBUTOR PERSONAL DATA PROCESSING DESCRIPTION

Description of the transfer:

Subject Matter of the Processing

Personal Data is Processed for the following purposes:

Technical Support, workflow optimization (Cepheid ExpertCare Program), high level support, minimize Distributor downtime, responding to feedback from Distributor, regulatory issues, metering, Distributor analytics (Cepheid ExpertCare Program visit – Field Application Specialists), connectivity verification (troubleshooting, implementation / LIS (laboratory informatic system))

Duration of the Processing

Personal Data will be Processed until:

Cepheid ExpertCare Program, Distributor analytics: Processed as long as necessary to fulfil the purposes and provide requested services pursuant to the Agreement, unless otherwise agreed upon in writing

Technical Support, high level support, minimize Distributor downtime, responding to feedback from Distributor, regulatory issues, metering, connectivity verification: until problem resolution

Frequency of transfer

Personal Data will be Processed on a continuous basis.

Nature of the processing:

Processing operations

Personal Data will be subject to the following basic Processing activities:

Record, storage, consultation, use, disclosure by transmission, combination, restriction, erasure or destruction, anonymization

Categories of Data subjects

The Personal Data to be Processed concerns the following categories of data subjects:

Patients of Customer

Distributor and its employees

Customer and its employees

Categories of personal data

The Personal Data to be Processed concerns the following categories of data:

Depending on data entered by Distributor into the instrument console: Sample ID, instrument telemetry data (temperature, voltages, pressure, system alerts and alarms), test results, name, patient ID (data may include sensitive or special categories of personal data)

CEPHEID DATA PROCESSING DESCRIPTION:

Description of the transfer:

Subject Matter of the Processing

Personal Data is Processed for the following purposes:

Business relationship

Support of Cepheid Systems, other products and services

Improvement and enhancement of Cepheid products/services or develop new products/services

Marketing

Duration of the Processing

The Personal Data will be Processed until the completion of the Services, unless otherwise agreed upon in writing.

Frequency of transfer

Personal Data will be Processed on a continuous basis.

Nature of the processing:**Processing operations**

Personal Data will be subject to the following basic Processing activities:

Record, storage, consultation, use, disclosure by transmission, combination, restriction, erasure or destruction, anonymization.

Categories of Data subjects

The Personal Data to be Processed concerns the following categories of data subjects:

- Distributor and its employees;
- Customer and its employees.

Categories of personal data

The Personal Data to be Processed concerns the following categories of data:

General contact information, Customer's system information, Product or service complaints.

Competent Authority

This will be the supervisory authority of the EU member State where the exporter is established, the Information Commission if the exporter is established in the United Kingdom ("UK") or the FDPIC if the exporter is established in Switzerland. Where the exporter is not established in an EU member State, the UK or Switzerland but it is subject to EU/UK/Swiss Data Protection Law, this will be the supervisory authority in the jurisdiction where Cepheid's representative is established (as required under EU/UK/Swiss Data Protection Law). Where the appointment of a representative is not required under EU/UK/Swiss Data Protection Law, the supervisory authority will be the CNIL in France if the individuals whose data is transferred are located in the EU, the Information Commissioner if the individuals are located in the UK or the FDPIC if the individuals are located in Switzerland. If the Personal Data originates from Canada, the supervisory authority will be one of the Commissioners who has jurisdiction over the matter as determined by the Applicable Data Protection Law.

Annex 2 to the DPA

Description of Technical and Organizational Measures Implemented by Cepheid

This Annex 2 forms part of the DPA and describes the technical and organizational measures which Cepheid has implemented in accordance with Article 32(1) of the GDPR and other Applicable Data Protection Laws.

1- On site:

Cepheid associate may use encrypted USB drive to extract necessary Customer instrument data to remedy technical issues and instrument performance.

For instrument Cepheid Expert Care Program determination and performance optimization visits, Cepheid associates access only minimum necessary data, which does not contain any patient healthcare data. The data is transferred to the associate's notebook, is processed for customer report generation with recommendations, and is thereafter deleted per Standard Work and Cepheid data retention policies.

2- Remotely:

Access role: Only Cepheid Technical Support and Field Support associates have secured access to the instruments.

For remote support for complaints handling, Cepheid agents can use Remote Desktop Sharing (RDS) sessions, but only after the session is authorized by the customer at each instance.

Data transmission: Per Cepheid policy data is transmitted via secure encrypted method to internal Cepheid servers for associate to engage in customer support activities (TLS 1.2+ protocols are used for secured transactions).

3- Customer sends data:

Sending by email, on web platform or per fax: data is sent by the Customer via secure encrypted method to internal Cepheid associate within region. The Customer, as Controller, is responsible for anonymizing Personal Data and uploading only the minimum data required before transferring to Cepheid (Cepheid instrument software allows the Customer to cloak specific Personal and Healthcare Data in its instrument report before exporting).

4- Data transfers within Cepheid Support functions:

If additional support is needed outside Customer home region, only necessary information will be transmitted; unnecessary Personal and Healthcare Data will be deleted / anonymized where possible* and data will be sent via secure sharing method. Data at rest is encrypted and is destroyed per appropriate Cepheid customer care policy.

5- Policy and Practice:

Cepheid ensures the ongoing confidentiality, integrity, availability and resilience of processing systems and services. For this purpose, it has the ability to restore the availability and access to relevant services support and complaints case handling data in the Cepheid systems in a timely manner in the event of a physical or technical incident.

6- Processes:

Cepheid has a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

* Procedure to de-identify/anonymize is instrument specific.

Annex 3 to the DPA

Processor to Processor UK / EU/Swiss Transfer Provisions (Distributor Personal Data)

This Annex 3 forms part of the DPA and sets out how the EU / UK SCC will be completed in respect of Distributor Personal Data:

1. EU GDPR transfers: Where the EU SCCs are deemed entered into and incorporated into this Agreement by reference between the Parties in accordance with Clause 3 the EU SCCs will be completed as follows:
 - (a) Module Three will apply;
 - (b) in Clause 7, the optional docking clause will apply;
 - (c) in Clause 9, Option 2 will apply, and the time period for prior notice of Cepheid Sub-Processor changes shall be as set out in Clause 3.2 of this DPA;
 - (d) in Clause 11, the optional language will not apply;
 - (e) in Clause 17, Option 2 will apply, and the EU SCCs will be governed by the law of the jurisdiction of establishment for the data exporter, where applicable and where such law allows for third-party rights, and otherwise the law of France;
 - (f) in Clause 18(b), disputes shall be resolved before the country courts of the data exporter and otherwise the courts of France;
 - (g) in Annex I:
 - Part A: with the information set out in Annex 1 to this Agreement;
 - Part B: with the relevant Processing Description set out in Annex 1 to this Agreement; and
 - Part C: in accordance with the criteria set out Clause 13 (a) of the EU SCCs; and
 - (h) Annex II: with the security measures in Annex 2.
2. UK GDPR transfers: Where the UK Addendum are deemed entered into and incorporated into the DPA by reference between the Parties in accordance with Clause 3, the UK Addendum will be completed as follows:
 - (a) The EU SCCs, completed as set out above in clause 1 of this Annex 3, shall also apply to transfers of such Distributor Personal Data, subject to sub-clause 2. (b) of this Annex 3 below; and
 - (b) Tables 1 to 3 of the UK Addendum shall be deemed completed with the relevant information from the EU SCCs, completed as set out above, and the options "neither party" shall be deemed checked in Table 4. The start date of the UK Addendum (as set out in Table 1) shall be the Effective Date.
3. Where the Swiss Addendum is deemed entered into and incorporated into this DPA by reference between the Parties, the Swiss Addendum will be completed as follows:
 - (a) The EU SCCs, completed as set out above in clause 1 of this Annex 3, shall also apply to transfers of such Personal Data, subject to sub-clause 3. (b) of this Annex 3 below;
 - (b) the Standard Contractual Clauses incorporated per reference shall protect the Personal Data of legal entities in Switzerland until the entry into force of the revised FADP.
4. If neither sub-clause 1, sub-clause 2 or sub-clause 3 applies, then the Parties shall cooperate in good faith to implement appropriate safeguards for transfers of such Distributor Personal Data as required or permitted by the Applicable Law without undue delay.

Annex 4 to the DPA

Controller to Controller EU/UK/Swiss Data Transfer Provisions (Cepheid Data)

This Annex 4 forms part of the DPA and sets out how the EU / UK SCCs will be completed in respect of Cepheid Data:

1. EU GDPR transfers: Where the EU SCCs are deemed entered into and incorporated into this Agreement by reference between the Parties in accordance with Clause 2 the EU SCCs will be completed as follows:
 - (a) Module One will apply;
 - (b) in Clause 7, the optional docking clause will apply;
 - (c) in Clause 11, the optional language will not apply;
 - (d) in Clause 17, Option 2 will apply, and the EU SCCs will be governed by the law of the jurisdiction of establishment for the data exporter, where applicable and where such law allows for third-party rights, and otherwise the law of France.
 - (i) in Clause 18(b), disputes shall be resolved before the country courts of the data exporter and otherwise the courts of France;
 - (ii) in Annex I:
 - (A) Part A: with the information set out in Annex 1 to this Agreement;
 - (B) Part B: with the relevant Processing Annex(ures) set out in Annex 1 to this Agreement; and
 - (C) Part C: in accordance with the criteria set out in Clause 13(a) of the EU SCCs;
 - (iii) Annex II: with the information set out in Annex 2 to this Agreement.
2. UK GDPR transfers: Where the UK Addendum are deemed entered into and incorporated into the DPA by reference between the Parties in accordance with clause 2, the UK Addendum will be completed as follows:
 - (a) The EU SCCs, completed as set out above in clause 1 of this Annex 4, shall also apply to transfers of such Personal Data, subject to sub-clause 2. (b) of Annex 4 below; and
 - (b) Tables 1 to 3 of the UK Addendum shall be deemed completed with the relevant information from the EU SCCs, completed as set out above, and the options "neither party" shall be deemed checked in Table 4. The start date of the UK Addendum (as set out in Table 1) shall be the Effective Date
3. Where the Swiss Addendum is deemed entered into and incorporated into this DPA by reference between the Parties, the Swiss Addendum will be completed as follows:
 - (a) The EU SCCs, completed as set out above in clause 1 of this Annex 3, shall also apply to transfers of such Personal Data, subject to sub-clause 3. (b) of this Annex 3 below;
 - (b) the Standard Contractual Clauses incorporated per reference shall protect the Personal Data of legal entities in Switzerland until the entry into force of the revised FADP.

4. If neither sub-clause 1, sub-clause 2 or sub-clause 3 applies, then the Parties shall cooperate in good faith to implement appropriate safeguards for transfers of such Cepheid Data as required or permitted by the Applicable Law without undue delay.

Annex 5

4.1 Supplemental requirements for the transfer of Personal Data out of the European Economic Area

The following supplemental requirements shall apply to any Restricted Transfer:

1. The Distributor shall regularly make available to Cepheid information regarding public authority requests for access to Personal Data and the manner of reply provided (if permitted by law);
2. The Distributor warrants that it has not purposefully created technical back doors or internal processes to facilitate direct access by public authorities to Personal Data, and is not required under applicable law or practice to create or maintain back doors;
3. The Distributor shall inquire of any public authority making an access request regarding Personal Data whether it is cooperating with any other state authorities in relation to the matter;
4. The Distributor shall provide reasonable assistance to data subjects in exercising their rights to Personal Data in the receiving jurisdiction;
5. The Distributor shall cooperate with Cepheid in the event that a relevant supervisory authority or court determines that a transfer of Personal Data must be subject to specific additional safeguards;
6. The Distributor shall implement encryption and/or other technical measures sufficient to reasonably protect against interception of Personal Data during transit, or other unauthorized access, by public authorities; and
7. The Distributor shall have appropriate policies and procedures in place, including training, so that requests for access to Personal Data from public authorities are routed to the appropriate function and properly handled.

4.2 Supplemental requirements for the transfer of Personal Data out of the Republic of South Africa

The following supplemental requirements shall apply to transfer of Personal Data out of the Republic of South Africa:

1. Transfer of personal data outside of South Africa shall meet the following parameters:
 - (A) the Party who is the recipient of the information is subject to a law, binding corporate rules or binding agreement which provide an adequate level of protection that:
 1. effectively upholds principles for reasonable processing of the information that are substantially similar to the conditions for the lawful processing of personal information relating to a data subject who is a natural [person](#) and, where applicable, a juristic [person](#); and
 2. includes provisions, relating to the further transfer of personal information from the recipient to third parties who are in a foreign country;
 - (B) the data subject consents to the transfer;
 - (C) the transfer is necessary for the performance of a contract between the data subject and the responsible party, or for the implementation of pre-contractual measures taken in response to the data subject's request;
 - (D) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the responsible party and a third party; or
 - (E) the transfer is for the benefit of the data subject, and:
 1. it is not reasonably practicable to obtain the consent of the data subject to that transfer; and
 2. if it were reasonably practicable to obtain such consent, the data subject would be likely to give it.

2. For the purpose of this section:
 - (A) “binding corporate rules” means personal information processing policies, within a group of undertakings, which are adhered to by a responsible party or operator within that group of undertakings when transferring personal information to a responsible party or operator within that same group of undertakings in a foreign country; and
 - (B) “group of undertakings” means a controlling undertaking and its controlled undertakings.