



TERMS OF USE – iLab OPERATIONS SOFTWARE

**AGILENT LICENSE AGREEMENT**

**LEGAL NOTICE: PLEASE READ THESE TERMS BEFORE INSTALLING OR OTHERWISE USING THE LICENSED MATERIALS. ALL USE OF THESE LICENSED MATERIALS IS SUBJECT TO THE LICENSE TERMS SET FORTH BELOW. "LICENSED MATERIALS" INCLUDES THE SOFTWARE, ANY WHOLE OR PARTIAL COPIES, AND ANY ACCOMPANYING INSTRUCTIONS, DOCUMENTATION, TECHNICAL DATA, IMAGES, RECORDINGS, HARDWARE AND SOFTWARE KEYS, AND OTHER RELATED MATERIALS.**

USING THE LICENSED MATERIALS INDICATES YOUR ACCEPTANCE OF THE LICENSE TERMS. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU MAY RETURN ANY UNINSTALLED LICENSED MATERIALS FOR A FULL REFUND. IF THE LICENSED MATERIALS ARE BUNDLED OR PRE-LOADED WITH ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE UNUSED PRODUCT FOR A FULL REFUND.

These terms of use ("**Terms of Use**") and the Offer concerning the iLab Operations Software are a legal binding agreement between **Customer** and the Agilent entity issuing the Offer, ("**Agilent**"). These Terms of Use shall supersede any other provisions, terms and conditions set forth by Customer, and the rights of the parties shall therefore be governed exclusively by the provisions, terms and conditions set forth herein.

**1. DEFINITIONS**

- a) "**Agreement**" means the Terms of Use and the Offer.
- b) "**Confidential Information**" means any non-public information that a party to the Agreement marks as being confidential or, if disclosed orally, reduced to writing and further disclosed to the receiving party within thirty (30) days of disclosure. Notwithstanding the foregoing, Confidential Information includes, but is not limited to the Services, Documentation and Software, the contents of the Agreement, the Data, the Pricing Terms, and Agilent's business policies or practices;
- c) "**Core Facility**" means the agreed upon group of equipment, technology, and/or expertise which will be managed by the iLab Operations Software.
- d) "**Customer**" and "Customer's" means the legal entity specified in the Offer to which Agilent will provide the Services and Software.
- e) "**Customization(s)**" means any software that Agilent develops at Customer's specific request and delivers to Customer;
- f) "**Data**" means the information including but not limited to Personal Data that Customer inputs into the Software and/or the information resulting from the use of the Software;
- g) "**Documentation**" means the manual containing the instructions for use of the Software;
- h) "**Effective Date**" means the date the Services, including set up services, are first provided by Agilent, or date the Customer first access the Software, whichever occurs first;
- i) "**Fees**" means the set up and Service fees identified in the Offer;
- j) "**Initial Term**" shall be for the period identified in Section 8a below shall commence on Effective Date;
- k) "**Offer**" means the proposal made by Agilent to Customer specifying (i) the Software; (ii) if applicable, Customizations (iii) the Fees due by Customer; (iv) the set up and support and maintenance options Customer selected; (v) use for internal purposes and for the number of Core Facilities for which the license Fee is paid ("Permitted Use"); (vi) the Initial Term; (vii) if applicable, the Renewal Term; (viii) the Services and the terms of these Services and (ix) the terms of license of the open software used by Agilent, if any; and (x) all written amendments thereto;
- l) "**Performance Criteria**" means the descriptions, standards, criteria, information contained in the Instructions for Use and Product Data Sheet (if applicable), and specifications contained in the Documentation, Offer, and this Agreement;
- m) "**Permitted Use**" is defined in Section
- n) "**Personal Data**" means Data that can directly or indirectly identify individuals, including but not limited to individually identifiable health information;
- o) "**Renewal Term**" means any subsequent period commencing upon expiration of the Initial Term or of any previous Renewal Term during which this Agreement will be in effect as identified in Section 8.b;



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- p) “**Services**” means the services that Agilent will provide, as detailed in the Offer together with the respective Product Data Sheet and herein, including but not limited to access and use of the Software and Documentation, storage and back-up of Data, support, maintenance and training, and Customizations;
- q) “**Software**” means Agilent’s iLab Operations Software contained in the Offer together with the respective Product Data Sheet and/or any of its components (including those installed onsite) as further described in the Offer and, if applicable, (i) additional functional and knowledge modules; and/or (ii) Customizations;
- r) “**Subscription Term**” means the Initial Term and Renewal term(s).
- s) “**Third Party Components**” means any third party software or database that is *integrated* with but not *included* in the Software. Third Party Components are subject to a separate agreement.

**2. Services**

Subject to the terms and conditions of the Agreement, Agilent grants Customer a non-exclusive and non-transferable license to access and use the Software and Documentation within Customer’s Permitted Use during the Initial Term and, if applicable, Renewal Term. Customer will not make available, directly or indirectly, by any technical means, the Software or the Documentation accessible to third parties. The Software and Documentation will operate on Agilent’s servers and Customer will access and use the Software through the Internet in an application service provider (ASP) mode.

**3. OBLIGATIONS**

a) **Customer Responsibilities.**

Customer is responsible for: (i) controlling who may access or use the Services on behalf of Customer, for protecting Customer passwords, and for compliance with this Agreement; (ii) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Data; (iii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Agilent promptly of any such unauthorized access or use; and (iv) complying with all applicable local, state, federal and foreign laws and governmental regulations in using the Services, including any and all laws or governmental regulations, in any jurisdiction, relating to the handling, treatment and protection of Data, including sensitive or personally-identifiable information. Some of Customer’s content may be subject to governmental regulation or may require security measures beyond those specified by Agilent for an offering. Customer will not input or provide such content unless Agilent has first agreed in writing to implement additional required security measures.

b) **Restrictions.** Customer will use the Services solely for Customer internal business purposes and will not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, or distribute the Services, or otherwise commercially exploit or make the Services available to any third party (including any Agilent competitor); (ii) use the Services to store or transmit any material that infringes any third party’s copyright, patent, trademark, trade secret or other proprietary rights; (iii) use the Services to store or transmit any viruses, Trojan horses, worms, time bombs, or any other similar malicious software, data, or programs; (iv) interfere with or disrupt the integrity or performance of the Services or any third party data contained therein; (v) use in any jurisdiction for unlawful, obscene offensive or fraudulent content or activity, such as advocating or causing harm, evading filters, sending unsolicited, abusive or deceptive messages; or (vi) attempt to gain unauthorized access to the Services, materials, other accounts, computer systems or networks connected to the Services, **decompile or reverse assemble the Software except to the extent this is expressly allowed by law.** If there is a complaint or notice of violation, Agilent will provide Customer notice and a reasonable period to cure such violation prior to suspending or terminating the Service, if reasonable under the circumstances, and if the violation does not involve unlawful use or data/content or present a risk to the functionality or security of the Service or other Customers. Unless expressly provided in an attachment, Customer is not authorized to use the Service to provide hosting or timesharing services to any third party.

c) **Authority to Use Data.** Customer agrees not to transmit or store any personal health information or sensitive data when using the Services. Customer is responsible for obtaining necessary permission to allow Agilent to store, use, and transfer Data. At all times, it is the responsibility of Customer to monitor or screen the Data that Customer provides. Customer, and not Agilent, is responsible for



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removing from the Services any Data which is not in compliance with this Agreement or applicable law, or which contains sensitive information.

- d) **Security.** Customer is responsible for taking appropriate measures to maintain appropriate security and protection of Data. Customer understands that there is an inherent risk in electronic storage and in the transmission of Data over the internet, and Customer agrees to rely solely on its own back-up copies of any Data stored in or transmitted through the Services should the Data become lost or damaged for any reason. At no time will Agilent be responsible for recovering or retrieving any Data stored or transmitted by Customer in using the Services or for any unauthorized access to Customer Data. Agilent will provide Customer notice of any unauthorized third party access to Customer's content of which Agilent becomes aware and will use reasonable efforts to remediate identified security vulnerabilities.

**4. DISCLAIMER & WARRANTY**

- a) **Warranty.** Agilent warrants that the Services will substantially conform to the specifications during the Subscription Term.
- b) **Remedies.** For any breach of the above warranty, Agilent will use commercially reasonable efforts to restore access to the Services in its reasonable discretion. In the event Agilent is unable to do so, Agilent may terminate access to the nonconforming Service and refund the subscription fees paid by Customer for such Service for the remainder of the Subscription Period. THE FOREGOING REMEDY SETS FORTH AGILENT'S SOLE RESPONSIBILITY AND CUSTOMER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY UNDER THIS AGREEMENT.
- c) **Disclaimer.** Except as otherwise expressly provided in the Agreement and to the maximum extent permitted by applicable law: (i) the Services and the Software are provided "as is"; (ii) AGILENT MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, AND AGILENT SPECIFICALLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, regarding the Services and Software; (iii) Agilent does not warrant that the Services and Software will be accurate, complete or without error; (iv) the use of the Services and Software is entirely at Customer's risk and Agilent makes no warranties as to the accuracy, quality or reliability of the reports, results, Data or other information obtained by or from accessing and using the Services and Software, nor that the results to be derived from the use of the Services will meet Customer's particular needs; (v) Agilent does not warrant that the communications to or through the use of the Services and Software will be un-interrupted or error free, and (vi) Agilent does not warrant that the communications will be secure or that Data will not be lost, damaged or corrupted.

**5. CONFIDENTIALITY**

- a) **Obligations during the Term.** Each party agrees to keep confidential the Confidential Information received from the other party and to protect the confidentiality thereof in the same manner as it would protect the confidentiality of its own Confidential Information during the Term and for a period of two (2) years thereafter. Each party shall exercise at least a reasonable degree of care in the protection of Confidential Information. Information shall cease to qualify as Confidential Information which is (i) publicly available without breach of this Agreement, (ii) rightfully obtained by the receiving party from another source without a duty of confidentiality, (iii) independently developed or ascertained by the receiving party, (iv) already in the receiving party's possession without a duty of confidentiality, or (v) required to be disclosed under operation of law provided the disclosing party has been given reasonable advance notice to object to such disclosure.
- b) **Obligations Upon Termination or Expiration.** Upon termination or expiration of this Agreement, each party shall, upon the written request of the other party, return or destroy all documents and materials that are the property of the other party or its licensees, licensors, or affiliates and Confidential Materials in its possession or control, except as may otherwise be agreed upon between the parties in writing; provided that Agilent may retain a copy of Data in its production environment to the extent it is commercially impracticable to destroy it, so long as it continues to be protected under the confidentiality terms of the Agreement.



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**6. FEES AND PAYMENT**

- a) Annual subscription Fees shall be invoiced in advance of the applicable year of the Term. Customer shall provide all payments net 30 days from receipt of the invoice. License fees are non-refundable, except as provided in Section 8.c. below.
- b) **Taxes; Other Charges.** Customer shall be responsible for, and shall pay or reimburse Agilent for all applicable taxes, duties or charges or any kind, including but not limited to sales and use tax, which may be levied upon either party in connection with the service delivered to Customer in this Agreement.

**7. INTELLECTUAL PROPERTY RIGHTS**

- a) Subject to the limited rights expressly granted herein, all right, title and interest in and to the Services, Documentation, Software and Customizations, including all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in the Services, Documentation, Software and Customizations will remain with Agilent. No rights are granted to Customer hereunder other than as expressly set forth herein.
- b) Customer acknowledges and agrees that Agilent will own all right, title and interest in and to any suggestions, recommendations or feedback (“Feedback”) provided by Customer to incorporate into or improve the Services. Agilent will be entitled to use the Feedback without restriction or compensation to Customer. Customer hereby irrevocably assigns to Agilent all right, title, and interest in and to the Feedback.
- c) Customer will not (i) modify, copy or create derivative works based on the Services; (ii) reverse engineer the Services; or (iii) remove, deface, cover, alter or obscure any copyright or trademark notices and/or legends or other proprietary notices associated with the Services.
- d) As between Customer and Agilent, and subject to the limited rights granted by Customer herein, Customer owns all right, title and interest in and to all Customer’s Data. Customer grants to Agilent during the term of this Agreement a non-exclusive, royalty-free, fully-paid, transferable license to host, cache, record, copy, transmit, store and display Customer’s Data solely for the purpose of providing the Services to Customer. Agilent may use anonymized and aggregated data from across the user base to improve service and develop new services, and otherwise will not access Customer’s Data, except as necessary to provide the Services, respond to service or technical problems, comply with the law or an order of a government or regulatory body, or at Customer’s request.
- e) To the extent that Customer loads third party Data from external sources such as public or private databases, Customer warrants that it has all appropriate rights and licenses from such external sources to access, upload, and use such Data.

**8. TERM, TERMINATION, SUSPENSION, AND FORCE MAJEURE**

- a) **Initial Term.** The term of this Agreement shall commence upon the Effective Date and shall continue for one year (the “Initial Term”) unless extended under the terms of Section 8.b below or terminated sooner under the terms of Section 8.c below.
- b) **Renewal Term.** Upon expiration of the Initial Term, this Agreement shall automatically renew for additional one-year period, year over year, (the “Renewal Term”) upon payment of the Fees. Either party may terminate the Agreement upon expiration of the Initial Term or any Renewal Term upon providing written notice to the other party at least sixty (60) days prior to expiration of the Initial Term or applicable Renewal Term, as the case may be. The Initial Term and any Renewal Terms are referred to collectively herein as the “Term.”
- c) **Termination for Material Breach.** Upon a material breach of any term of this Agreement, the non-breaching party may terminate this Agreement upon providing at least thirty (30) days written notice, unless the breaching party cures the material breach within such thirty (30) day period. Solely in the event that Customer terminates this Agreement because of a material breach by Agilent, Customer shall be entitled to a partial refund of annual subscription Fees already paid proportional to the number



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of months remaining for which Customer had already provided payment; provided that Customer shall not be entitled to a refund of any Fees other than annual subscription fees.

- d) **Termination in the event of Bankruptcy or Insolvency.** This Agreement may be terminated by either party, if the other party becomes unable to pay its debts when due, or becomes bankrupt or subject to any other proceeding for the benefit of creditors.
- e) **Suspension.** Agilent may suspend Services without liability as set forth in the Agreement if Agilent reasonably determines: i) there is a material breach of Customer's obligations; ii) a security breach affecting Customer or Agilent infrastructure, network, or other Customers; iii) a violation of law; or iv) Customer use may subject Agilent, or an Agilent third party provider to liability. Customer agrees to cooperate with Agilent in any investigation to resolve a suspension. Agilent will only suspend the Services causing, or the basis for, a suspension. Agilent will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect Agilent or its Customers from operational, security, or other risk, or if ordered by a court or other judicial body.
- f) **Effect of Suspension.** If Agilent suspends use of all or any portion of the Services: (i) Customer remains responsible for all charges incurred through the date of suspension and for any Services Customer has continued to access during or after a suspension; (ii) Customer is not entitled to any credits for any period of suspension; and (iii) Agilent is not liable for any damages or losses Customer may incur as a result of loss of access to content during a suspension.
- g) **Agilent's Right to Termination.** Agilent may terminate in whole or in part the Agreement and the Services immediately upon notice if: i) Agilent discovers Customer provided inaccurate or incomplete information; ii) Customer did not have the legal capacity, right or authority to enter into agreement with AGLIENT at the time an order was submitted; iii) Customer fails to pay any undisputed overdue amount within 5 days of the due date; iv) Customer uses the Services in violation of the Agreement terms and fails to remedy the violation within 5 days of Agilent's written notice; v) Customer's account has been suspended for 30 days or more; or vi) there are multiple violations of the Agreement terms. Agilent will give Customer written notice of termination unless AGLIENT determines, in its reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect Agilent or its other Customers from operational, legal or security risks.
- h) **Deletion of Customer Data.** Agilent may delete content upon expiration, cancellation, or termination, and Customer understands that in the event of deletion content is not recoverable. Customer must discontinue use of the Services on such effective date, and relinquish use of IP addresses, infrastructure and all other materials provided in connection with the Services, including pointing the Domain Name System (DNS) for Customer's domain names away from the Services.
- i) **Force Majeure.** Either of the parties shall be excused from the performance of any obligation under this Agreement if, and for so long as and only to the extent the non-performance of such obligation occurs by reason of, any act of God occurs, including but not limited to fire, flood, storm, earthquake, war, national emergency or natural disaster, strike, or any law, regulation, order or act of any governmental instrumentality or military authority ("Force Majeure"), provided that the party claiming such excuse from performance shall have used its best efforts to minimize the effects of the Force Majeure and resume performance. If such event occurs unabated for a period of fifteen (15) days or longer, the party not claiming the excuse may terminate this Agreement upon five (5) days' written notice to the other party.

### 9. PROCESSING OF DATA INCLUDING PERSONAL DATA

- a) In the event that any Customer Data may contain Personal Data, Customer acknowledges and agrees that Agilent:
  - (i) may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Services. Agilent may transfer Customer's Data across country or regional borders. Agilent will process the Personal Data on Customer's behalf, as a data processor including but not limited to in the country where the Customer is located, in the countries where Agilent affiliates are located, and in such countries where Agilent subprocessors are located;



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- (ii) will execute appropriate data processing agreements and business associate agreements as required to comply with laws and regulations; and
  - (iii) may use the Personal Data in an anonymized and aggregated way for statistical purposes; and
  - (iv) during the course of Customer's relationship, will process non-sensitive Personal Data relating to Customer and its employees and contractors, solely for the purposes of enabling Customer to order products or services, make requests, register for customized communications programs and enhance Customer's experience on Agilent's websites, in accordance with Agilent's privacy statement (<http://www.agilent.com/home/privacy-policy>).
- b) Customer warrants as a material term of this Agreement that, in view of the use of the Personal Data referred to above under a(i), (ii) and (iii): (i) it is legally entitled to transfer all Personal Data to Agilent for the purpose of delivering the Services, and to process any and all Personal Data, as contemplated herein, and (ii) any and all transfers and processing of Personal Data by Customer comply in full with all laws, statutory rules and codes of practice, to which Customer is subject; and (iii) it has ensured that it has obtained all appropriate permits, certifications and consents (including but not limited to, from the relevant data subjects/ patients, institutional review board (IRB) legal and ethical approval for, submitting Data, including Personal Data, into consortia), whether submitted by Customer through the automated submission features in the software, or submitted at the request of Customer; (iv) it will not store in the Software nor transfer to Agilent, individually identifiable health information without obtaining Agilent's advance written consent.

**10. LIMITATION OF LIABILITY**

- a) SUBJECT TO CLAUSE 10C BELOW, IN NO EVENT WILL AGILENT, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS OR LOST REVENUE, THE COST OF PROCURING SUBSTITUTE SERVICES), REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, AGILENT WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND ARISING FROM (I) CUSTOMER'S INABILITY TO ACCESS OR USE THE SERVICES IN CASE OF TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S ACCESS TO THE SERVICES OR DISCONTINUATION OF THE SERVICES, OR (II) ANY UNAUTHORIZED ACCESS, ALTERATION OF, DELETION, CORRUPTION OR LOSS OF CUSTOMER'S DATA, OR (IV) ANY FAILURE TO TRANSMIT OR RECEIVE ANY DATA.
- b) IN NO EVENT WILL AGILENT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID BY THE CUSTOMER TO AGILENT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.
- c) THE EXCLUSIONS AND LIMITATIONS IN CLAUSES 10(A) AND 10(B) SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW BUT AGILENT DOES NOT EXCLUDE AND/OR LIMIT LIABILITY FOR DEATH OR BODILY INJURY CAUSED BY THE GROSS NEGLIGENCE OF AGILENT, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS.
- d) THE REMEDIES IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

**11. INDEMNIFICATION BY CUSTOMER**

Customer will defend, indemnify and hold Agilent and Agilent's officers, directors, employees, consultants, agents, and suppliers harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any suit, action or claims (a "Claim") made or brought against Agilent by a third party arising out of or related to Customer's Data, or Customer's use of the Services in violation of this Agreement, provided Agilent promptly notifies Customer in writing and provides control of the defense or settlement, and assistance to Customer. If Customer does not diligently pursue resolution of the Claim nor provide Agilent with reasonable assurances that Customer will diligently pursue resolution, then Agilent, without in any way limiting its other rights and remedies, may defend the Claim.

**12. MISCELLANEOUS**

- a) **Entire Agreement – Modifications.** The Agreement constitutes the entire understanding and agreement between Customer and Agilent. The Agreement replaces all prior negotiations and dealings between



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- Customer and Agilent pertaining to the Software and Services. The Agreement cannot be modified unless by an instrument in writing signed by Customer and Agilent.
- b) **Severability.** If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. If a provision of these Terms of Use is found to be incompatible with a provision of the Offer, the Offer shall prevail.
  - c) **Law Compliance.** The parties agree to comply with applicable laws and regulations. Agilent may suspend performance if Customer is in violation of applicable laws or regulations.
  - d) **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the country where the Agilent entity issuing the Offer is located as identified on the Offer. If the Offer is issued by Agilent Technologies, Inc., in the United States, then this Agreement shall be governed by and construed in accordance with the substantive laws of the State of California and the California courts shall have jurisdiction over all matters relating to this Agreement. Customer hereby consents to the jurisdiction and venue of such courts. The Uniform Laws of the United Nations Convention of Contracts for the International Sale of Goods shall not apply. This is without prejudice to Agilent's right to initiate legal proceedings against Customer for the recovery of unpaid invoices under Customer's local laws before the competent courts of Customer's domicile.
  - e) **Assignment** Customer may not assign or transfer this Agreement without Agilent's prior written consent, which may be subject to applicable charges and terms and which consent may not be unreasonably withheld. Agilent may assign or transfer any of its rights or obligations under this Agreement upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of Agilent, or its permitted successive assignees or transferees. Any assignment in violation of this clause will be null and void.
  - f) **Independent Contractors.** Agilent and Customer are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.
  - g) **Export Control.** If Customer exports, re-exports, or transfer products, technology or technical data purchased hereunder Customer assume all responsibility for complying with applicable U.S. and all other laws and regulations, and for obtaining required export authorizations. Customer expressly agrees not to sell or otherwise transfer products, technology or technical data to companies or persons on the Denied Parties List and Specially Designated Nationals and Blocked Persons List, or to any other prohibited parties or restricted destinations listed in applicable laws and regulations, unless properly authorized by the appropriate government(s). Agilent may suspend performance if Customer is in violation of Applicable Laws. Further information on restricted destinations can be obtained from - <http://www.bis.doc.gov>.
  - h) **Delays.** Agilent will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
  - i) **U.S. Federal Government.** The Service, including related software and technology, are provided to the federal government in accordance with the following: software and technical data rights granted to the federal government include only those rights customarily provided to end user Customers. Use, distribution or disclosure of the Service by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software- Restricted Rights).
  - j) **Waiver.** The failure by Agilent to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit Agilent's right to enforce such provision at a later time. All waivers by Agilent must be in writing to be effective.
  - k) **English Language.** The parties to this Agreement have agreed that all correspondence and related documentation to this Agreement and associated with the Software shall be rendered in English.
  - l) **Survival.** Notwithstanding the expiration or termination of this Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive, including without limitation all provisions related to indemnity, confidentiality, ownership and limitation of liability.



**Agilent Technologies**

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- m) **Use of Names.** Neither party may use the other party's name without prior consent, except that Agilent may use Customer's name and logo in any list of Customers included on its web site or other marketing materials.