



bioMérieux Pharma Quality Control Software General Terms and Conditions

1. APPLICABILITY

These bioMérieux Pharma Quality Control Software General Terms and Conditions ("**General Terms**") along with any applicable Additional Terms and the Data Processing Addendum (US-Industry) shall govern the respective rights and obligations of bioMérieux and Customer (each a "**Party**" and collectively the "**Parties**") relating to the pertinent bioMérieux Solution. (The General Terms, the Additional Terms, and the Data Processing Addendum (US-Industry) shall collectively be referred to as these "**Terms**".) These Terms shall apply whether Customer procures the bioMérieux Solution directly from bioMérieux or through a Distributor.

2. DEFINITIONS

The definitions below shall apply to these Terms. To the extent that a term as defined below is not used in these General Terms, that term is reserved for use in the applicable Additional Terms or Data Processing Addendum (US-Industry).

2.1 "Access Credentials" shall mean any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify a User's identity and/or authorization to access and use the bioMérieux Solution.

2.2 "Additional Terms" shall mean the additional terms and conditions applicable to the specific bioMérieux Solution and, where applicable, any terms and conditions governing additional services in relation to the bioMérieux Solution, such as support, maintenance, and professional services.

2.3 "Affiliate" shall mean a corporate entity controlled by, controlling or under common Control with a party. For this purpose, control of such entity shall mean the direct or indirect ownership of more than fifty percent (50%) of voting rights and/or share capital or such other relationship which constitutes actual control of such entity.

2.4 "Agreement" shall mean these Terms together with the relevant Order Documentation which incorporates these Terms by reference.

2.5 "Applicable Law" shall mean any statute, law, ordinance, regulation, rule, code, treaty or binding legal precedent applicable in the relevant jurisdiction.

2.6 "Authorized Use Limitation" shall mean any applicable limitations to the access or use of the bioMérieux Solution as set forth in the Order Documentation or other relevant Documentation.

2.7 "bioMérieux" shall mean the bioMérieux entity that is a party to the Order Documentation along with its Affiliates or, in cases where the party to the Order Documentation other than Customer is a Distributor, it shall mean the bioMérieux entity that appointed the Distributor along with that bioMérieux entity's Affiliates.

2.8 "bioMérieux Instrument" shall mean an Instrument that is developed or manufactured by bioMérieux.

2.9 "bioMérieux Solution" shall mean a BIOMÉRIEUX PHARMA QUALITY CONTROL SOFTWARE solution identified in the Ordering Documentation.

2.10 "Cloud Service" shall mean a bioMérieux Solution where the hosting and management of the service occurs on a network of third-party remote servers and made available via the Internet, alternatively referred to as "software-as-a-service" or "SaaS".

2.11 "Customer" shall mean the customer identified in the Order Documentation.

2.12 "Customer IT Environment" shall mean any computing platforms, computer networks, information systems or data repositories controlled by Customer, inclusive of any software, hardware or Instrument containing software that interacts with hardware or other software.

2.13 "Customer Premises" shall mean any physical location, facility, or building owned, leased, or controlled by Customer.

2.14 "Data" shall mean data or information accessed, collected, uploaded, analyzed, or generated in connection with the use of a bioMérieux Solution or Instrument.

2.15 "Data Privacy Laws" shall mean any Applicable Laws that specifically govern or regulate the collection, use, transfer, disclosure, retention, and/or handling of Personal Data.

2.16 "Data Processing Terms" shall mean the terms and conditions governing the collection, use, transfer, disclosure, retention, and/or handling of Personal Data in connection with the applicable bioMérieux Solution available in the Data Processing Addendum (US-Industry).

2.17 "Distributor" shall mean an entity appointed by bioMérieux pursuant to a distribution or similar agreement for purposes of marketing, reselling, or making available bioMérieux Instruments or bioMérieux Solutions in commerce.

2.18 "Documentation" shall mean bioMérieux standard descriptions, user guides, end-user manuals, or electronic user guides, including online resources such as those located at the [Resource Center](#), as updated and amended from time to time.

2.19 "Instrument" shall mean a device that is capable of being connected to or integrated with a bioMérieux Solution.

2.20 "Intellectual Property Rights" shall mean all rights, whether registered or not, including without limitation patents, patent applications of any kind, trademarks, service marks, trade names, service names, logos, any other source identifiers, copyrights, copyrightable works, proprietary information (including trade secrets) or any equivalent form of protection in force anywhere in the world.

2.21 "License" shall mean a revocable, non-exclusive, non-transferable, limited license to use On-Prem Software.

2.22 "Non-Personal Data" shall mean Data that does not constitute or include Personal Data.

2.23 "On-Prem Software" shall mean a bioMérieux Solution, or component of a bioMérieux Solution, that is deployed and implemented by or on behalf of Customer within the Customer IT Environment, alternatively referred to as "on-premises software."

2.24 "Order Documentation" shall mean any quote or other sales or ordering document mutually agreed-upon between, and executed by, Customer and bioMérieux or Distributor, if applicable, incorporating these Terms by reference.

2.25 "Perpetual License" shall mean a License subject to termination provision of these General Terms permitting Customer to use the applicable On-Prem Software indefinitely subject to Customer's payment of a one-time fee and its compliance with all applicable terms and conditions.

2.26 "Personal Data" shall have the same meaning as "personal data", "personal information", "personally identifiable information", or "protected health information" under applicable Data Privacy Laws, or to the equivalent or corresponding term(s) as defined under Data Privacy Laws of the applicable jurisdiction.

2.27 "Subscription" shall mean access to a Cloud Service or License to On-Prem Software permitting use of the relevant bioMérieux Solution for a renewable Term subject to Customer's payment of a recurring fee.



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2.28 “Term” shall mean the period of time in which a license or access to a bioMérieux Solution is granted as provided for in the Order Documentation.

2.29 “Territory” shall mean the country specified in the Order Documentation or, otherwise, the country where the Customer is based.

2.30 “User” shall mean an individual duly authorized by Customer to use or access to the bioMérieux Solution on behalf of Customer and who may be either an employee or an authorized contractor of Customer.

3. ACCEPTANCE, TERM, CONSIDERATION

3.1 Customer Acceptance. By executing the relevant Order Documentation that expressly incorporates these Terms by reference, Customer shall be deemed to have accepted and agreed to the Agreement (“**Acceptance**”). bioMérieux reserves the right to accept or reject any Order Documentation prior to execution. Any Customer documentation shall not, without bioMérieux’s express written agreement, add to, modify, amend, supersede, or replace the Agreement.

3.2 Term. The Agreement shall come into force upon Acceptance by Customer and shall remain in force during the Term, subject to Section 16 below.

3.3 Consideration. To the extent necessary, the Parties acknowledge that their respective covenants and promises contained in the Agreement and other good and valuable consideration are adequate and sufficient to support this Agreement.

4. RIGHTS, OBLIGATIONS, RESTRICTIONS

4.1 Cloud Service Access Grant. Where applicable, and subject to the Agreement, bioMérieux hereby grants Customer a non-exclusive, non-transferable, and limited right to access and use the Cloud Service and applicable Documentation during the Term in the Territory solely for Customer’s internal business purposes. The Cloud Service shall be hosted, operated, and maintained by bioMérieux and its third-party cloud service providers (“**Cloud Service Providers**”).

4.2 On-Prem Software License Grant. Where applicable, and subject to the Agreement, bioMérieux hereby grants Customer a non-exclusive, non-transferable, non-sublicensable and limited License to use the On-Prem Software and applicable Documentation during the Subscription Term in the Territory solely for Customer’s internal business purposes.

4.3 Obligations. Customer shall:

- (a) use commercially reasonable efforts to prevent unauthorized access to or use of the bioMérieux Solution;
- (b) be responsible for all User acts and omissions;
- (c) grant bioMérieux access to pertinent Instruments, Customer IT Environment, or Customer Premises to install or configure the bioMérieux Solution;
- (d) obtain all necessary consents or authorizations in accordance with Applicable Law, including Data Privacy Laws, to permit the upload of Data into the bioMérieux Solution and/or sharing of Data with bioMérieux;
- (e) remain responsible for the reliability, integrity, accuracy and quality of any Data uploaded into or accessed by the bioMérieux Solution;
- (f) configure the Customer IT Environment to enable the installation, configuration, or use of the bioMérieux Solution; and
- (g) where applicable, contract with third-party ISP, telecommunications, or other service providers to enable access or use of the bioMérieux Solution.

4.4 Restrictions. Customer shall not, directly or indirectly:

- (a) access and/or use the bioMérieux Solution beyond applicable Authorized Use Limitations;
- (b) assign, sell, lease, rent, license, sublicense, distribute, transfer, or otherwise make available its rights granted under the Agreement to third-parties;
- (c) use or access the bioMérieux Solution in any way that threatens the integrity, performance or availability of the bioMérieux Solution;
- (d) attempt to gain unauthorized or unlawful access to the bioMérieux Solution including engaging in any unauthorized activities for purposes of attempting to resolve defects or enhance features with such activities remaining within the exclusive purview of bioMérieux and its authorized representatives;
- (e) Download or upload Data from or into the bioMérieux Solution in violation of any Applicable Law or any legal or contractual duty owed to a third-party;
- (f) use the bioMérieux Solution to store or transmit malicious code, infringing or unlawful material, or material in violation of third-party rights;
- (g) remove, modify or obscure any Intellectual Property Rights notice or legend affixed to the bioMérieux Solution or Documentation;
- (h) reverse engineer the bioMérieux Solution or attempt to reconstruct underlying code or protectable algorithms in violation of Applicable Law; or
- (i) access, use, or copy any portion of the bioMérieux Solution or Documentation in violation of Applicable Law or to develop a competitive product or service.

4.5 Additional On-Prem Software Restrictions. Customer shall not, directly or indirectly:

- (a) copy, make available for copying, or reproduce On-Prem Software except (i) as may be required for installation; or (ii) to make a reasonable number of copies solely for backup purposes provided that any resulting copies shall include all Intellectual Property Rights notices contained in the original copy; or
- (b) modify or create derivative works of On-Prem Software.

4.6 Reservation of Rights. Except as expressly granted under this Agreement, no other Intellectual Property Rights are granted under this Agreement and are thus hereby expressly reserved by their respective owners.

5. BETA, EVALUATION, PILOT ACCESS

5.1 Access. From time to time bioMérieux may, in its sole discretion, grant Customer access to and use of the bioMérieux Solution or an enhancement thereof as part of a beta, evaluation, pilot, early access, or similar arrangement (“**Evaluation**”) subject to an additional or separate agreement (“**Evaluation Agreement**”).

5.2 Relationship with Evaluation Agreement. Notwithstanding any other provision to the contrary in these Terms and unless otherwise mutually agreed upon:

- (a) any grant of access to the bioMérieux Solution shall be limited to the period of time set forth in the Evaluation Agreement;
- (b) these Terms may be terminated by mutual written agreement, or as provided for in the Evaluation Agreement;
- (c) all payment, indemnification, warranty, liability and related obligations shall be governed exclusively by the Evaluation Agreement;
- (d) bioMérieux shall terminate Customer’s access to, and Customer shall cease use of, the bioMérieux Solution upon termination of the Evaluation Agreement;
- (e) bioMérieux may terminate the Evaluation Agreement if Customer materially breaches these Terms without incurring any additional obligation or penalties; and
- (f) the Evaluation Agreement shall prevail to the extent that there is a conflict between the Evaluation Agreement and these Terms.

6. THIRD-PARTY SOFTWARE, HOSTING



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6.1 Third-Party Software in On-Prem Software. On-Prem Software may incorporate software subject to third-party software licenses or terms and conditions, including open-source software licenses ("**Third-Party Licenses**"). Where applicable, information regarding Third Party Licenses or a list of third-party software shall be included in applicable Documentation. Customer shall be responsible for complying with applicable Third-Party Licenses. Where third-party software is not subject to a Third-Party License, applicable provisions of these Terms shall govern such software.

6.2 Third-Party Hosting for Cloud Services. Where applicable, bioMérieux may use the services of Cloud Service Providers to provide Cloud Services to Customers. bioMérieux shall pass through to Customer any applicable warranties and service level obligations from its Cloud Service Providers to the extent possible. As applicable, Customer agrees to comply with any acceptable use policies and other terms from the Cloud Service Provider as provided, or otherwise made available, to Customer from time to time.

7. ACCESS MANAGEMENT

7.1 Circumvention of Security. Customer shall not, and shall not permit a User to, circumvent or otherwise interfere with any user authentication or security control measure implemented on the bioMérieux Solution. Customer shall immediately notify bioMérieux of any attempted or actual compromise of authentication or security controls known to Customer.

7.2 Customer Responsibility. Customer shall remain responsible for access to or use of the bioMérieux Solution by Users as well as for the confidentiality and security of Access Credentials. Any access to the bioMérieux Solution through improper use or sharing of Access Credentials is prohibited. Customer shall be responsible for ensuring Users' compliance with applicable provisions of this Agreement and Documentation. Subject to this Agreement, and where applicable, bioMérieux grants to Customer a non-exclusive, revocable right to:

- (a) authorize or permit Users to access and use the bioMérieux Solution solely for Customer's internal business purposes pursuant to the rights and restrictions set out in Section 4 above; and
- (b) permit Customer's designated administrative Users to access administrative features or functions of the bioMérieux Solution, where available, in order to manage access or usage rights for Users.

7.3 Authorized Use Limitations. Customer shall remain liable to bioMérieux for any access or use of the bioMérieux Solution in excess of any applicable Authorized Use Limitations. Customer acknowledges and understands that bioMérieux shall, at its discretion, and either directly or indirectly through a Distributor impose additional fees in the event that Customer's use of the bioMérieux Solution exceeds applicable Authorized Use Limitations.

8. DATA

8.1 Personal Data. Customer acknowledges and agrees that:

- (a) bioMérieux shall not gain proprietary rights to Personal Data by virtue of this Agreement;
- (b) where applicable, Customer grants bioMérieux a worldwide, royalty-free, non-exclusive right to access, process, use and store Personal Data for purposes of enabling services offered or rendered to Customer in relation to the bioMérieux Solution and for the applicable duration defined in the Data Processing Addendum (US-Industry); and
- (c) bioMérieux shall access, host, and/or process Personal Data pursuant to applicable Data Processing Terms and Data Privacy Laws.

8.2 Non-Personal Data. Customer acknowledges and agrees that:

- (a) to the extent Customer retains proprietary rights to Non-Personal Data, Customer grants bioMérieux a worldwide, royalty-free, non-exclusive right to access, process, use and store such Data for purposes permissible under Applicable Law, including (i) to facilitate the provision of services in connection with the bioMérieux Solution, (ii) for research, development and continuous improvement of bioMérieux's products or services, (iii) to monitor the operation and performance of bioMérieux Instruments and reagents including for customer support, (iv) to generate and provide data and insights for surveillance, stewardship or epidemiological purposes, and (v) for bioMérieux's internal business and operational purposes;
- (b) bioMérieux may aggregate Non-Personal Data with Data collected from other sources for the purposes enumerated in Section 8.2(a); and
- (c) bioMérieux may disclose Non-Personal Data pursuant to Section 8.2(a) subject to confidentiality provisions of Section 15 where applicable.

8.3 Data Safeguards. Customer acknowledges and agrees to the following:

- (a) bioMérieux and its Cloud Service Providers shall use commercially reasonable efforts to implement and maintain applicable technical, physical, and organizational measures to secure the availability, protection, security, and confidentiality of Data hosted by the Cloud Service Providers ("**Cloud-Hosted Data**") from accidental loss or unauthorized access, use, alteration, or disclosure. However, there is no absolute guarantee that such measures will never be defeated. Thus, bioMérieux and its Cloud Service Providers shall periodically review their security measures to minimize risk to Cloud-Hosted Data; and
- (b) Customer shall use commercially reasonable efforts to implement and maintain all applicable technical, physical, and organizational measures to secure the availability, protection, security, and confidentiality of Data hosted within the Customer IT Environment or the Customer Premises ("**Customer-Hosted Data**") from accidental loss or unauthorized access, use, alteration, or disclosure.

8.4 Data Backups. Customer acknowledges and agrees that none of the bioMérieux Solutions are intended or designed to serve as backup repositories or redundant archives ("**Data Backups**") for Customer-Hosted Data. It is and shall remain Customer's sole responsibility to maintain Data Backups of all Customer-Hosted Data. Accordingly, bioMérieux shall have no obligation and shall incur no liability in connection with Data Backups for any Customer-Hosted Data.

8.5 Data Publication. Customer shall retain the right to publish summaries, conclusions, or other results derived from its use of the bioMérieux Solution; provided, however, that prior to any such publication, Customer shall provide bioMérieux with a copy of any article, abstract, manuscript, poster, presentation or other information intended for publication, at least thirty (30) days prior to submission for publication so that bioMérieux may review the proposed publication for the purposes of verifying (a) the correct usage of bioMérieux trademarks and service marks, (b) that bioMérieux's Confidential Information is not going to be disclosed, and (c) that the publication is not in violation of Applicable Law.

9. PROPRIETARY RIGHTS

9.1 bioMérieux Intellectual Property. bioMérieux and its licensors shall remain the owners of all Intellectual Property Rights to the bioMérieux Solution and Documentation. The Agreement only provides Customer a limited License to the On-Prem Software and/or limited access to the Cloud Solution. This Agreement does not constitute an agreement for the sale or purchase of software. Accordingly, no Intellectual Property Right to the bioMérieux Solution or Documentation shall be deemed to have been transferred from bioMérieux to Customer by virtue of this Agreement.



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9.2 Customer Intellectual Property. Subject to any other applicable provision in this Agreement, Customer shall remain the owner of any Intellectual Property Rights resulting from activities undertaken by Customer prior to its Acceptance of this Agreement and/or resulting from activities undertaken by Customer independent of and unrelated to this Agreement or the bioMérieux Solution.

9.3 Feedback. All ideas, suggestions, comments, and recommendations provided by Customer to bioMérieux regarding the functionality or performance of the bioMérieux Solution based on Customer's usage of the bioMérieux Solution including, without limitation, identification of potential errors and improvements ("Feedback") shall belong to bioMérieux upon receipt. bioMérieux may use the Feedback solely at its discretion. Customer shall not acquire or retain any proprietary interest in any improvement of any kind to a bioMérieux Solution, or to a new or different software solution, developed by bioMérieux in reliance or with the aid of on any Feedback.

10. PAYMENT

10.1 Fees. Customer shall pay the fees agreed upon in the agreed-upon Order Documentation ("Fees") in accordance with any applicable payment terms and conditions. Unless the agreed-upon Order Documentation or Applicable Laws specify otherwise, all Fees payable shall be non-refundable and not subject to offset. bioMérieux reserves the right to increase Fees upon reasonable prior written notice to Customer.

11. UPDATES, UPGRADES, USAGE AUDITS

11.1 Updates and Upgrades to On Prem Software. bioMérieux may, from time to time and at its sole discretion, develop updates to On Prem Software for purposes of remedying defects or improving functionality ("Updates") or upgrades to On Prem Software for purposes of implementing additional capabilities or enhancing features ("Upgrades"). This Agreement does not entitle Customer to Updates or Upgrades unless otherwise provided for in the applicable Additional Terms, pursuant to a separate agreement signed by the Parties, or as specifically set forth in applicable Documentation.

11.2 Usage Audits. Upon reasonable request from bioMérieux but no more frequently than annually, Customer shall permit bioMérieux to review Customer's deployment and use of the bioMérieux Solution for compliance with the provisions of this Agreement including, without limitation, any applicable Authorized Use Limitations ("Audit"). The Audit shall be at bioMérieux's expense and shall be scheduled at least ten (10) business days in advance during Customer's normal business hours without unreasonably interfering with Customer's business activities. If Customer's use of the bioMérieux Solution is found to be in excess of applicable Authorized Use Limitations, Customer shall be invoiced for the additional usage of the bioMérieux Solution with such invoiced Fees being immediately due and payable.

12. WARRANTIES, DISCLAIMERS

12.1 Mutual Warranties. bioMérieux and Customer each represents, warrants, and covenants that:

- (a) it has the full power and authority to agree to the Agreement and to perform its obligations hereunder; and
- (b) its acceptance of and performance of the Agreement shall not breach any oral or written agreement with or obligation in favor of a third party.

12.2 Disclaimers. THE BIOMÉRIEUX SOLUTION IS PROVIDED OR MADE AVAILABLE ON AN "AS-IS" BASIS. CUSTOMER'S USE OF THE BIOMÉRIEUX SOLUTION IS AT ITS OWN RISK. BIOMÉRIEUX DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPATIBILITY, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS (LATENT OR PATENT), AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. SUBJECT TO THE APPLICABLE THIRD-PARTY LICENSE, THIS WARRANTY DISCLAIMER SHALL APPLY TO THIRD-PARTY SOFTWARE INCORPORATED INTO THE BIOMÉRIEUX SOLUTION.

CUSTOMER ACCEPTS FULL RESPONSIBILITY FOR ANY AND ALL DECISIONS MADE BY CUSTOMER, AND ANY OF ITS USERS AS A RESULT OF THEIR USE OF THE BIOMÉRIEUX SOLUTION INCLUDING ANY DATA OR INFORMATION OBTAINED THROUGH THE USE OF THE BIOMÉRIEUX SOLUTION.

BIOMÉRIEUX DOES NOT ENDORSE OR VALIDATE ANY DATA OR MATERIAL UPLOADED TO THE BIOMÉRIEUX SOLUTION BY CUSTOMER OR CUSTOMIZED WITHIN THE BIOMÉRIEUX SOLUTION BY BIOMÉRIEUX AT THE DIRECTION OF CUSTOMER INCLUDING, BUT NOT LIMITED TO, ANY CUSTOMER POLICIES, PROCEDURES, PROTOCOLS, OR OTHER GUIDANCE, INSTRUCTIONS OR RESOURCES THAT MAY BE ACCESSED OR USED BY USERS OF THE SOLUTION. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ANY DATA OR MATERIAL PROVIDED OR UPLOADED BY CUSTOMER OR ANY USER.

13. INDEMNIFICATION

13.1 bioMérieux Indemnity. Subject to any limitations or restrictions imposed by Applicable Law or in other agreement between bioMérieux and Customer, bioMérieux shall indemnify, defend, and hold harmless Customer from and against third-party claims, demands, causes of action, or liability arising from a claim that Customer's use of the bioMérieux Solution infringes or misappropriates the Intellectual Property Rights of any third-party except to the extent such claim arises from:

- (a) Customer's use of the bioMérieux Solution in combination with software or hardware not provided, licensed or authorized by bioMérieux;
- (b) Customer's unauthorized modification or alteration of the bioMérieux Solution;
- (c) Customer's continued use of the bioMérieux Solution after being notified to discontinue use because of an actual or potential infringement claim;
- (d) Customer's failure to implement any release made available by bioMérieux to Customer to remedy a potential third-party infringement; or
- (e) Customer's violation of Applicable Law or this Agreement.

13.2 Customer Indemnity. Subject to any limitations or restrictions imposed by Applicable Law, Customer shall indemnify, defend, and hold harmless bioMérieux from and against third-party claims, demands, causes of action, or liability to the extent such claim arises from:

- (a) Customer's use of the bioMérieux Solution in violation of Applicable Law or the terms of this Agreement; or
- (b) Customer's use or sharing of Data in connection with the bioMérieux Solution in violation of legal obligations to third-parties.

14. LIABILITY

14.1 Limitation. UNLESS PROHIBITED OR LIMITED BY APPLICABLE LAW, BIOMÉRIEUX AND ITS LICENSORS AND VENDORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST OR ALTERED DATA, AS WELL AS FOR THE COSTS LINKED TO THE DATA RECOVERY, OR ANY DAMAGE FOR BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE, OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. UNLESS PROHIBITED OR LIMITED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY SHALL BE LIMITED TO THE ACTUAL FEES PAID OR PAYABLE BY



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CUSTOMER FOR THE USE OF THE BIOMÉRIEUX SOLUTION PURSUANT TO THE AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE DAMAGE. WHERE THE BIOMÉRIEUX SOLUTION AT ISSUE IS PROVIDED TO CUSTOMER ON A FULLY DISCOUNTED BASIS OR OTHERWISE WITHOUT CHARGE, THE TOTAL AGGREGATE LIABILITY SHALL BE LIMITED TO TEN THOUSAND (10,000) EUROS OR TO THE EQUIVALENT IN APPLICABLE CURRENCY. THE LIMITATIONS SET FORTH IN THIS SECTION 14.1 SHALL NOT APPLY WITH RESPECT TO DAMAGES ARISING FROM GROSS NEGLIGENCE OR FRAUD.

15. CONFIDENTIALITY

15.1 Obligation. Either party ("**Receiving Party**") hereby understands and acknowledges that the other party ("**Disclosing Party**") has disclosed or may disclose certain business, technical or financial information that is intended to be confidential ("**Confidential Information**"). The Receiving Party agrees (a) to take reasonable precautions similar to those that the Receiving Party would take to protect its own Confidential Information, and (b) not to use the Confidential Information (except pursuant to this Agreement) or divulge to any third party any such Confidential Information with the exception of its legal representatives, agents or counsel to the extent required for the performance of their duties and provided that they are subject to an obligation of confidentiality guaranteeing a level of protection at least equivalent to the provisions in this Section 15. The foregoing obligation shall remain in force throughout the Term of the Agreement and for five (5) years from the effective date of termination or expiration of the Agreement. This obligation shall not apply to information for which the Receiving Party can document (a) had become generally available to the public, (b) was in the Receiving Party's possession or known by it prior to receipt from Disclosing Party, (c) that was rightfully disclosed to Receiving Party without restriction by a third-party, or (d) that was independently developed without use of any Confidential Information of Disclosing Party.

15.2 Compelled Disclosure. The Receiving Party shall not be prevented from disclosing Confidential Information to the extent such Receiving Party is legally compelled to do so by any competent court or administrative authority; provided, however, that prior to disclosure, Receiving Party shall (a) assert the confidential nature of the Confidential Information to the court or administrative authority, (b) immediately notify Disclosing Party in writing of the disclosure order or request, and (c) cooperate fully with Disclosing Party in protecting against or limiting disclosure to the extent allowable under Applicable Law.

15.3 Injunctive Relief. To the extent permissible under Applicable Law, Customer and bioMérieux agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury and that, in the event of such breach, Disclosing Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other related relief, without bond and without the necessity of showing actual monetary damages.

16. TERMINATION

16.1 Termination for Cause. Either Party may terminate the Agreement upon written notice to the other party in the event the other party:

- (a) commits a material breach of any of the Agreement and does not remedy such breach within thirty (30) days after receiving a notice of breach. In no event shall termination relieve Customer of the obligation to pay any Fees due for the period prior to the effective date of the termination; or
- (b) files a petition for bankruptcy, has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days of filing. Such termination shall occur immediately upon notice unless limited or prohibited by Applicable Law.

16.2 Termination for Breach of Customer's Agreement with Distributor. As applicable, when bioMérieux is notified that Customer is in material breach of its obligations pursuant to an agreement between Customer and Distributor relating to the bioMérieux Solution, bioMérieux reserves the right to terminate these Terms at its discretion and without additional notice to Customer.

16.3 Effects of Termination. The following provisions shall apply upon the expiration or termination of the Agreement:

- (a) Customer's use of the bioMérieux Solution shall cease immediately without the need for additional notice;
- (b) Unless otherwise agreed upon, Fees or any other amounts owed or payable shall be immediately due and payable by Customer;
- (c) Where applicable, the Data Processing Addendum (US-Industry) shall govern the deletion of Personal Data; and
- (d) Where applicable, bioMérieux may retain Non-Personal Data for as long as is necessary after bioMérieux determines, in its sole discretion, that deletion would be technically infeasible or commercially unreasonable, or when retention is required in order for bioMérieux to comply with Applicable Law, to investigate violations of the Agreement, or to protect the integrity and security of its products, systems, or services.

16.4 Survival. The following Sections in these General Terms shall survive the termination or expiration of the Agreement: 8, 9, 10, 11.2, 12, 13, 14, 15 and 17. All other terms and provisions of this Agreement which by their nature are intended to survive termination or expiration of the Agreement, shall also so survive.

17. MISCELLANEOUS

17.1 Changes to these Terms. The versions of these General Terms, Additional Terms, and the Data Processing Addendum (US-Industry) applicable to the Order Documentation are the versions published at the [Terms and Conditions](#) page when the Order Documentation is executed. bioMérieux may revise these Terms from time to time to better reflect changes to Applicable Law, new regulatory requirements, or improvements or enhancements made to the applicable bioMérieux Solution. If bioMérieux revises these Terms, the revised Terms will be published at the [Terms and Conditions](#) page. The Terms, as revised, shall apply to Order Documentation executed or renewed as of the publication date of the revised Terms.

17.2 Relationship. No agency, partnership, joint venture, or employment is created as a result of the Agreement. Neither party has any authority whatsoever to bind the other party in any respect by virtue of the Agreement.

17.3 Subcontractors. Customer acknowledges and agrees that, subject to the applicable Data Processing Addendum (US-Industry), bioMérieux shall have the discretion to subcontract all or part of its obligations under this Agreement provided that bioMérieux shall be ultimately responsible for the fulfillment of any subcontracted activities under this Agreement.

17.4 Assignment, Third-Party Beneficiaries. Customer shall not assign its rights hereunder or delegate the performance of any of its duties or obligations under the Agreement to a third party, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without bioMérieux's prior consent. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties. There are no third-party beneficiaries to the Agreement, except that bioMérieux's licensors and vendors shall be third-party beneficiaries of bioMérieux's rights and Customer's obligations with respect to any use restrictions and limitations, confidentiality, limitations of liability, disclaimers, and indemnity provisions.

17.5 Waiver, Severability. No waiver will be implied from any conduct or failure by either party to enforce any rights provided for under this Agreement. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permitted by Applicable Law and the remainder of this Agreement will remain in full force.



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17.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the bioMérieux Solution and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.

17.7 Force Majeure. Except for Customer's payment obligations, neither party shall be liable to the other party or any third-party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, flood, natural disaster, earthquake, an act of terrorism, a war, a total or partial strike, an epidemic, pandemics, a total or partial interruption or blockade of telecommunications or electrical networks, or an act of computer piracy, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations.

17.8 Translations. bioMérieux may provide translated versions of these Terms in select countries. Unless bioMérieux is expressly obligated by Applicable Law to provide a translated version, Customer acknowledges that the translated version is provided to Customer at bioMérieux's sole discretion and shall be for informational purposes only. If there is a discrepancy or inconsistency between the English version and the translated version, the English version shall control unless Applicable Law provides otherwise.

17.9 Order of Precedence. If there is a conflict between these General Terms, the Additional Terms, Data Processing Addendum (US-Industry), Order Documentation, or Documentation referenced in these Terms, the order of precedence (from highest to lowest) shall be:

- (a) the Order Documentation;
- (b) the Data Processing Addendum (US-Industry);
- (c) the Additional Terms;
- (d) these General Terms; then
- (e) Documentation referenced in these General Terms or the Additional Terms.

17.10 Governing Law, Venue, Dispute Resolution. To the extent not prohibited or limited by Applicable Law, this Section shall apply to these Terms (with the exception of Data Processing Terms which shall be governed by applicable Data Privacy Laws) unless otherwise agreed upon by the Parties in writing.

- (a) To the extent that provisions relating to governing law, venue and/or dispute resolution are included in the Order Documentation, those provisions shall control.
- (b) In the absence of any governing law, venue and/or dispute resolution provisions in the Order Documentation, the governing law, venue and/or dispute resolution provisions included in the applicable terms and conditions or other agreement relating to the sale, purchase, lease, or placement of the related Instrument ("**Instrument Terms**") shall control.
- (c) In the absence of governing law and venue provisions in either the Order Documentation or the Instrument Terms, these Terms shall be governed by the laws of, and in the event of a dispute shall be subject to venue in, the jurisdiction where the bioMérieux entity identified in the Order Documentation has its principal place of business. If the entity identified in the Order Documentation is a Distributor, these Terms shall be governed by the laws of, and in the event of a dispute shall be subject to venue in, the jurisdiction where the bioMérieux entity that appointed the Distributor has its principal place of business.
- (d) Notwithstanding the foregoing, if Customer is a governmental entity pursuant to Applicable Law, these Terms (inclusive of the Data Processing Addendum (US-Industry)) shall be subject to the governing law, venue, and/or dispute resolution provisions provided for in Applicable Law. If Applicable Law is silent on governing law, venue, and dispute resolution, these Terms shall be governed by the laws of, and in the event of a dispute shall be subject to venue in, the jurisdiction where the governmental entity is located.