

# End User License Agreement

This is a legal agreement between you, the person or entity receiving software products, and Life Technologies Corporation, through its Invitrogen business unit, having offices at 5791 Van Allen Way, Carlsbad California 92008 USA ("Licensor"). This agreement is part of a package that includes one or more software products and certain electronic and/or written materials. This agreement covers your licensing of such software.

BY CLICKING YOUR ACCEPTANCE OF THIS END USER LICENSE AGREEMENT ("Agreement"), OR BY INSTALLING OR USING THE SOFTWARE (defined below) OR ANY OTHER COMPONENT OF THE PACKAGE, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM. If you do not agree to the terms of this Agreement, you may not install or use the Software, and may return it to Licensor. In addition to the restrictions imposed under this Agreement, the Software installation instructions or release notes shall apply to your use of the Software.

As used in this Agreement: "Authorized Users" means, collectively, the personnel authorized by you to use the Software for your benefit. Unless otherwise expressly allowed by this Agreement, Authorized Users may include only your employees and agents having a need to know, and Authorized Users may not be entities or persons in the business of licensing or otherwise providing products or services competitive with the Software. "Array" means any Licensor product which is a microarray. "Designated Site" means your facilities or offices located at the postal address provided to Licensor for your billing and invoicing purposes, unless otherwise indicated in a license key provided to you. "Software" means the software product(s) accompanying this Agreement and the content therein; including the associated user manuals, user documentation and application program interfaces, and license key(s) provided, and any patches, updates, upgrades, improvements, enhancements, fixes and revised versions of any of the foregoing that may be provided to you from time to time, and any combination of the foregoing. "affiliate" means any entity Controlling, Controlled by, or under common Control with the referenced entity, where the term "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

1. **TAX OBLIGATIONS; SHIPMENT.** If any authority imposes a duty, tax or similar amount (other than taxes based on Licensor's income), you agree to pay, or to promptly reimburse Licensor for, all such amounts. You are responsible for paying all shipping charges. All shipments by Licensor or its designee are FCA point of shipment (Incoterms 2000).

2. **ACCEPTANCE.** You will be deemed to have accepted the Software unless you provide written notice of rejection within ten (10) days after receipt of the Software or the applicable license key (whichever event occurs first). Any such notice must state the reason for rejection, and you may only reject the Software if it materially fails to comply with its accompanying documentation and user manual. If you reject the Software, Licensor's sole obligation and liability, and your sole and exclusive remedy, shall be for Licensor to use commercially reasonable efforts to deliver to you a replacement for the nonconforming Software, and if Licensor is not able to deliver a replacement for the Software, then the Agreement shall terminate.

3. **GRANT OF SOFTWARE LICENSE.** Subject to the terms and conditions of this Agreement, Licensor grants to you a non-exclusive, non-transferable license for Authorized Users to use the Software only to acquire and analyze data generated from an Array, and only for your internal operations and internal data processing purposes ("License"). You may install and operate the Software on a single designated computer located at the Designated Site. You may not network the Software for use at any other location at the Designated Site or any other site.

4. **RESTRICTIONS ON USE.** You acknowledge that you are receiving LICENSED RIGHTS only. The Software may only be used internally, by your Authorized Users, with the license key provided, for your copy(ies) of the Software. If any Software is provided on separate media (e.g., a CD-ROM), you may make a single copy solely for your internal backup purposes. You shall not directly or indirectly: (i) sell, rent, lease, distribute, redistribute or transfer any of the Software or any rights in any of the Software, including without limitation through "charge back" or any other selling, reselling, distributing or redistribution within your organization of any usage capacity you have licensed, without the prior express written approval of Licensor, (ii) modify, translate, reverse engineer (except to the limited extent permitted by law), decompile, disassemble, attempt to discover the source code for, create derivative works based on, or sublicense any of the Software, (iii) use any Software for the benefit of any third parties (e.g., in an ASP, outsourcing or service bureau relationship), or in any way other than in its intended manner, (iv) remove any proprietary notice, labels, or marks on or in Software, or (v) disable or circumvent any access control or related device, process or procedure established with respect to the Software, including the license key or any other part thereof. If the Software design permits modification, then you may only use such modifications or new software programs for your internal purposes and otherwise consistent with the License. You are responsible for all use of the Software and for compliance with this Agreement; any breach by you or any user of the Software shall be deemed to have been a breach by you. Licensor reserves all rights not expressly granted; no right or license is granted hereunder, express or implied or by way of estoppel, to any intellectual property rights other than as expressly set forth herein; and your receipt of a license to the Software does not by itself convey or imply the right to use the Software in combination with any other product(s). You agree and acknowledge that you have been provided sufficient information such that you do not need to reverse engineer the Software in any way to permit other products to interoperate with the Software.

5. **NO SEPARATION OF COMPONENTS.** The Software is licensed as a single product. Some Licensor software products combine separately available components into a single product (e.g., a software suite product may be comprised of multiple component products). When licensed as a combination product, the component parts may not be separated for use independently of the combination product. You must first purchase a license to each component of the combination product before you may use it independently of the combination product.

6. **TERM AND TERMINATION.** Unless otherwise agreed, the term of this Agreement shall continue until it is terminated. Licensor may terminate this Agreement (or any License) upon 15 days written notice if you breach this Agreement and do not cure the breach within 15 days following receipt of written notice of breach. Immediately upon any termination or expiration of this Agreement, you agree to: (a) pay all amounts owed to Licensor; (b) un-install and cease use of the Software for which your rights have been terminated; (c) upon request, return to Licensor (or destroy) all copies of the Software and any other Confidential Information or proprietary materials in your possession for which your rights have been terminated; and (d) upon request, certify in writing your compliance with (b) and (c), above.

7. **CONFIDENTIALITY.** You agree to protect Licensor's Confidential Information with the same degree of care used to protect your own confidential information (but in no event less than a reasonable standard of care), and not to use or disclose any portion of such Confidential Information to third parties, except as expressly authorized in this Agreement. You acknowledge that the Software, including its content, structure, organization and design constitute proprietary and valuable trade secrets (and other intellectual property rights) of Licensor and/or its licensors. The term "Confidential Information" means, collectively, non-public information that Licensor (and its licensors) provide and reasonably consider to be of a confidential, proprietary or trade secret nature, including but not limited to Software prices, and confidential elements of the Software and Licensor's (and its licensors') technology and know-how, whether in tangible or intangible form, whether designated as confidential or not, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing. Confidential Information does not include any information which you can demonstrate by credible evidence: (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through no fault of yours; (ii) was rightfully known to you prior to the time of its disclosure, or to have been independently developed by you without use of Confidential Information; and/or (iii) is subsequently learned from a third party not under a confidentiality obligation with respect to such Confidential Information. Confidential Information that is required to be disclosed by you pursuant to a duly authorized subpoena, court order, or government authority shall continue to be Confidential Information for all other purposes and you agree, prior to disclosing pursuant to a subpoena, court order, or government authority, to provide prompt written notice and assistance to Licensor prior to such disclosure, so that Licensor may seek a protective order or other appropriate remedy to protect against disclosure.

8. **WARRANTY AND DISCLAIMER.** Your use of the Software and its results is entirely at your own risk. Should the Software prove defective, you assume the entire cost of all service, repair or correction. The Software is made available to you "AS IS", AND LICENSOR MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SOFTWARE, AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED OR OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION. NO WARRANTY IS MADE THAT ANY SOFTWARE WILL OPERATE IN AN ERROR FREE, UNINTERRUPTED OR COMPLETELY SECURE MANNER, OR IN COMBINATION WITH THIRD PARTY HARDWARE OR SOFTWARE PRODUCTS. YOU ACKNOWLEDGE THAT LICENSOR HAS NO CONTROL OVER THE SPECIFIC CONDITIONS UNDER WHICH YOU USE THE SOFTWARE. ACCORDINGLY, EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, LICENSOR CANNOT AND DOES NOT WARRANT THE PERFORMANCE OF THE SOFTWARE OR ANY PARTICULAR RESULTS THAT MAY BE OBTAINED BY THE USE OF THE SOFTWARE. THE SOFTWARE DOES NOT REPLACE YOUR OBLIGATION TO EXERCISE YOUR INDEPENDENT JUDGMENT IN USING THE SOFTWARE. The warranty made by Licensor may be voided by abuse or misuse. Licensor has no obligation to provide any support, error corrections, updates, or any other services related to the Software.

9. **THIRD PARTY SOFTWARE AND DATABASES.** You understand that third party products integrated into the Software or provided for use with the Software may be subject to additional terms and conditions and/or license agreements from the applicable third party vendor, which shall govern over conflicting terms of this Agreement for purposes of your relationship with the third party vendor. You agree not to use any such third party product on a stand-alone basis independent of the Software, unless you have purchased the appropriate license from the third party vendor for use of such products. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ALL THIRD PARTY SOFTWARE, DATABASES AND OTHER PROGRAMS AND SOFTWARE COMPONENTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER FROM LICENSOR. ANY DATABASES OR OTHER INFORMATION PROVIDED BY LICENSOR ARE DESIGNED TO SUPPLEMENT OTHER SOURCES OF INFORMATION, ARE NOT INTENDED TO REPLACE YOUR PROFESSIONAL DISCRETION AND JUDGMENT AND LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUCH DATABASES OR INFORMATION, THEIR ACCURACY, COMPLETENESS OR OTHERWISE. Licensor agrees, upon request and as Licensor's sole liability and obligation, to have passed through to you (to the extent it may reasonably do so) any warranties and indemnifications provided by the applicable third party vendor of any third party products provided to you. To the extent any problem or liability arises from a third party product, you agree to seek recourse solely from the applicable third party vendor and not Licensor.

10. **INDEMNIFICATION BY YOU.** You agree to indemnify and defend Licensor, its licensors, and its affiliates, against any third party claims arising from or related to your use or misuse of the Software or any breach of the terms and conditions of this Agreement, and you agree to pay all costs, losses, damages, and attorneys' fees that a court finally awards, and all associated settlements.

11. **LIMITATION OF LIABILITY.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR'S OR ITS AFFILIATES' TOTAL, AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE (INCLUDING FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION, AND OTHER CONTRACT OR TORT CLAIMS), EXCEED THE AMOUNT OF YOUR DIRECT DAMAGES ACTUALLY INCURRED, UP TO THE AMOUNT OF FEES PAID TO LICENSOR UNDER THIS AGREEMENT FOR THE SOFTWARE PRODUCT THAT IS THE SUBJECT OF THE CLAIM UNDERLYING THE DAMAGES. Some jurisdictions do not allow the exclusion or limitation of liability for certain damages, so the above limitation may not apply to you to the extent prohibited by such local laws; if so, then Licensor's liability for damages hereunder shall not exceed an amount equal to the amounts paid by you hereunder, or one hundred dollars (\$100.00), whichever is less.

12. **EXCLUSION OF DAMAGES.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL LICENSOR, ITS AFFILIATES, OR ANY OF THEIR SUPPLIERS OR LICENSORS BE LIABLE HEREUNDER FOR ANY OF THE FOLLOWING: (I) THIRD PARTY CLAIMS, (II) LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA, AND/OR (III) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOST SAVINGS AND DAMAGE TO ANY DATA OR SYSTEMS); EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE ACCURACY AND ADEQUACY OF ANY OUTPUT FROM THE SOFTWARE, AND FOR ANY RELIANCE THEREON.

THE FEE FOR THE SOFTWARE, THE REMEDIES SET FORTH IN THIS AGREEMENT, THE LIMITS ON LIABILITY SET FORTH IN PARAGRAPHS 11 AND 12 AND THE OTHER PROVISIONS IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISKS BETWEEN THE PARTIES. THIS PARAGRAPH IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

13. **VERIFICATION.** Licensor shall have the right to have on-site audits periodically conducted of your use of the Software. These audits will generally be conducted during regular business hours, and Licensor will use its reasonable efforts not to interfere unduly with your regular business activities. Licensor may also require you to accurately complete a self-audit questionnaire in a form Licensor may have

provided. If an audit reveals unauthorized use, you must promptly order sufficient licenses to permit all usage disclosed. If material unlicensed use is found, you also shall reimburse Licensor for all costs incurred in connection with the verification, including without limitation reasonable attorneys' fees.

14. **LEGAL COMPLIANCE; RESTRICTED RIGHTS.** Software is provided solely for lawful purposes and use. You shall be solely responsible for, and agree to comply with, all applicable laws, statutes, ordinances, and other governmental authority, however designated. Without limiting the foregoing, this Agreement is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding export from the United States and re-export from other jurisdictions of equipment, computer hardware, software, technical data and information or derivatives of such equipment, hardware, software or technical data and information. You agree to comply with all applicable export and reexport control laws and regulations in regard to products (including computer hardware, software, deliverables, technical data, source code, or any other technology, equipment, and/or derivatives of such hardware, software, deliverables, technical data, source code, equipment, or any other technology) received from Licensor. You further certify that you will not, directly or indirectly, without obtaining prior authorization from the competent government authorities as required by those laws and regulations: (1) sell, export, reexport, transfer, divert, or disclose technical data or dispose of any product or technology received from Licensor to any prohibited person, entity, or destination; or (2) use the product or technology for any use prohibited by the laws or regulations of the United States. You will reasonably cooperate with Licensor and will provide to Licensor promptly upon request any certificates or documents as are reasonably requested to obtain approvals, consents, licenses and/or permits required for any payment or any export or import of products or services under this Agreement, at Licensor's expense. Your breach of this provision shall constitute cause for immediate termination of this Agreement. You agree to indemnify and hold harmless Licensor, its affiliates, and their respective officers, directors, employees and agents for your noncompliance with this Paragraph. Products acquired for use within or for any United States federal agency are provided with "LIMITED RIGHTS" and "RESTRICTED RIGHTS" as defined in DFARS 252.227-7013 and FAR 52.227-19.

15. **GOVERNING LAW; SEVERABILITY.** This Agreement shall be governed in all respects by the laws of the State of California, USA, without regard to its conflicts of law rules or principles. Any dispute arising out of or related to this Agreement shall be resolved only in the state or federal courts having subject matter jurisdiction in California. Each party hereby consents to the exclusive jurisdiction and venue of such courts. If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law; the remainder of this Agreement shall remain in full force and effect.

**GENERAL.** This Agreement is the parties' complete agreement regarding its subject matter, superseding any prior oral or written communications, representations or agreements. You understand and agree that, to the extent Licensor permits you to use a non-Licensor purchase order or other form to order Software, Licensor does so solely for your convenience. Any terms in any such forms that purport to vary or are in addition to or inconsistent with any terms in this Agreement shall be deemed to be void and of no effect. Amendments or changes to this Agreement must be in mutually executed writings to be effective. Paragraphs 4, and 6 through 16, inclusive, shall survive the termination or expiration of this Agreement. The parties are independent contractors for all purposes under this Agreement. Neither party shall be liable for any delay or failure due to force majeure and other causes beyond its reasonable control; provided that the foregoing shall not apply to any of your payment obligations. Any notices under this Agreement to Licensor must be personally delivered or sent by certified or registered mail, return receipt requested, or by nationally recognized overnight express courier, to the address specified herein or such other address as Licensor may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery. All such notices shall be sent to the attention of General Counsel of Life Technologies Corporation (unless otherwise specified by Licensor). You may not assign or otherwise transfer this Agreement or any License without Licensor's prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. You agree, at Licensor's request and reasonable expense, to provide reasonable assistance and cooperation to Licensor and its designees, and to give testimony and execute documents and to take such further acts reasonably requested by the other to acquire, transfer, maintain, perfect, and enforce Licensor's intellectual property rights as described in this Agreement. To the extent you fail to do so, you appoint Licensor's or its affiliates' officers as your attorney in fact to execute documents on your (and your personnel's), successors' and assigns' behalf for this limited purpose.



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