

**FEI COMPANY  
SCIENTIFIC WORKFLOWS APP  
TERMS OF USE**

**1. GENERAL**

These terms of use (“Terms”) are entered into by and between FEI Company, a Thermo Fisher Scientific business (“Company”), and you, the person accessing this application (the “Application”) and, if applicable, the organization or entity that has authorized you to access the Application for its benefit (in either case, “Customer”), and govern Customer’s access to and use of the Application.

PLEASE READ THESE TERMS CAREFULLY. IT IS IMPORTANT TO UNDERSTAND THAT THIS IS A LEGALLY BINDING AGREEMENT BETWEEN CUSTOMER AND COMPANY. BY ACCESSING OR USING THE APPLICATION, CUSTOMER CONFIRMS THAT (1) CUSTOMER HAS READ THESE TERMS, (2) IF CUSTOMER IS A NATURAL PERSON, CUSTOMER IS AT LEAST 18 YEARS OLD, (3) CUSTOMER ACCEPTS THESE TERMS, AND (4) CUSTOMER HAS READ, UNDERSTOOD AND ACCEPTED COMPANY’S PRIVACY POLICY (available at <http://www.thermofisher.com/us/en/home/global/privacy-policy.html?cid=fl-privacypolicy>) (“Privacy Policy”) AND COMPANY’S CONNECTED CARE PORTAL CLOUD TERMS OF USE (“Cloud Terms”) (available at <https://www.thermofisher.com/us/en/home/electron-microscopy/services/software-licenses.html>). THE PRIVACY POLICY AND THE CLOUD TERMS ARE MADE A PART OF THESE TERMS BY THIS REFERENCE. UNLESS OTHERWISE AGREED IN A SEPARATE SERVICE CONTRACT BETWEEN COMPANY AND CUSTOMER, CLICKING ON THE “I ACCEPT” BUTTON BELOW OR USING THE APPLICATION INDICATES THAT CUSTOMER CONFIRMS EACH OF 1-4 ABOVE, AND ACCEPTS AND INTENDS TO BE BOUND BY THESE TERMS, AND CONSENTS TO ENTER INTO THESE TERMS IN ELECTRONIC FORM. **IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER SHALL NOT ACCESS OR USE THE APPLICATION AND SHALL NOT CLICK “I ACCEPT”.**

*If Customer is located within the People’s Republic of China (including Hong Kong), then Customer is not authorized to use the Application under these terms and conditions: **DO NOT ACCESS OR USE THE APPLICATION AND DO NOT CLICK “I ACCEPT”.***

Company may modify these Terms from time to time and at any time, in which case Company will post a new version on Company’s website and will prompt Customer to review the revised terms. Clicking on the “I Accept” button, or otherwise accessing or using the Application, will indicate Customer’s acceptance and intent to be bound by the revised terms, and Customer’s consent to enter into said terms in electronic form. If Customer does not agree with the revised terms, Customer must immediately stop using the Application and must not click “I Accept”.

**2. BINDING ARBITRATION**

ANY CLAIM, DISPUTE OR CONTROVERSY OF WHATEVER NATURE BETWEEN CUSTOMER AND COMPANY ARISING OUT OF OR RELATING TO THESE TERMS OR THE APPLICATION WILL BE RESOLVED BY FINAL AND BINDING ARBITRATION IN ACCORDANCE WITH SECTION 15 BELOW, UNLESS OTHERWISE AGREED BY THE PARTIES IN WRITING. PLEASE READ SECTION 15 CAREFULLY.

**3. DATA AND PRIVACY**

A. Privacy. Company’s Privacy Policy explains how Company protects Customer’s privacy when Customer visits and uses Company’s website (“Site”) and uses the Application. Company’s Privacy Policy applies to Customer’s use of the Site and the Application, and its terms are made a part of these Terms by this reference. If there is a conflict between these Terms and the Privacy Policy, these Terms will control with respect to the Application. Also, by using the Application or the Site, Customer acknowledges and agrees that internet transmissions are never completely private or secure.

B. Prohibition of Personal Data. CUSTOMER MAY NOT SUBMIT ANY DATA RELATING TO PATIENTS, CLINICAL STUDIES, MEDICAL TREATMENT, PERSONALLY IDENTIFIABLE INFORMATION (except with respect to Customer’s contact information that Customer submits during the registration process or through your account settings), PERSONAL HEALTH INFORMATION, OR OTHER SENSITIVE PERSONAL DATA (as such terms may be defined below) (collectively “Personal Data”) IN CONNECTION WITH CUSTOMER’S USE OF THE APPLICATION. ANY PERSONAL DATA MUST BE DE-IDENTIFIED IN ACCORDANCE WITH STATE-OF-THE-ART REQUIREMENTS BEFORE BEING SUBMITTED TO THE APPLICATION.

1.     “Personally Identifiable Information” means any information that relates to an identified or identifiable individual and can be used to distinguish or trace an individual’s identity without investing significant efforts, time, cost and/or other resources (including, but not limited to, education, financial transactions, medical history, and criminal or employment history, name, social security number, date and place of birth, family names, biometric records, home address, home phone number, personal email address, financial information, fingerprint, photograph, information stored in social media networks and medical information).

2.     “Personal Health Information” has the meaning set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified and amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and includes but is not limited to genetic data by which an individual can be identified, medical history, health status and diagnoses.

3.     “Sensitive Personal Data” means Personally Identifiable Information, Personal Health Information, and other sensitive information about a person (e.g., racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or data concerning sex life).

C.     Customer will indemnify and hold Company and its affiliates, licensors and suppliers harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) that Company and its affiliates, licensors and suppliers may incur as a result of or arising from the receipt and handling of Personal Data.

D.     Acknowledgement. By clicking the “ACCEPT” button or otherwise accessing and using the Application, (1) Customer consents to the transfer of data Customer submits to the Application to countries that may have a lower standard of protection of such data than the standard of the country in which Customer is located, and (2) Customer consents to the transfer of such information by Company to Company’s third party service providers, and (3) you accept that these Terms PROHIBIT your use of Personal Information in connection with the Service, and (4) Customer agrees that Customer’s use of the Application is for NON-CLINICAL, NON-DIAGNOSTIC, NON-THERAPEUTIC USE (hereinafter, “RESEARCH USE”) ONLY.

**IF CUSTOMER DOES NOT ACCEPT THIS ACKNOWLEDGMENT, CUSTOMER SHALL NOT ACCESS OR USE THE APPLICATION AND SHALL NOT CLICK “I ACCEPT” ABOVE OR BELOW.**

E.     Processing Customer Data. Customer agrees that Customer will remain the controller of all data that Customer processes in connection with the Application (“Customer Data”), and that Company will only process Customer Data on Customer’s behalf in accordance with these Terms and the terms of Supplemental Support Services (as defined below). Company will use Customer Data only in accordance with these Terms and the Privacy Policy. Also, if Customer makes Customer Data publicly available, then notwithstanding provisions in these Terms or in the Privacy Policy that restrict Company’s use of Customer Data, Company may thereafter use Customer Data that is publicly disclosed in all manners permitted under applicable laws. Although Company will use commercially reasonable efforts to keep Customer Data generally available to Customer while Customer uses the Application, Company does not represent that Customer Data will be available to Customer at any given time, or will not be altered, lost or damaged, and Company recommends that Customer makes regular back-up copies of Customer Data independently of the Application, and that Customer not rely on the Application as the sole repository for Customer Data. If Customer removes Customer Data from the Application, Company may not be able to recover it. Customer acknowledges that, unless specified otherwise in the Privacy Policy Customer Data may be hosted anywhere in the world.

F.     License; Warranties. By submitting Customer Data to the Application, Customer represents and warrants to Company that (i) Customer has all necessary rights to do so, either because Customer is the author of Customer Data and has the right to distribute the same, or because Customer has the appropriate distribution rights, licenses, consents, and/or permissions to use, in writing, from any and all copyright or other owner(s) of Customer Data; (ii) all information that Customer provides to Company is accurate and truthful, (iii) Customer’s acceptance and performance of these Terms does not violate any applicable law or any contract or obligation to which Customer is bound, and (iv) Customer Data and its use do not infringe or misappropriate the intellectual property rights, including any copyrights, trademarks, trade secrets, right of privacy, or right of publicity, of any person. Customer hereby grants to Company and Company’s affiliates, suppliers, licensors and agents, a worldwide, royalty-free, fully-paid, non-exclusive, transferable, sublicensable license to copy, modify, publicly display and distribute Customer Data in furtherance of Company’s providing the Application as described in these Terms and as permitted in the Privacy Policy. This license ends when Customer Data is no longer stored within the Application.

#### 4. GRANT OF RIGHTS; ACCOUNTS

A. Limited License. Subject to these Terms, Company grants Customer a nonexclusive, non-sublicensable, limited time, non-transferable right to access and use the Application, and any associated or supporting content or data, hardware, user manuals or other documentation related to the Application (including without limitation associated sample files or programs, media, printed materials, patches, upgrades, utilities, tools, and/or “online” or electronic documentation) (“Associated Materials”) for Customer’s Research Use only and not for use in diagnostic or therapeutic procedures and, if Customer is an organization or entity, then Customer may use the Application and Associated Materials solely for Customer’s internal business purposes and solely by Customer’s authorized employees and agents.

B. Account and Login. To gain access to and use the Application, Customer must use its unique user ID and associated password (“Login Credentials”), and Customer shall not share its Login Credentials with anyone except Customer’s employees who use the Application for Customer’s benefit. Customer is solely and entirely responsible for maintaining the confidentiality of the information Customer holds for Customer’s account, including Customer’s Login Credentials, and for any and all activity that occurs under Customer’s account as a result of Customer failing to keep this information secure and confidential. If Customer’s account information changes, Customer must update Customer’s account promptly. Except with Company’s express prior written permission, Customer may not use the profile, username, or password of another Application user. If multiple accounts or sets of Login Credentials are registered or established by the same individual, Company may terminate such accounts or Login Credentials immediately at Company’s sole discretion. If Company has reason to believe that Customer account information is untrue, inaccurate, out-of-date or incomplete, Company may suspend or terminate Customer’s account at Company’s sole discretion.

C. Subscription Limitations. Customer’s use of the Application and/or Associated Materials is explicitly subject to Customer’s agreement to abide by any and all limitations, restrictions, and subscription levels/options associated with Customer’s account, which shall be explicitly set forth in the applicable Company order acknowledgement(s) issued pursuant to Customer’s purchase of the supplemental support services in connection with which this Application is provided (“Supplemental Support Services”) (such limitations including, but not limited to, limits on the number of user accounts and/or number of Company devices that may be registered by Customer and/or associated with Customer’s account) (collectively, the “Subscription Limitations”). Customer hereby agrees and acknowledges that Customer shall not at any time during Customer’s use of the Application and/or Associated Materials exceed or otherwise violate the Subscription Limitations corresponding to Customer’s account, as may be in effect at that time. Customer is solely and entirely responsible for ensuring that Customer’s use of the Application does not exceed or otherwise violate any Subscription Limitation. If Company has reason to believe that Customer’s use of the Application in any way fails to comply with this Section 4.C., or threatens to do so, Company may suspend or terminate Customer’s use of the Application at Company’s sole discretion.

#### 5. RESTRICTIONS

A. Regulatory. Customer may use the Application and Associated Materials for RESEARCH USE ONLY AND NOT IN DIAGNOSTIC OR THERAPEUTIC PROCEDURES. THE APPLICATION IS NOT FOR USE IN DIAGNOSTIC, THERAPEUTIC OR CLINICAL PROCEDURES OR APPLICATIONS. The Application has not received any governmental approval, clearance, or similar designation (“Approvals”), does not necessarily satisfy the requirements of any governmental body or other organization, and has not been validated for clinical or diagnostic use, for safety and effectiveness, or for any other specific use or application. Customer is solely responsible for compliance with any and all applicable laws, and regulations, and governmental policies that pertain to Customer’s use of the Application and Customer Data including, but not limited to, obtaining any necessary Approvals and conforming with any regional, territorial or other regulatory requirements, including but not limited to any submissions to or approvals required by applicable regulatory authorities, that pertain to Customer’s procedures and uses of the Application.

B. Restrictions. Customer shall not use or allow the use of the Application or Associated Materials: (i) for rental or in the operation of a service bureau, including without limitation, providing third party hosting, or third party application integration or application provider services; (ii) by persons not employed by or with Customer or the organization or entity on whose behalf you have accepted these Terms; (iii) as essential equipment in the operation of any nuclear facility, aircraft navigation or communication systems or air traffic control machines, or (iv) any other use in which failure of the Application could lead to death, personal injury or severe physical or environmental damage. Customer shall not modify, adapt, sublicense, translate, create a derivative work of, sell, reverse engineer, decompile, disassemble, or otherwise attempt to extract the source code of any portion of the Application.

C. Acceptable Use. Customer may not use the Application for illegal or unlawful or malicious activities, or for activities that Company deems improper for any reason whatsoever in Company’s sole judgment. Customer must use the Application in compliance with all applicable laws. Company may take preventative or corrective actions relating to Customer’s use of the Application to protect Company, Company’s affiliates, licensors, partners, suppliers and users. Customer’s use of the Application is

conditioned on Customer's compliance with the following rules of conduct. Customer shall not: (a) impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with any person or entity, or use or provide any fraudulent, misleading or inaccurate information; (b) defame, abuse, harass, stalk, intimidate, bully, threaten or otherwise violate the rights of others, including without limitation others' privacy rights or rights of publicity; (c) access or use (or attempt to access or use) another user's account without permission, or solicit another user's login information; (d) transmit any software or materials that contain any viruses, worms, trojan horses, defects, or other items of a destructive nature; (e) "frame" or "mirror" any portion of the Application; (f) use any robot, crawler, script, spider, site search/retrieval application or other manual or automatic device or process to access, attempt to access, retrieve, index, "data mine" or in any way reproduce or circumvent the navigational structure or presentation of, the Application; (g) harvest or collect information about or from other users of the Application (except as otherwise permitted herein); (h) use the Application for any illegal activity; (i) probe, scan or test the vulnerability of the Application, nor breach the security or authentication measures on the Application, monitor data or traffic on the Application, or take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Application, such as a denial of service attack, or otherwise disrupts, compromises, or interferes with the functioning of the Application or its security measures; (j) send or otherwise post unauthorized commercial communications (such as spam); (k) engage in unlawful activities; (l) post content that is hateful, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence; (m) facilitate or encourage any violations of this Section; (n) authorize, facilitate, induce, encourage, or otherwise permit any third party to do anything which, if done by you, would constitute a breach of any obligations set forth in this Section; or (o) violate the Amazon Web Services Acceptable Use Policy found at <http://aws.amazon.com/aup/>.

## 6. TERM AND TERMINATION

A. Term. The term during which Customer may use the Application is either (i) the term of the Supplemental Support Services, or (ii) for as long as Customer is permitted by Company to use the Application (such permission being at Company's sole discretion and revocable by Company at any time,) if Company provides the Application free of charge. At the expiration of such term, these Terms will terminate. If Customer's access to the Application is granted on a trial basis, Customer is hereby notified that license management software may be included to automatically cause the Application to cease functioning at the end of the trial period (and in any case Customer agrees to discontinue usage at the end of the trial period or at Company's written request).

B. Termination. Customer may terminate these Terms at any time by discontinuing use of the Application. Any noncompliance or threatened noncompliance by Customer with these Terms shall be deemed a material breach of these Terms, and Customer agrees that Company may, in addition to and without limiting any other available remedies for such breach, terminate Customer's access to the Application immediately upon such noncompliance or threatened noncompliance. Customer further agrees that Company may, in addition to and without limiting any other available remedies, terminate Customer's access to the Application immediately in the event of any breach or threatened breach by Customer of any other contractual obligations to Company relating in any way to Customer's purchase of or use of the Application or the Supplemental Support Services (including without limitation Company's terms and conditions of sale applicable to Customer's purchase and the terms of use governing Customer's use of Company's cloud platform) (such terms, the "Other Company Terms"). Subject to the terms of any applicable service contract, Company reserves the right to discontinue the Application and/or close Customer's account in Company's sole discretion upon at least ninety (90) days' notice to Customer, during which time Company will make available Customer Data, as it exists at that time, to Customer.

C. Effect of Termination. Upon termination of Customer's use of the Application or of these Terms, Customer must discontinue using the Application and Associated Materials. Upon discontinuation or termination of the Application, Customer will no longer have rights to access or use the Application or Customer Data, and except as may be required by law, Company will delete Customer Data or otherwise render it inaccessible. Sections 2, 3, 6.C., 9, 10, 11, 12, 13, 14, and 15, and any other provisions and terms that by their nature extend beyond termination, shall survive the termination or expiration of these Terms.

## 7. THIRD PARTY APPLICATIONS

The Application may also, from time to time, make Company or third party software applications available to Customer through use of the Application ("App(s)"). If Customer elects to download an App, then Customer will need to agree to separate terms and conditions governing Customer's use of the App. Apps are provided solely as a convenience to Customer. Third party Apps are not under Company's control, and Company is not responsible for and does not endorse the content or functions of third party Apps, and Customer must exercise independent judgment regarding Customer's interaction with all Apps. Customer should review all terms and policies governing Apps, including privacy and data gathering practices, and should make whatever investigation Customer believes necessary or appropriate before downloading or using any Apps.

## 8. FEES

If Customer has purchased Supplemental Support Services, then Customer must pay for the Supplemental Support Services in accordance with the terms of the Supplemental Support Services. If Customer does not make such payments when due then Company may, at Company's sole discretion and without limiting Company's other available remedies, suspend Customer's access to the Application until all overdue payments are received, or terminate these Terms and close Customer's account.

## 9. OWNERSHIP; NO TRANSFER OF THE APPLICATION

A. Ownership. Customer acknowledges that the Associated Materials and the Application (including its structure, sequence, organization, text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, artwork and computer code, including but not limited to the design, structure, "look and feel" and arrangement of the content of the Application), are owned, controlled or licensed by or to Company, are and remain the proprietary information of Company and Company's affiliates, suppliers and licensors, and are protected by intellectual property laws. Customer acknowledges that all intellectual property rights relating to the Application (other than Customer Data) and the Associated Materials are, as between Customer and Company, solely and exclusively owned by Company. All modifications, enhancements or changes to the Application and the Associated Materials are and shall remain the property of Company and Company's licensors and suppliers, without regard to the origin of such modifications, enhancements or changes. No ownership rights in the Application or Associated Materials are granted, and Company reserves all right, title and interest therein and thereto. Except as expressly set forth in Section 4.A. of these terms and conditions, use of the Application does not grant Customer a license to intellectual property or other rights of Company or its affiliates or licensors or any third parties, whether express, implied, by estoppel or otherwise, or grant Customer the right to make or have made any products, or to use the Application or Associated Materials beyond the scope of these Terms. Customer will not challenge the ownership or rights in and to the Application and the Associated Materials, including without limitation all copyrights and other proprietary rights. Nothing in these Terms limits Company's ability to enforce Company's intellectual property rights.

B. Feedback. If Customer has comments regarding the Site or Application or ideas on how to improve them ("Application Improvements and Feedback"), please note that by transmitting said Application Improvements and Feedback to Company, Customer also assigns, and hereby assigns, all right, title, and interest worldwide in the Application Improvements and Feedback to Company and agrees to assist Company, at Company's expense, in perfecting and enforcing Company's rights thereto and ownership thereof. Customer acknowledges and agrees that Company may use and incorporate the Application Improvements and Feedback into the Site and/or Application or for other business purposes without compensation and without restriction.

## 10. DISCLAIMERS

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE APPLICATION, ASSOCIATED MATERIALS AND ANY SUPPORT AND INFORMATION PROVIDED BY COMPANY IN CONNECTION WITH THE SITE AND APPLICATION, IS ALL PROVIDED "AS IS" AND ON AN "AS AVAILABLE BASIS" "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND.

TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY, ITS AFFILIATES, SERVICE PROVIDERS, AGENTS, PARTNERS AND LICENSORS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, 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 OR PROPRIETARY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION. NO WARRANTY IS MADE THAT THE SITE OR APPLICATION WILL: BE OPERABLE OR ACCESSIBLE; OPERATE IN AN ERROR FREE, BUG FREE, UNINTERRUPTED OR SECURE MANNER; OPERATE IN COMBINATION WITH THIRD PARTY HARDWARE OR SOFTWARE PRODUCTS; OR THAT COMPANY'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S INFORMATION OR DATA.

CUSTOMER ACKNOWLEDGES THAT COMPANY HAS NO CONTROL OVER THE SPECIFIC CONDITIONS UNDER WHICH CUSTOMER USES THE APPLICATION. COMPANY CANNOT AND DOES NOT WARRANT THE PERFORMANCE OF THE APPLICATION OR RESULTS THAT MAY BE OBTAINED BY THE USE OF THE APPLICATION. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM CUSTOMER'S USE OF THE APPLICATION. THE APPLICATION AND ANY SUPPORT OFFERED BY COMPANY DOES NOT REPLACE CUSTOMER'S OBLIGATION TO EXERCISE CUSTOMER'S INDEPENDENT JUDGMENT IN USING THE APPLICATION.

## 11. LIMITATIONS OF LIABILITY

A. Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR ITS AFFILIATES, SUPPLIERS OR LICENSORS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR UNDER ANY STATUTE (INCLUDING WITHOUT LIMITATION ANY TRADE PRACTICE, UNFAIR COMPETITION OR OTHER STATUTE OR REGULATION OF SIMILAR IMPORT) OR ON ANY OTHER BASIS FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO THE ASSOCIATED MATERIALS, LOSS OF USE, LOSS OF DATA, DOWNTIME, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

B. Damage Cap. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS AND CONDITIONS, THE ENTIRE LIABILITY OF COMPANY OR ITS AFFILIATES, AGENTS, LICENSORS OR SUPPLIERS UNDER THE AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY YOU FOR THE APPLICATION GIVING RISE TO SUCH LIABILITY DURING THE 3 MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION AROSE.

C. Acknowledgement. Customer agrees that the limitations of liability set forth in this Section 11 shall be effective despite any failure of consideration or of an exclusive remedy. Customer acknowledges that the fees for accessing the Application (if any) have been set and these Terms are accepted by Company in reliance upon these limitations of liability and that these limitations form an essential basis of the bargain between the parties

## 12. INDEMNITY

If a third party makes a claim against Company or its affiliates, agents, licensors or suppliers (as referred to in this Section 12, the “Indemnified Parties”) (i) resulting from, arising out of or otherwise relating to Customer’s willful misconduct, or (ii) infringement or misappropriation of intellectual property rights resulting from, arising out of, or otherwise relating to Customer’s use of the Application, or in connection with Customer’s data or information (including without limitation Customer Data), then Customer will indemnify and hold the Indemnified Parties harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees and other costs of defending and/or settling any action) that any Indemnified Party or Parties may suffer or incur as a result of the claim. Customer will defend such action, at Customer’s expense, if instructed by Company, and may not settle such action without Company’s prior written consent, such consent not to be unreasonably withheld.

## 13. US GOVERNMENT END USERS

The Application and Associated Materials are copyright protected Commercial Computer Software and Computer Software Documentation as those terms are defined in 48 C.F.R. 2.101. The Government shall obtain only those rights to the Application and Associated Materials as are authorized by 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-3, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Application and Associated Materials by the U.S. Government shall be governed solely by these Terms.

## 14. EXPORT RESTRICTIONS

A. U.S. Export Laws and Regulations. Customer acknowledges that this Application and any Company related products may be subject to export controls of the U.S. government. With regard to exports and re-exports, unless authorized by applicable laws and regulations, Customer represents and warrants that no product supplied by Company, or products, technology or services that Customer may be deemed to control as a distributor or reseller, shall be exported, re-exported, distributed or supplied to (i) any person or organization in Cuba, Iran, North Korea, Sudan, or Syria, or who is considered a part of the government of those countries, (ii) any person or organization who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (“CBW”) or missiles, or in terrorist activities, or (iii) any person or organization who is prohibited by the government of the United States, or of any other country, from receiving the subject product, technology or services, or from participating in transactions involving the subject product, technology or services. Both Customer and Company confirm they shall comply with all applicable laws and regulations including but not limited to the U.S. export laws and regulations. Customer acknowledges that the provision by Company of certain products (including without limitation components and spare parts therefore), technologies or services (including without limitation warranty services) and technology including technical information supplied by

Company or contained in documents (collectively, “Items”) may require Company to first obtain a license from (or otherwise secure the assent of) the U.S. government or other regulatory body. Customer agrees that any delay in the provision of, or failure to provide, any such products, technologies or services, occasioned by Company’s failure, or inability, to obtain any such license that Company believes it should obtain (or otherwise secure assent) timely (or ever) shall (i) not constitute a breach or default by Company of the agreement or any other express or implied obligations of Company to Customer and (ii) shall not give rise to any liability, or further obligation, of Company. Customer shall, if requested by Company, (i) promptly provide written information correctly identifying the end user and end use of any Items (including without limitation any such information as it may relate to a subsequent transfer of such Items by Customer) and (ii) cooperate fully with Company in any official or unofficial audit or inspection arising in respect of the Items under applicable export or import control laws or regulations. In the event that Customer resells or transfers Company’s product as a distributor or otherwise, Customer shall ensure that the end user to whom you resell or transfer the products agrees in writing to the provisions of this section and Customer covenants to use best efforts to enforce such provisions against the end user should it fail to comply. Customer’s failure to strictly comply with this clause shall be a material breach of this Agreement.

B. Non-U.S. Approvals. Customer shall obtain and maintain, at Customer’s own expense, any non-United States governmental consents, authorizations, approvals, filings, permits, or licenses required for Customer to export or import any Item and for each of Customer and Company to exercise its rights and to discharge its obligations under these Terms including, without limitation, all consents of and filings with any non-United States governmental body.

C. Indemnification. Customer agrees to indemnify and hold Company harmless from, or in connection with, any violation of the provisions of this Section 14 by Customer or Customer’s employees, contractors, consultants, agents, or clients.

## 15. ARBITRATION

A. Arbitration. Unless otherwise agreed in writing by the Parties, any claim or cause of action arising out of, related to or connected with these Terms or the Application that cannot be resolved through negotiation and settlement (a “Dispute”) may only be heard by an arbitrator pursuant to binding arbitration as described in this Section 15. Arbitration shall be conducted by and submitted to a single arbitrator (“Arbitrator”) selected from and administered by the Boston office of JAMS in accordance with its then-existing Comprehensive Arbitration Rules & Procedures, and Customer consents to this as the sole and exclusive venue and jurisdiction for resolving Disputes. The Arbitrator may award compensatory damages, but may not award non-economic damages, such as for emotional distress or pain and suffering, or punitive, indirect, incidental or consequential damages. Each party shall bear its own attorneys’ fees, cost and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the Arbitrator and JAMS; however, the Arbitrator may award to the prevailing party reimbursement of its reasonable attorneys’ fees and costs (including, for example, expert witness fees and travel expenses), and/or the fees and costs of the Arbitrator. Within fifteen (15) calendar days after conclusion of the arbitration, the Arbitrator shall issue a written award and a written statement of decision describing the material factual findings and conclusions on which the award is based, including the calculation of any damages awarded. Judgment on the award may be entered by any court of competent jurisdiction.

B. Restrictions. To the fullest extent permitted by applicable law, no arbitration under these Terms shall be joined to an arbitration involving any other party, whether through class action proceedings or otherwise. Also, regardless of any statute or law to the contrary, any Dispute must be filed within one (1) year after such claim or cause of action arose or be forever banned.

C. Acknowledgement. By agreeing to this binding arbitration provision, Customer understands that Customer is waiving certain rights and protections which may otherwise be available if a claim or dispute were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this Section 15, the right to a jury trial, certain rights of appeal, the right to bring a claim as a class member in any purported class or representative proceeding, and the right to invoke formal rules of procedure and evidence.

D. Injunctive Relief. Notwithstanding Section 15.A., if Customer infringes or threatens to infringe Company’s intellectual property rights, Company may seek injunctive or other appropriate relief in any court having jurisdiction, and Customer hereby waives all defenses of lack of personal jurisdiction and *forum non conveniens* with respect to jurisdiction and venue in such courts.

## 16. MISCELLANEOUS

These Terms shall be governed by the internal substantive laws of the Commonwealth of Massachusetts, without respect to any conflict of laws principles that would dictate a different body of law. The United Nations Convention on the International Sale of Goods is excluded from these Terms. If any provision of these Terms shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining

provisions. No waiver of any term or condition of these Terms shall be deemed a further or continuing waiver of such term or any other term, and Company's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. These Terms, the Other Company Terms, and the Privacy Policy collectively contain the entire agreement between Customer and Company with respect to the subject matter hereof and supersede all prior or other agreements between Customer and Company concerning this subject matter. These Terms shall prevail notwithstanding any different, conflicting, or additional terms or conditions which may appear in any purchase order, or other similar document, submitted by Customer, and such additional or inconsistent terms are deemed rejected by Company. In the event of a conflict between the Other Company Terms and these Terms, these Terms shall prevail. Unless otherwise expressly stated on a product provided hereunder or in the documentation accompanying such product, such product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. Customer agrees that all pricing, discounts and technical information that Company provides to Customer are the confidential and proprietary information of Company. Customer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Customer's internal purposes and in connection with the Application, Supplemental Support Services and related equipment. Nothing herein shall restrict the use of information available to the general public. Customer may not sublicense, assign or transfer Customer's rights to use the Application, in whole or in part, without Company's prior consent. Any attempted assignment or sublicense without such consent shall be void. Company may assign this Agreement (including Customer's user registration), without Customer's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Company's assets, or to an affiliate or partner, or in connection with a change in control. These Terms are binding upon the parties' successors and permitted assigns. All notices and consents made hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after sending by confirmed facsimile, or (iii) the first business day after sending by email. Notices to Company must be sent in writing to the following address, unless otherwise agreed in writing : FEI Company, 5350 NE Dawson Creek Drive, Hillsboro, Oregon 97124 Attn: Corporate Counsel, and notices to Customer will be sent to the latest email address Customer provide to Company.