

**LI-COR End-User Terms**  
**Last Updated: 6/30/2025**

**IMPORTANT:** PLEASE BE ADVISED THAT BY AGREEING TO THESE TERMS YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND WAIVING YOUR RIGHT TO HAVE A JURY TRIAL ON YOUR CLAIMS. THE ARBITRATION CLAUSE IN SECTION 11.4 BELOW REQUIRES YOU TO RESOLVE ALL DISPUTES WITH LI-COR ON AN INDIVIDUAL BASIS, THROUGH FINAL AND BINDING ARBITRATION. BY AGREEING TO THESE TERMS, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THEM AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

Please carefully read the following General Terms and Conditions (the “**Terms**”), which along with any applicable Order Form referencing these terms and any applicable supplemental terms (collectively, the “**Agreement**”) govern the entity accessing or using the Services (“**You**” or “**Customer**”) provided by LI-COR Inc. (“**LI-COR**”). LI-COR and Customer are hereinafter jointly referred to as the “**Parties**” or individually a “**Party**.”

BY EXECUTING AN ORDER FORM, OR BY ACCESSING OR USING THE SERVICES (AS DEFINED BELOW), YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY AND TO COMPLY WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (PERSONALLY AND ON BEHALF OF ANY LEGAL ENTITY THAT YOU REPRESENT WHEN USING THE SERVICES OR THAT YOU NAME AS THE USER WHEN YOU CREATE AN ACCOUNT). IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS AND/OR USE THE SERVICES.

## **1. Definitions**

“**Affiliate**” of a Party means: (a) any entity that such Party controls; (b) any entity that controls such Party; or (c) any entity under common control with such Party. To “control,” for purposes of this definition, means owning or otherwise controlling more than 50% of the voting interests of an entity.

“**API**” means the application programming interface for sending data to or receiving data from the Services and any software libraries made available to Customer for accessing the foregoing.

“**Authorized User**” means an employee, agent, representative, contractor or other individual affiliated with Customer who is authorized by Customer to access and use the Services on Customer’s behalf.

“**Customer Data**” means, other than Usage Information, all data, information, and other content, in any form or medium, submitted, posted, or otherwise transmitted by or on behalf of Authorized Users through the Services.

**"Documentation"** means the user manuals, specifications, and policies, as may be updated from time to time, that describe the functionality, features, operation, or use of the Services or API and that are made available by LI-COR to Customer.

**LI-COR Instrument"** means one or more data loggers, sensors or other instruments purchased by Customer from LI-COR or a LI-COR Affiliate that is synced or paired with the Services or otherwise used by the Customer to access the Services.

**"LI-COR Policies"** means LI-COR's standard privacy policy, and other policy and related information made available at [licor.com/corp/legal](http://licor.com/corp/legal), and any amendments thereto.

**"Instrument Data"** means all data, content and information uploaded or transmitted to, or otherwise received by, the Services.

**"Order Form"** means a LI-COR estimate, renewal notification, order confirmation, statement of work, invoice, e-commerce confirmation, order form, or similar agreement issued by LI-COR which specifies the Services to be provided by LI-COR subject to the terms of this Agreement. An Order Form may be in electronic or written form.

**"Services"** means LI-COR's cloud computing services, software-as-a-service application(s), online services, as well as any products [including installed software] supplied by LI-COR under the Agreement that are detailed in the applicable Order Form. References to the "Services" in this Agreement include the Documentation and any APIs.

**"Usage Information"** means any information, data, or other content (including statistical compilations and performance information) related to or derived from access to and use of the Services by Customer or Authorized Users thereof.

## **2. IP Ownership; Licenses & Delivery**

2.1. Reservation of Rights. LI-COR reserves all rights not expressly granted under the Agreement. Except for the limited rights and licenses expressly granted herein, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Services. Customer acknowledges that, as between the Parties, all intellectual property rights in the Services, including all modifications, derivative works, upgrades and updates thereto, are owned by LI-COR, its Affiliates, or its third-party services providers.

2.2. Use of the Services. Except with respect to installed software, which is licensed under Section 2.3 below, subject to the terms and conditions of this Agreement and Customer's compliance with applicable LI-COR Policies and any amendments thereto, LI-COR grants Customer and its Authorized User(s) a revocable, non-exclusive, non-sublicensable, non-transferable right to access, view, and use the Services solely for the

internal business operations of Customer and solely in conjunction with LI-COR Instruments.

2.3. **Installed Software License.** Subject to the terms and conditions of the Agreement and any applicable LI-COR Policies, to the extent you use or purchase a license or subscription to any LI-COR installed software, LI-COR grants Customer and its Authorized Users a non-exclusive, non-sublicensable, non-transferable right to install and use such installed software only for the internal business operations of Customer and solely in conjunction with LI-COR instruments. You may make necessary copies of such installed software solely for backup or archival purposes. Any instance of installed software: (i) remains the exclusive property of LI-COR; (ii) is subject to the terms and conditions of the Agreement; (iii) must include all copyright or other proprietary rights notices contained in the original. Customer may only use such installed software in the format provided.

2.4. **Feedback.** If Customer or any Authorized User provides LI-COR any feedback or suggestions regarding the Services, then Customer grants LI-COR an unlimited, irrevocable, perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to Customer or any Authorized User.

2.5. **Customer Data; Instrument Data; Analyses.**

(A). Customer grants to LI-COR and its Affiliates a worldwide, non-exclusive license and right to access, use, copy, store, host, distribute, display, transmit, and process Customer Data and Instrument Data, and provide necessary access to third party service providers acting on LI-COR's behalf, such as LI-COR's hosting services provider, in accordance with applicable law to: (a) to provide, maintain, and improve the Services; (b) to prevent or address service or technical problems. Customer represents and warrants that it has all necessary rights and appropriate consents related to Customer Data to allow LI-COR to perform the Services and enforce its rights. LI-COR may delete or disable Customer Data if required under applicable law, in which case LI-COR will use reasonable efforts to provide Customer with notice.

(B). Customer acknowledges and agrees that LI-COR may, during and after the Term, (i) compile statistical and other information related to the performance, operation, and use of the Services, and (ii) collect, use, and analyze information derived from Customer Data in aggregated and de-identified form (collectively "**Analyses**"), to create statistical analyses, to improve and enhance the Service, for research and development purposes in connection with the Services or any other LI-COR offerings and for any other legal use. LI-COR retains all right, title, and interest, including all intellectual property rights, in and to Analyses. Customer grants to LI-COR and its Affiliates a perpetual, worldwide, non-exclusive, sublicensable, transferable, fully paid up and royalty-free license to (i) access, store and retain (both during and after the Term) Instrument Data and (ii) use, reproduce, distribute and create derivative works of Instrument Data for any legal purpose, provided that such Instrument Data is not identifiable to or associated with Customer or any Authorized User.

(C). Subject to the limited licenses granted herein, LI-COR acquires no right, title or interest under this Agreement in or to any Customer Data or Instrument Data. *Customer retains all rights, title and interest in and to all Customer Data/Instrument Data*

2.6. **Third Party Providers.** The Services may include data and software from third parties. Some third-party providers require LI-COR to pass additional terms through to You. Third-party terms may change from time to time and new third-party providers may be added. To see the current third-party additional terms for the Services please click the following link [INSERT LINK]. Customer agrees to comply with all applicable third-party terms therein.

2.7. **API License.** Where the applicable Order Form provides for application programming interface(s) (“APIs”) to be provided to Customer and subject to Customer’s ongoing compliance with the terms of this Agreement and LI-COR Policies, LI-COR hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, internal use only license, during the period of time set forth on the applicable Order Form to use any API made available to Customer by LI-COR through the Services to submit to and obtain information from the Services in accordance with any associated Documentation. Customer acknowledges that LI-COR may set and enforce usage limits on any such API and Customer shall not circumvent, or attempt to circumvent, such limits.

2.8. **Delivery.** LI-COR will deliver the Services electronically, on tangible media, or by other means, in its sole discretion. When You download or access the Services, you are accepting it for use in accordance with the Agreement.

### 3. LI-COR Services

3.1. **Updates and Upgrades.** The terms of this Agreement will also apply to updates and upgrades of the Services subsequently provided by LI-COR to Customer. LI-COR may update the functionality, user interfaces, usability, and Documentation from time to time in its sole discretion as part of its ongoing mission to improve the Services. LI-COR reserves the right to charge for upgrades (release or versions that include new features or additional functionality) or any APIs for applicable Services. Any additional charges for selected upgrades or APIs will be set forth in a separate Order Form. LI-COR may subject certain features or functionality to metering or other usage restrictions to maintain responsive performance.

3.2. **Protection of Customer Data.** LI-COR will maintain commercially reasonable administrative, physical, and technical safeguards designed to prevent unauthorized access to or use of Customer Data. Before providing necessary access to Customer Data to a third-party service provider, LI-COR will require such third party to maintain commercially reasonable data practices for maintaining the confidentiality and security of Customer Data.

3.3. Compliance with Laws. LI-COR will comply with all laws applicable to LI-COR's provisioning of the Services to its customers generally (i.e., without regard to the specific nature of the Customer Data or Customer's particular use of the Services).

3.4. Text Message Services LI-COR may offer one or more mobile message programs (collectively, the "**Message Service**") that allows users to receive SMS/MMS mobile messages by opting-in such as through online or application-based enrollment forms.

(A). Consent to Receive Messages. Use of the Message Service is governed by the Agreement. By entering a mobile number in the Message Service, you authorize us to send recurring SMS/MMS messages at that number, and you represent that you are authorized to provide this consent.

(B). Automated Messaging Disclosure. Messages sent through the Message Service may include information related to your LI-COR Instrument and Instrument Data. Messages may be sent using an automatic telephone dialing system ("**ATDS**"), other automated dialing technology, or non-automated systems. Your consent to receive such messages is not required (directly or indirectly) as a condition of purchasing any property, goods or services. While some messages may be sent using an ATDS, LI-COR does not guarantee that all messages sent via the Message Service will be.

(C). Message Frequency and Charges. Message frequency varies. You are responsible for all charges and fees associated with mobile messaging imposed by your wireless carrier and you acknowledge that your carrier may charge you or deduct usage credit when you send or receive messages through the Message Service. Message and data rates may apply.

(D). Opting Out. To stop receiving messages, reply STOP, END, CANCEL, UNSUBSCRIBE, or QUIT to any mobile message you receive from the Message Service. You may receive a one-time message confirming your decision to opt out. You acknowledge that the foregoing commands are the only valid means of opting out of the Message Service. We are not responsible for unrecognized variations or other forms of opt-out requests (e.g., use of different spellings, the addition of other words or phrases to the command, or verbal requests). To the extent you subscribe to more than one Message Service program that we operate, you must unsubscribe from each program separately.

(E). Number Changes. We may change any short code or telephone number we use to operate the Message Service at any time with notice to you. You acknowledge that any messages, including any STOP or HELP requests, you send to a short code or telephone number we have changed may not be received and we are not responsible for honoring requests made in such messages.

(F). Carrier and Delivery Disclaimers. The Message Service may not be available on all carriers or devices. Delivery is subject to effective transmission by your wireless carrier, and LI-COR is not liable for any failed, delayed or undelivered messages.

(G). Disputes. Any disputes between You and LI-COR related to the Message Service will be governed by Section 10.4 (Arbitration).

#### 4. Access to and Use of the Services

4.1. Account Creation. Customer may be required to register a primary Authorized User who will be responsible for Customer's master administrator account and for creating Authorized User accounts using a third party single sign-on solution (e.g., OKTA), and LI-COR may use information received from such third party (e.g., email address and phone number) to register Customer and its Authorized Users for any such accounts. Authorized User accounts cannot be shared or used by more than one Authorized User.

4.2. Passwords. Customer access to certain Services is password protected. Customer is responsible for ensuring its Authorized Users maintain the confidentiality of its logins, passwords, and accounts and for all activities that occur.

4.3. Customer Responsibilities. Customer will: (a) obtain any permissions and consents required for Authorized Users to access Customer Data in connection with the Services; (b) be responsible for Authorized Users' compliance with this Agreement and LI-COR Policies; (c) be responsible for the accuracy, appropriateness, and legality of Customer Data; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and promptly notify LI-COR of any such unauthorized access or use; and (e) use the Services only in accordance with applicable laws and government regulations.

4.4. Usage Restrictions. Customer may not, unless expressly permitted by LI-COR in writing in each instance by e-mail sent to envsales@licor.com:

(A). use or provide the Services on a white-labeled/re-branded basis, or otherwise make the Services available to, or use the Services for the benefit of, anyone other than Customer and the Authorized Users;

(B). upload, post, transmit, or otherwise make available to the Services any content that (i) is unlawful or tortious, or (ii) Customer does not have a right to make available under any applicable law or under contractual or fiduciary relationships, or that infringes, misappropriates, or otherwise violates any intellectual property, privacy, publicity, or other proprietary rights of any person;

(C). sublicense, resell, time share, publish, decompile, decode or disassemble, remove any proprietary notices, translate or transfer or similarly exploit the Services [or any other LI-COR information or data], either in whole or in part or as a component of any other product, service, or material;

(D). upload, post, transmit, or otherwise make available any content or information designed to interrupt, interfere with, destroy or limit the functionality of the Services or any computer software or hardware or telecommunications equipment underlying the Services;

(E). reverse engineer, modify, adapt, or hack the Services, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks;

(F). access the Services to build a competitive product or service;

(G). alter, obscure or remove any patent, trademark, copyright or other proprietary or legal notice contained in the Services; or

(H). Without written consent from LI-COR, use any portion of the Services or any property of LI-COR's third-party providers to train any artificial intelligence ("AI") or

machine learning algorithms or software or create any derivative works, compilations or collective works or in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any personal, or that violates any applicable law.

Notwithstanding the foregoing, Customer may use limited extracts of content from the Services; provided that such extracts do not reach such quantity as to have commercial value and Customer does not use such extracts as a substitute for any Services and LI-COR and any third-party content provided, if applicable, is cited and credited as a source.

4.5. Audit Rights. During the Term and at any time during the 24 month period thereafter, LI-COR may audit Customer's use of the Service upon reasonable advance written notice through an independent auditor (selected by LI-COR in its sole discretion) to verify Customer's compliance with the terms of this Agreement. Customer shall maintain accurate records with respect to Customer's usage of the Service and agrees to provide such records to LI-COR within thirty (30) days following Customer's receipt of written request therefor. Customer shall make its applicable books and records available for inspection during normal business hours by LI-COR's independent auditor. If such audit uncovers unauthorized use, distribution, reproduction or other breach of the terms of this Agreement, without limiting any right or remedy available to LI-COR, Customer shall reimburse LI-COR, at LI-COR's request, for the reasonable cost of the audit. LI-COR may not conduct an audit more than once per year unless a prior audit uncovers a material breach by Customer.

## 5. Confidentiality

5.1. Definition. "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all copies thereof. Confidential Information of Customer includes Customer Data and Customer Personal Data (as defined in the DPA), and Confidential Information of LI-COR includes the Service (including its software and content, other than Customer Data) and the work product created from its performance of any Services, and Confidential Information of each Party includes the terms of this Agreement. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party.

5.2. Protection. The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no

event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's and its Affiliates' employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control.

5.3. Compelled Disclosure. The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the access or disclosure.

## 6. Representations, Warranties, and Disclaimers

6.1. Mutual Representations. Each Party represents that: (a) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (b) the execution, delivery, and performance of this Agreement are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

6.2. LI-COR Warranties. LI-COR warrants that: (a) the Service will perform materially in accordance with the applicable Documentation; (b) LI-COR will not materially decrease the functionality of the Services. If LI-COR breaches any of the foregoing warranties in this Section, Customer's exclusive remedy and LI-COR's entire liability will be the correction of the breach, or if LI-COR cannot substantially correct the breach within a commercially reasonable amount of time, Customer may terminate this Agreement.

6.3. Customer Warranty. Customer warrants that it has obtained and will maintain all rights, consents, and permissions necessary for Customer to make available the Customer Data to LI-COR for its use as contemplated herein.

6.4. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN SECTION 7.2, THE SERVICE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND LI-COR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. LI-COR DOES NOT WARRANT THAT

THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE IS NOT DESIGNED OR INTENDED FOR USE AND MAY NOT BE USED IN CONNECTION WITH HAZARDOUS OR HIGH-RISK ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, IN WHICH THE FAILURE OR MALFUNCTION OF THE SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR PROPERTY DAMAGE. SUCH USE IS AT CUSTOMER'S OWN RISK AND, WITHOUT LIMITING THE FOREGOING, LI-COR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.

## 7. Limitation of Liability.

7.1. Exclusion of Certain Damages. EXCEPT FOR A PARTY'S LIABILITY FOR ITS BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

7.2. Liability Cap. EXCEPT FOR CUSTOMER'S LIABILITY FOR ITS PAYMENT OBLIGATIONS UNDER SECTION 4, OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6, OR FOR ITS WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO LI-COR HEREUNDER IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE FIRST CLAIM GIVING RISE TO LIABILITY AROSE.

7.3. Scope. For the avoidance of doubt, the exclusions and limitations set forth in Section 9.1 and Section 9.2 will apply with respect to all legal theories of liability, whether in contract, tort, or otherwise. The Parties agree that the exclusions and limitations set forth in Section 9.1 and Section 9.2 allocate the risks between the Parties under this Agreement, and that they have relied on these exclusions and limitations in determining whether to enter into this Agreement.

## 8. Term, Termination, and Suspension

8.1. Term of the Agreement. The term of this Agreement commences on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue for the term specified in the Order Form (the "**Initial Term**") and any renewal term purchased from LI-COR by the Customer (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**"). Customer agrees that LI-COR may modify the fees for each Renewal Term by providing Customer with notice of such modification at least 30 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.

8.2. Termination for Cause. Either Party may terminate this Agreement effective after 30 days' written notice if the other Party materially breaches this Agreement and such breach is not cured within such 30-day period.

8.3. Suspension. LI-COR may suspend Customer's or any or all Authorized Users' access to the Service, in whole in part, if LI-COR reasonably suspects or has determined: (a) Customer or any Authorized User is using the Service in violation of this Agreement or any applicable law; (b) Customer's or any Authorized Users' systems or accounts have been compromised or unlawfully accessed; (c) suspension of the Service is necessary, in LI-COR's reasonable discretion, to protect the security of the Service or the infrastructure of LI-COR or its Affiliates; (d) suspension is required by applicable law; or (e) any fees owed by Customer (excluding amounts disputed in reasonable and good faith) are 90 days or more overdue, provided LI-COR has given Customer 30 or more days' prior notice.

8.4. Effects of Termination. In no event will any termination of this Agreement relieve Customer of its obligation to pay any fees payable to LI-COR for the period of time prior to the effective date of such termination. Upon any termination of this Agreement, Customer and all Authorized Users must immediately cease all use of the Service. For a period of 60 days following any termination of this Agreement, LI-COR will, upon Customer's request, provide Customer with the ability to export of all current Customer Data in the format agreed by the Parties. After such 60-day period, LI-COR will have no obligation to maintain or provide any Customer Data and LI-COR will, unless prohibited by applicable law, delete all Customer Data in its systems or otherwise in its possession or under its control in accordance with LI-COR's then-current data retention and deletion policies. Subject to this Section, upon any termination of this Agreement and the Disclosing Party's request, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control. Notwithstanding anything to the contrary, LI-COR may retain Instrument Data for use as permitted under Section 5.3.

8.5. Survival. The sections titled "Protection of Customer Data," "Fees," "Proprietary Rights," "Confidentiality," "Indemnification," "Limitation of Liability," "Termination for Cause," "Effects of Termination," "Survival," and "General Provisions" will survive any termination of this Agreement.

## 9. General Provisions

9.1. Force Majeure. Except for payment obligations, neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations due to events beyond the reasonable control of such Party, which may include but are not limited to natural disasters, fires, epidemics, pandemics, riots, war, terrorism, denial of service attacks, internet outages, labor shortages, and judicial or government action.

9.2. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this

Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without LI-COR's prior written consent. Any purported assignment, delegation or transfer in violation of this [Section 11.3] is void. LI-COR may assign this Agreement without Your consent to: (i) an Affiliate; (ii) an acquirer of LI-COR's equity, business or assets; or (iii) a successor by merger. This Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.

9.3. Arbitration. The Parties agree to resolve all disputes arising under or in connection with the Agreement through binding arbitration. A party who intends to seek arbitration must first send a written notice of the dispute to the other party. The parties will use good faith efforts to resolve the dispute directly, but if the parties do not reach an agreement to do so within 30 days after the notice is received, either party may commence an arbitration proceeding. The arbitration will be conducted in accordance with the applicable rules of the American Arbitration Association ("**AAA**"). The arbitration will be conducted in English in New York, NY, USA. If the parties do not agree on an arbitrator, the arbitrator will be selected in accordance with the applicable rules of the AAA for the appointment of an arbitrator. The selection of an arbitrator under the rules of the AAA will be final and binding on the parties. The arbitrator must be independent of the parties. The arbitrator's decision will be final and binding on both parties, and the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The costs and expenses of the arbitration will be shared equally by both parties; however, if the arbitrator finds that either the substance of the claim or the relief sought in arbitration is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. Notwithstanding the foregoing, this Section 11.4 will not prohibit either party from: (i) bringing an individual action in small claims court; (ii) seeking injunctive or other equitable relief in a court of competent jurisdiction; (iii) pursuing an enforcement action through the applicable federal, state, or local agency if that action is available; or (iv) filing suit in a court of law to address an intellectual property infringement or misappropriation claim. If this Section 11.4 is found to be unenforceable, the parties agree that the exclusive jurisdiction and venue described in Section 11.5 will govern any action arising out of or related to the Agreement.

9.4. Disputes.

(A). WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY FOR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION COUNTERCLAIMS REGARDING SUCH DISPUTES, CLAIMS RELATED TO THE PARTIES' NEGOTIATIONS AND INDUCEMENTS TO ENTER INTO THIS AGREEMENT, AND OTHER CHALLENGES TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. THE WAIVER IN THE PRECEDING SENTENCE APPLIES REGARDLESS OF THE TYPE OF DISPUTE, WHETHER PROCEEDING UNDER CLAIMS OF CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY".

(B). WAIVER OF CLASS ACTION. NEITHER PARTY SHALL BRING OR PARTICIPATE IN ANY CLASS ACTION OR OTHER REPRESENTATIVE PROCEEDING

ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER PROCEEDING UNDER CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY (COLLECTIVELY, "THIS AGREEMENT'S CLAIMS"). THIS AGREEMENT'S CLAIMS INCLUDE, WITHOUT LIMITATION, COUNTERCLAIMS, CLAIMS RELATED TO THE PARTIES' NEGOTIATIONS AND INDUCEMENTS TO ENTER INTO THIS AGREEMENT, AND OTHER CHALLENGES TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. THE PROCEEDINGS EXCLUDED ABOVE IN THIS SECTION INCLUDE, WITHOUT LIMITATION, CLASS-WIDE ARBITRATION AND PRIVATE ATTORNEY-GENERAL ACTIONS.

9.5. Governing Law; Venue. This Agreement, and any disputes arising out of or related hereto, shall be governed by and construed under the laws of the State of Nebraska without reference to conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Subject first to Section 11.4, if a lawsuit or court proceeding is permitted under the Agreement, the parties will be subject to the exclusive jurisdiction of the state and federal courts located in the County of Lancaster, Nebraska, and the parties hereby agree and consent to the exclusive jurisdiction and venue of such courts. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

9.6. Notices. LI-COR may give notice by means of a general notice on or through the Services, electronic mail to the email address associated with Your account, or text message to any phone number provided in connection with Your account, or by written communication sent by certified or registered mail to any address connected with Your account. You may give notice to LI-COR in writing to the address provided below or to the email address [\_\_\_\_@\_\_\_\_]. Such notice will be deemed to have been duly given: (a) upon receipt (if sent by certified or registered mail with return receipt requested; (b) the first business day after sending (if sent by email or text message); and (c) at the time of sending (if sent on or through the Services). Notices to LI-COR shall be sent to:

Contracts  
LI-COR, Inc.  
4647 Superior Street  
Lincoln, Nebraska 68504 USA

9.7. Relationship of the Parties; Third Party Beneficiaries. The Parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

9.8. Waiver. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.

9.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.

9.10. Entire Agreement. These End-User Terms and The Order Form compose the Entire Agreement. The Order Form identifies the Services, quantities, charges and other details of Customer's order. The applicable Order Form may also refer to and incorporate documents which may apply to the Services selected by Customer. Each Order Form, any applicable incorporated documents and these terms constitute the complete agreement and supersede any prior or contemporaneous discussions, agreements, representations or warranties regarding your order. Customer will ensure that Authorized Users comply with all applicable provisions of the Agreement.

9.11. Amendments.

(A). LI-COR may amend this Agreement from time to time by [posting an amended version at the website] and providing Customer with written notice thereof. Such amendment will become effective 30 days after such notice (unless Customer first terminates this Agreement pursuant to Section 9 (Term, Termination, and Suspension. Customer's continued use of the Service after such 30-day notice period will confirm Customer's consent to such amendment.

(B). Except as provided in Section 10.12(A), this Agreement may only be amended through a written agreement signed by authorized representatives of both Parties.