



Terms & Conditions

SOFTWARE AS A SERVICE TERMS

bioMérieux SA and/or its Affiliates (“bioMérieux”) is willing to grant access to the EPISEQ® Applications to you as the company, the legal entity or individual that will be utilizing EPISEQ® Applications (referenced below as “Customer”) on the condition that you accept all of these Software as a Service Terms (“Terms”) in full. Customer and bioMérieux may each also be referred to as a “Party” and together, the “Parties”.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE EPISEQ® PLATFORM AND APPLICATIONS. Customer agrees to be legally bound by this Agreement.

If there is any discrepancy or conflict between the Terms and the Order, the Order shall govern and control. The Order, which is hereby incorporated by reference, and the Terms (collectively, the “Agreement”) comprise the entire agreement between the Parties regarding the EPISEQ® Applications and the Service and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral, and shall not be supplemented or explained by any evidence of trade usage or course of dealing. All Customer terms and conditions on any Customer documentation or contract are hereby objected to and rejected and shall be of no force and effect or deemed to be binding on bioMérieux in whole or in part.

1. DEFINITIONS

For the purposes of this Agreement, the following words and terms written with an initial capital letter, will have the meaning assigned to them in this Section. Words in singular will include their plural and vice-versa. References to the words “include” or “including” are to be construed without limitation as to the generality of the preceding words. The definitions contained in this Section are in addition to those mentioned before, and to those which may be mentioned later in the agreement.

“**Affiliates**” means, with respect to any party to this Agreement, any entity that is controlling, is controlled by, or is under common control with that party, where “Control” shall mean the power to direct the management and policies of the relevant entity through the direct or indirect ownership of at least 50% of the voting securities, by contract or otherwise.

“**Agreement**” means all the provisions herein contained related to the access and use of the EPISEQ® Applications together with the Order if any.

“**Analysis**” means the process of performing the genomic characterization and a phylogenetic analysis of strains using the Service(s). “**Analyses**” shall be construed accordingly.

“**Available Analyses**” means the number of Analysis that that are available to Customer based on the selected the subscription plan.

“**EPISEQ® Applications**” means bioMérieux’s proprietary software, technology, tools, logic, reports, workflows, algorithms, predictive models, database schemes, database, analytics, hardware, and technology infrastructure supporting the Service and third-party software included with the EPISEQ® Applications but excluding any separately licensed Third Party Software (as defined herein), as ordered under the terms of this Agreement. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the EPISEQ® Applications that bioMérieux develops or deploys during the term of this Agreement together with all Documentation. bioMérieux may add to, modify, and/or reduce the number and scope of features offered by EPISEQ® Applications at any time.

“**Confidential Information**” shall mean any information and data disclosed by a Party (or a Party’s Affiliate) to the other (or to an Affiliate of the other Party) within the framework of the Agreement, regardless of whether or not such information has been expressly identified as confidential at the time of disclosure or thereafter. Confidential Information shall be deemed to include (without being limited to) information and data related to proprietary, developmental, technical, marketing, sales, operating, performance, cost, know-how, business and process information, as well as computer programming techniques and all record-bearing media containing or disclosing such information or techniques.

“**Data**” includes all the Customer’ information, files, or data uploaded to, provided to, stored on, created within, created as a result of the Analyses.

“**Documentation**” means any end user manuals or documentation, and on-line help files which contain bioMérieux’ specifications and Customer guide and that could be revised by bioMérieux from time to time. A Quick Start Guide can be found under following numbers in bioMérieux’ resource center on our website: <https://resourcecenter.biomerieux.com>:

- EPISEQ® CS: 051408
- EPISEQ® 16S: 058019
- EPISEQ® SARS-COV-2: 059043

Further information can be obtained via <https://www.biomerieux.com> website and in the on-line help accessible within the EPISEQ® platform: <https://episeq.biomerieux.com/apps/online-help/documentation/en/>

“**Effective Date**” means the date a Service is first made available to Customer, or as otherwise agreed-upon between bioMérieux and Customer.

“**Intellectual Property Rights**” or “**IPR**” shall mean those rights arising from the French Intellectual Property Code and any and all international and local Intellectual Property law and regulation, in particular (but not limited to) patents, trademarks, service marks, design, *sui generis* right for database makers and copyrights whether existing now or in the future.



“Last Available Analysis” means the last of the Analyses that are available to Customer based on the selected subscription plan.

“Order” means bioMérieux’s standard order form executed by both Parties that references this Agreement, or an order in another form that is executed by both Parties and references this Agreement.

“Results” means:

- For EPISEQ® CS: genotypic strain typing and genomic characterization results obtained from the Data as defined in Article 8 of the Agreement.
- For EPISEQ® 16S: the microbial community characterization and statistical interpretation results obtained from the Data as defined in Article 8 of the Agreement
- For EPISEQ® SARS-COV-2: the variant identification and viral genome mutations results obtained from the Data as defined in Article 8 of the Agreement

“Sample(s)” means: the biological sample belonging to Customer and the genomic sequence thereof which is processed by the EPISEQ® Applications.

“Service(s)” means the EPISEQ® set of Applications in a hosted environment provided and maintained by bioMérieux (or appointed third party) to which Customer is being granted access under this Agreement in accordance with the terms and conditions set forth in the Agreement. In no event shall Customer use the Service for diagnostic or otherwise in connection with diagnostic purposes.

“Site(s)” means the authorized location(s) where the Service are provided as identified in the Order.

“Term” means the duration of Customer’s right to receive, access, and use the Service set forth in the Order or in the frame of a Free Trial subscription.

“Upload” means the act of directly uploading sequencing data to the pertinent EPISEQ® Application via .fastq or assembled .fasta files. **“Uploads”** shall be construed accordingly.

“Third Party Licenses” means the specific manuals and/or licenses of use linked to the Third Party Software.

“Third Party Software” means third party software included or required to be used with the EPISEQ® Applications.

2. PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to define the terms and conditions whereby bioMérieux will provide Customer with the Service in consideration for payment of the applicable fees set forth in Article 6 herein. The Agreement also sets forth the conditions under which the Parties will govern and manage their business relationship.

3. USE OF THE SERVICE

3.1 As of the Effective Date, in consideration for Customer’s ongoing payment of the fees in accordance with Article 6, bioMérieux shall make available to Customer, on a non-exclusive, non-assignable, non-transferable and revocable basis, the Service, at the Site, for Customer’s own internal business operations, only and for the Term.

3.2 Any use of the Service not expressly permitted by this Agreement is prohibited. Without limiting the foregoing, Customer shall not:

- reverse assemble, reverse compile, reverse engineer or otherwise attempt to derive the object or source code of the EPISEQ® Applications, or otherwise attempt to access or use the EPISEQ® Applications other than through the Service;
- copy, modify, enhance or create derivative works of any part or feature of the Service or the EPISEQ® Applications; or
- interfere or disrupt the integrity or performance of the Service or third party data contained therein, or attempt to gain, or allow others to gain unauthorised access to the Service or related systems or networks.

3.3 The terms and conditions for the use of the Third Party Software are governed by (i) the present general conditions of use and/or, where applicable, (ii) the Third Party Licenses made available at the following link: https://episeq.biomerieux.com/help/topics/boilerplate/r_third_party_and_open_source_software.html?hl=third. In any case, Customer remains exclusively responsible for the use of the Third Party Software, in compliance with the Agreement and/or, where applicable, the Third Party Licenses which may prevail over the terms of this Agreement, including, without limitation, any provisions governing access to source code, modification, or reverse engineering.

3.4 The Service, including portions and information or materials thereof, may not be used for any purpose that would be a violation of this Agreement. All rights not addressed herein are specifically reserved by bioMérieux.

3.5 When using EPISEQ® CS, EPISEQ® 16S or EPISEQ® SARS-COV-2 Application, Customer expressly agrees that each EPISEQ Application is not intended to be used for patient care purposes, nor for use in diagnosing or treating patients. Customer shall assume the sole risk and liability for using one of those EPISEQ® Applications for any purpose other than to carry out research.

4. CUSTOMER OBLIGATIONS

The Customer shall, at all times during the Term be responsible for:

- providing bioMérieux with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by bioMérieux, so that bioMérieux can provide the Service;
- ensuring the accuracy, quality, integrity, and legality of Data, and the means by which Customer acquires the Data;
- ensuring that the Service is used only in accordance with the Documentation and in compliance with all applicable laws and regulations;
- choosing the network accessibility provider, notably in terms of security options,



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- implementing the bioMérieux' recommended minimum technical specifications as defined in the EPISEQ® Application Quick Start Guide;
- ensuring the confidentiality and the custody of the ID communicated by bioMérieux and the Results obtained and any direct or indirect consequences thereof;
- making qualified personnel available to use the Service;
- using all reasonable efforts to prevent unauthorized access to or use of the EPISEQ® platform, the Service and/or the Documentation and notifying bioMérieux promptly of any unauthorized access or use thereof;
- permitting bioMérieux, on giving at least 15 days prior notice, to audit the Service (including Customer's physical facilities and applicable books, records and systems) in order to establish whether the Service are being used in accordance with this Agreement.

5. ACCESS TO SERVICE

- 5.1** bioMérieux shall make a single instance of the EPISEQ® Platform and Applications available to Customer via the Service, in accordance with this Agreement.
- 5.2** Customer acknowledges that bioMérieux has sole discretion as to the configuration of the Service.
- 5.3** Provided that this Agreement remains in effect and Customer is not in breach of its obligations hereunder, releases and versions will be made available by bioMérieux to Customer as part of the Service, subject to the terms and conditions of this Agreement. All rights, title and interest in and to all releases and versions shall remain with bioMérieux irrespective of whether any enhancement, modification or correction in such release or version is or has been suggested or requested by Customer.

6. PRICES AND PAYMENT TERMS

- 6.1** Customer shall pay bioMérieux the subscription fees set forth in the Order. If Customer is required to withhold any tax on the fees, Customer shall gross up its payment so that bioMérieux receives the full amount of fees. All payments to be made by Customer under this Agreement shall be made free of any deduction, set-off or counter claim.
- 6.2** In event of late payment, bioMérieux reserves the right to assess a penalty calculated from the day following the due date of payment stated in the Order. Interest shall be claimed based on the sum of the interest rate specified in the Order or as prescribed by local law.
- 6.3** In the event that Customer's payment is more than thirty (30) days overdue, bioMérieux shall have the right, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Customer's use of the Service, without further notice to Customer, until Customer has paid the full balance owed, plus any interest due.

7. SECURITY OF THE SERVICE

- 7.1** Customer acknowledges that the Service must be accessed using unique user login identifications and passwords, and agrees that it has sole responsibility for the creation of such unique identifiers and for maintaining the confidentiality and security of the passwords used to access the Service. bioMérieux shall have no liability to Customer or any third party's unauthorized access to the Service resulting from a failure of Customer to maintain the confidentiality and security of their passwords.
- 7.2** Customer acknowledges that the EPISEQ® Platform and Applications are not security software products and do not offer protection against the transmission of viruses, hacking or other attempts to gain unauthorized access to the Customer's network. Customer will not access, store, distribute or transmit any viruses, and bioMérieux may, without liability to Customer, disable Customer's access to the Service if Customer is in breach of this clause or in the event of an attack emanating from the Customer's connection point.

8. USE OF THE RESULTS AND DATA

- 8.1** All right, title and interest in and to Data is held exclusively by Customer, and Customer has sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.
- 8.2** Information provided to the applications whatever the format is, could be a short text, a file or even a file name shall not content information that could be used to identify a patient such as person name or identifier.
- 8.3** Each Party will take reasonable technical and organizational measures to help protect against unauthorized or unlawful processing of the Data or its accidental loss, destruction or damage.
- 8.4** bioMérieux represents, covenants, and warrants that bioMérieux will use Data only in compliance with this Agreement, and all applicable laws at the time of execution of the Agreement.
- 8.5** bioMérieux will not retain the Data for any period longer than necessary for bioMérieux to fulfil its obligations under this Agreement. As soon as bioMérieux no longer needs to retain such Data, bioMérieux will promptly destroy or erase all such Data.

EPISEQ® CS Application will store all Data up until 3 years after the end of the Term;

EPISEQ® 16S Application will store all Results during 365 days after each Analysis. After this date, all Data and Results will no longer be accessible. ;

EPISEQ® SARS-COV-2 will store the Results during 1 month after each Analysis.



- 8.6 The Customer expressly consents to the use by bioMérieux of some data derived from the Samples and the Data and Results to the exclusive purpose of designing, supporting and improving the products and solutions of bioMérieux and its Affiliates and of improving the Service's offer to the Customer, unless otherwise expressly mentioned in writing by the Customer.

9. PROCESSING OF PERSONAL DATA

9.1 Customer's personal data: Customer accepts that name and professional contact details (postal address, professional email address and professional mobile phone number and fixed line, job title) of individuals issued from its resources (Customer's Personal Data) are used by bioMérieux and its Affiliates, in conformity with the provisions of local personal data laws and regulations, in particular those in force in the European Union (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, General Data Protection Regulation, "GDPR") ("Applicable Personal Data Laws"). The terms, "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Processing" shall have the same meaning the GDPR, and their cognate terms shall be construed accordingly. Such Customer's Personal Data is for the exclusive use of bioMérieux, its Affiliates and its data processors in the in vitro devices context and purpose, in order to better address Customer's requirements and questions. In accordance with applicable laws and regulations, individuals ("Data Subjects") from Customer (i) have the right to access, object, modify, rectify, request copy of, transmit to another controller, their personal data, as well as (ii) the right to be forgotten. For these purposes, individuals ("Data Subjects") from Customer can contact bioMérieux's global Data Protection Officer (privacyofficer@biomerieux.com).

9.2 Patient data of Customer: Within the framework of the Service and Services Request issued by Customer provided by bioMérieux in relation with EPISEQ® Applications, Customer, as data controller, authorizes and grants access to bioMérieux and its Affiliates to Customer's patient pseudonymized personal data ("Customer's Patient Data") for the performance of the Service and/or Services Request issued by Customer. According to Applicable Personal Data Laws and after reception of written documented instructions from Customer, bioMérieux shall only process such Customer's Patient Data in accordance with the documented instructions of the Customer on behalf the Customer solely as necessary for the performance of the Service and/or Services Request issued by the Customer under this Agreement. bioMérieux undertakes to set up, from the beginning of the processing, appropriate devices and safety procedures, so as to guarantee the availability, the integrity and the confidentiality of Customer's Patient Data. Customer consents and gives the authorization to bioMérieux that the Customer's Personal Data and Customer's Patient Data may be accessed by and transfer to Affiliates of bioMérieux and bioMérieux Sub-processors as mentioned in paragraph 9.3) below, in compliance with the present Agreement, including those located outside of the European Union ("EU") (and/or of Iceland, Liechtenstein and Norway, which are part of the European Economic Area "EEA"), however solely subject to the following conditions (i) access to Customer's Patient Data and Customer Personal Data shall only be granted by Customer to bioMérieux, its Affiliates and its Sub-processor for the strict purposes of the present Agreement; (ii) the concerned Customer's Patient Data and Customer Personal Data shall be strictly limited to what is necessary for bioMérieux, its Affiliates and its Sub-processors to perform under the present Agreement. If the Affiliates and/or bioMérieux Sub-processors is/are located outside the EU (and/or of Iceland, Liechtenstein and Norway, which are part of the EEA), the access to the Customer's Patient Data and Customer's Personal Data will only be granted to such Affiliates and/or Sub-processors for which the recipient country shall (i) offer an adequate level of protection within the meaning of GDPR, or (ii) shall sign the standard contractual clauses of the European Commission ("SCC") which may not be amended in any way. bioMérieux will comply with all processor obligations set forth in the Controller to Processor SCC used as the basis of transfer of GDPR subject Customer's Personal Data and Customer's Patient Data outside the EU, EEA. In the event that any of the transfer mechanisms set forth above is declared invalid by a Court or other body of competent jurisdiction, the Customer and bioMérieux agree that they shall undertake all necessary steps in order to put in place an alternative transfer mechanism acceptable under Applicable Laws. bioMérieux undertakes to take into account, with regard to its tools, products, applications or services, the principles of data protection by design and of data protection by default.

10.3 Personal data processors of bioMérieux for Customer's Personal Data and Customer's Patient Data

Customer as data controller, shall agree that bioMérieux shall continue to use Sub-processors (including Affiliates of bioMérieux) already engaged by bioMérieux or its Affiliates for the processing or hosting of Customer's Personal Data or Customer's Patient Data for the performance of the Service and Services Request issued by Customer, listed on bioMérieux website to the following link:

https://www.biomerieux.com/sites/corporate/files/biomerieux_services_subprocessor_list.pdf. If bioMérieux elects to subcontract all or part of the processing or of the hosting of Customer's Personal Data or Customer's Patient Data the purpose of this Agreement, Customer shall authorize bioMérieux to engage any other processor ("Sub-processor") without prior specific written authorization from Customer, except the obligation for bioMérieux to inform the Customer of any intended changes concerning the addition or replacement of other Sub-processors. The Customer acknowledges and agrees that the method by which bioMérieux will inform Customer of its Sub-processors, and updates thereto, will be via the list of Sub-processors available to the following link:

https://www.biomerieux.com/sites/corporate/files/biomerieux_services_subprocessor_list.pdf. This Sub-processors' list is updated and Customer may subscribe by filling in an electronic address to receive email notifications for updates of the Sub-processor list of via the link on the website: <https://www.biomerieux.com/en/data-processors-list>. The Customer, as data controller, has the opportunity to reasonable object to such changes (on reasonable grounds) in accordance with article 28(2) of the GDPR by sending an email to the bioMérieux' global Data Protection Officer



(privacyofficer@biomerieux.com). bioMérieux shall ensure that the aforementioned Sub-processors have entered into confidentiality agreements and limit the use of, and access the Confidential Information to bioMérieux's employees and Sub-processors who need to know such Confidential Information and who are subject to obligations of confidentiality which are no less onerous than those which are set forth in this Agreement. bioMérieux undertakes to only hire Sub-processors with a written contract between it and the Sub-processor containing clauses equivalent in all material respects to those imposed on it in this article 9 and meet the requirements of article 28(3) of the GDPR.

bioMérieux shall take appropriate technical and organizational measures to ensure the security when processing or hosting services that are required to comply with the data security obligations under the GDPR. bioMérieux as data processor, shall assist Customer as data controller, in providing data subjects access to their personal data, and allowing Data Subjects to exercise their personal rights in accordance with the Applicable Personal Data Laws. bioMérieux as data processor, shall assist Customer as data controller, in meeting its own obligations in relation to the security of processing, and data protection impact assessment, if any. bioMérieux shall notify the Customer without undue delay after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer's Personal Data and Customer's Patient Data transmitted, stored or otherwise processed ("Personal Data Breach"), and provide the Customer with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such Personal Data Breach.

bioMérieux shall, upon request of the Customer as data controller, delete or return to Customer all Customer's Personal Data and Customer's Patient Data unless applicable law requires otherwise. bioMérieux shall allow for and assist Customer with audits or inspections conducting by a data protection authority as required. bioMérieux shall oblige any Sub-processor to immediately notify bioMérieux' global Data Protection Officer (privacyofficer@biomerieux.com) if (i) a Personal Data Breach occurs, (ii) if it is asked by Customer or any other persons to do anything which may infringe upon Applicable Personal Data Laws.

Data Privacy (the following shall apply to US Users Only)

Customer understands and agrees that it is responsible for the privacy and protection of all Data entered into the Service and shall comply with all applicable laws, rules and regulations regarding the privacy and protection of Data. Further, To the extent that Customer enters any Data into the Service that could be considered protected health information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulations promulgated thereunder ("HIPAA"), Customer understands that it is and shall remain the covered entity (as defined in 45 C.F.R. 160.103) with respect to such PHI and that bioMérieux's processing of that PHI shall be subject to a mutually agreed-upon Business Associate Agreement under HIPAA.

10. CONFIDENTIALITY

- 10.1 Each Party and its directors, officers, employees, agents and advisors (including attorneys and accountants) shall keep the other Party's Confidential Information secret and shall not use Confidential Information for purposes other than those described in the Agreement, or disclose the same to third parties without the prior written consent of the Party having disclosed the concerned Confidential Information.
- 10.2 The foregoing shall not apply when and to the extent such Confidential Information either:
 - (i) was known to the recipient prior to the disclosure thereof by the disclosing Party, and was declared as such at the time of disclosure by the recipient; or
 - (ii) is, or hereafter becomes, other than through the actions of the recipient, generally available to the public (the source of such public information is to be declared to the disclosing Party); or
 - (iii) is disclosed to the recipient by a third party in good faith and without violation of any confidentiality agreement or other obligation of secrecy entered into with the other Party; or
 - (iv) is developed by the recipient independently of any disclosure made hereunder, as evidenced by the recipient's written records; or
 - (v) is required to be disclosed by law or a court of competent jurisdiction, provided however that the purported disclosing Party shall immediately notify the other Party, so that the Parties may seek an appropriate protective order, if possible.
- 10.3 Each Party shall take all necessary steps and establish an effective process to the satisfaction of the other Party in order to ensure that the employees, consultants and subcontractors of each Party will have access to such Confidential Information only on a strict "need to know" basis which shall enter into a confidentiality agreement with the respective Party in order to expressly assume such confidentiality obligation.
- 10.4 All Confidential Information together with all copies thereof shall be promptly returned to the disclosing Party or destroyed at the disclosing Party's discretion upon termination of the Agreement.
- 10.5 The obligations arising under this Section will apply for as long as the Agreement is in force, as well as for a period of five (5) years thereafter.
- 10.6 Any Party breaching the provisions of this Section shall be liable for all damages caused by such breach, and the non-breaching Party shall be entitled to an injunction, or any other relief measure as may be available at law.
- 10.7 The Parties also expressly agree that any breach by a Party of any contractual obligation pertaining to Confidential Information shall be regarded as a material breach which the Party in breach will not be able to cure by any means, and



which shall allow bioMérieux to terminate, if they so choose, the Agreement with immediate effect, notwithstanding the right for bioMérieux to seek any remedies as may be available at law.

11 INTELLECTUAL PROPERTY RIGHTS (IPR)

- 11.1 bioMérieux reserves and retains all right, title and interest in and to the Service, EPISEQ® Applications and the Documentation. No express or implied license, right or interest in or to any intellectual property of bioMérieux or its licensors is conferred by this Agreement. If Customer suggests new features or functionality that bioMérieux, in its sole discretion, adopts for the EPISEQ® Applications, such new features or functionality will be the sole and exclusive property of bioMérieux. Any portion of the EPISEQ® Applications merged into or used in conjunction with other software or hardware will continue to be the property of bioMérieux and subject to the terms and conditions of this Agreement.
- 11.2 Copyright and other intellectual property rights in any materials or software (whether written or machine-readable), proprietary methodologies, templates, forms, spreadsheets, databases and other electronic tools created by or licensed to bioMérieux prior to or outside the scope of the Service and any subsequent modifications thereto and bioMérieux' working papers or other documentation generated by bioMérieux during the performance of the Service will remain vested in bioMérieux, excluding any Data, Confidential Information or any intellectual property rights of Customer reflected in such working papers or any documentation of or any information related thereto.
- 11.3 Nothing in these terms prevents or restricts bioMérieux from developing and/or using pre-existing intellectual property, its Confidential Information, any ideas, concepts, know-how, information, techniques, inventions and improvements developed during the course of the Service and relating to methods or processes of more general application, including those in the field of information technology and business processes, for itself or other customers.

12 INDEMNIFICATION

- 12.1 bioMérieux will indemnify Customer for any amounts awarded against Customer in any final judgment or settlement arising as a result of the Service or the Documentation infringing the intellectual property rights of any third party, provided that:
 - bioMérieux is given prompt notice of any such claim;
 - Customer provides reasonable co-operation to bioMérieux in the defence and settlement of such claim, at bioMérieux' expense; and
 - bioMérieux is given sole authority to defend or settle the claim.
- 12.2 In the defense or settlement of any claim, bioMérieux may procure the right for Customer to continue using the Service, replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on five (5) Business Days' notice to Customer without any additional liability.
- 12.3 In no event will bioMérieux, its employees, agents and sub-contractors be liable to Customer to the extent that the alleged infringement is based on:
 - a modification of the Service or the Documentation by anyone other than bioMérieux;
 - Customer's use of the Service or the Documentation in a manner contrary to the instructions given to Customer by bioMérieux; or
 - Customer's use of the Service or the Documentation after notice of the alleged or actual infringement from bioMérieux or any appropriate authority.
- 12.4 The foregoing states Customer's sole and exclusive rights and remedies, and bioMérieux' entire obligations and liability, for infringement of the intellectual property rights of any third party.

13 WARRANTIES- LIABILITY

- 13.1 The Service shall perform as described in the Documentation as of the Effective Date. Customer will timely notify bioMérieux of any known non-conformance to the specifications outlined in the Documentation. bioMérieux' only obligation under this warranty, and Customer's sole and exclusive remedy, is for bioMérieux to correct any failure to so perform, or if such correction is not possible in a commercially reasonable timeframe, refund the fees paid for the specific non-conforming service during the periods of non-conformance.
- 13.2 Customer represents and warrants that Customer has all necessary consents and rights to use and provide the Data to bioMérieux and Customer is not violating any existing agreements or laws and regulations by providing bioMérieux with Data.
- 13.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, BIOMÉRIEUX MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO EPISEQ® APPLICATIONS OR SERVICE PROVIDED VIA EPISEQ® PLATFORM, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BIOMÉRIEUX OR ITS EMPLOYEES BE LIABLE TO THE CUSTOMER FOR PERSONAL INJURY, DAMAGES TO PROPERTY, OR ANY INDIRECT, SPECIAL INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, LOSS OF ANTICIPATED SAVINGS, GOODWILL, OR REVENUE ARISING OUT OF THE CUSTOMER'S ACCESS TO AND USE OF EPISEQ® APPLICATIONS OR OTHERWISE AS A RESULT OF THIS AGREEMENT.



- 13.4 Customer understands and agrees that the Service is a channel for information only and in no way a substitute for competent medical advisors' or related clinicians' diagnostics. Customer is well aware that the EPISEQ Applications are "Not for Diagnostic Use" and are not intended to guide therapeutic decisions. All medical practice management and patient care decisions made in which the Service may be utilized, and the consequences thereof, will be exclusively the responsibility of the Customer, practitioners and clinicians using the Service. The successful operation of the Service is dependent on Customer's use of proper procedures and systems for the management of the data being processed and input of correct data, and Customer is solely responsible for the accuracy and adequacy of the data furnished for processing by the Service.
- 13.5 Customer agrees to indemnify, defend and hold bioMérieux harmless from and against any loss, damage or claim by any third party resulting from:
- any improper medical diagnosis resulted from Customer's use or reliance upon the Service;
 - Customer's unauthorized use or modification of the Service;
 - any liability that bioMérieux may have to Customers as a result of the Service, the EPISEQ® Applications or the Documentation resulting from Customer's breach of the Agreement.

14 ASSIGNMENT OF THE AGREEMENT – SUB-CONTRACTING

bioMérieux may assign the Agreement or any part thereof to any third party within the bioMérieux Group at any time, provided written notice of such assignment is provided to Customer within one (1) month as of its effective date. Customer shall not assign the Agreement or any part thereof to any third party without the prior consent of bioMérieux.

15 TERM AND TERMINATION

- 15.1 **Term** – The Agreement shall commence on the Effective Date and shall terminate one year from the Effective Date of the initial term (the "**Initial Term**") and shall be subject to renewal for a subsequent one-year subscription plan upon mutual agreement by Customer and bioMérieux (the "**Renewal Term**"). If Customer makes use of its Last Available Analysis prior to the expiration of the Initial Term or a Renewal Term, Customer may still conduct Uploads but shall be prohibited from making any further Analyses until Customer and bioMérieux mutually agree to a subsequent Renewal Term. If Customer does not make use of all its Last Available Analysis prior to the expiration of the Initial Term or a Renewal Term, the number of Available Analyses during a mutually agreed-upon subsequent Renewal Term shall be reset to the number specified in the new subscription plan. The foregoing shall govern unless Customer notifies bioMérieux in writing not less than six (6) months prior to the expiration of the Renewal Term or unless terminated in accordance with Article 15.2.
- 15.2 **Termination** - Either Party may terminate this Agreement immediately on giving notice in writing to the other Party if the other Party: (a) commits a material breach (including any non-payment of fees due by Customer and, in the case of a material breach capable of being cured, failed to cure that breach within sixty (60) days after the receipt of a request in writing to cure such breach; (b) files for bankruptcy; (c) becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (d) makes an assignment for the benefit of all or substantially all of its creditors; or (e) enters into an agreement for the cancellation, extension, or readjustment of substantially all of its obligations.
- 15.3 **Effects of termination** - Termination of the Agreement for any reason whatsoever shall not relieve bioMérieux nor Customer from their respective obligations owed at the effective date of termination, which shall survive the termination of the Agreement. Customer shall remain liable for all payments due to bioMérieux with respect to the period ending on the date of termination. For any termination other than a termination for good cause by Customer in accordance with this Section 15, the balance of all remaining subscription fees relating to the then current Term will be due and payable. The provisions of Sections 6, 10, 11, 12 and 13 shall survive any termination or expiration of this Agreement. Upon any termination or expiration of this Agreement, all the rights granted for the access or use of one or several EPISEQ® Applications and Service shall automatically expire.

16 MISCELLANEOUS

- 16.1 **Entire agreement** - From this Effective Date, this Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and cancels and supersedes any prior understandings, statements, representations, discussions, negotiations, commitments and agreements both oral and written between the Parties hereto and/or between bioMérieux and Customer, provided however that any prior confidentiality and non-disclosure agreements shall remain in effect. The Agreement includes the recitals, preamble and definitions, which form an integral part hereof.
- 16.2 **Notice** - All notices, consents, and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the first business day after being sent by a reputable overnight delivery service. Either Party may change its address for notices by giving written notice of the new address to the other Party.
- 16.3 **Modification and Waiver** - This Agreement may not be modified or amended without written agreement of the Parties. No waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of both Parties and such waiver shall not be construed as a waiver of any subsequent breach of this Agreement.
- 16.4 **Severability** - Each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If unenforceable or invalid under applicable law, such provision shall be ineffective only to the extent of such unenforceability or invalidity. The remaining provisions of the Agreement shall continue to be binding upon the Parties in full force and effect.



Terms & Conditions

- 16.5 **Compliance** with Laws - Each Party shall comply with all applicable federal, state, and local laws and regulations in connection with their business, operations, and obligations under this Agreement.
- 16.6 **Publicity** - Subject to the prior information of the Customer, bioMérieux may reference the Customer as an EPISEQ® Application's Customer, according to Customer's trademark and logo usage guidelines provided by Customer. Any intended public communication by Customer whether by publication, presentation on any support or in any form whatsoever, relating to the Agreement or an EPISEQ® Application must be approved in advance and in writing by bioMérieux.
- 16.7 **Force Majeure** - Except with respect to Customer's payment obligations, neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies, disruption of the Service due to Internet connection impairments, or any other cause which could not have been prevented by the non-performing Party with reasonable care.

17 **GOVERNING LAW – JURISDICTION**

(The following shall only apply for NON-US Users)

The Agreement shall be governed and interpreted as to all matters including validity, construction, performance and termination in accordance with the laws of France. All disputes between the Parties arising out of, in relation to or in connection with the Agreement shall be settled exclusively by the competent Courts of Lyon, France.

(The following shall apply to US Users Only)

The Agreement shall be governed and interpreted as to all matters including validity, construction, performance and termination in accordance with the laws of Utah. All disputes between the Parties arising out of, in relation to or in connection with the Agreement shall be settled exclusively by the competent Courts located in Salt Lake City, Utah.