

## LICENSE AGREEMENT

**IMPORTANT:** This License Agreement (this "Agreement") is a legal agreement between The County of Monterey, a political subdivision of the State of California ("Customer") and **PerkinElmer Health Sciences, Inc.** ("Licensor"), with its headquarters at 940 Winter Street, Waltham, Massachusetts 02451. These terms and conditions should be carefully read prior to opening the Software package or electronically downloading the Software licensed under this Agreement. By opening the Software package, electronically downloading the Software, or issuing a purchase order, as the case may be, Customer acknowledges that it has read this Agreement and agrees to be bound by its terms; that the Software is accepted as delivered ("Acceptance"), and Customer is obligated to pay the related license, maintenance fees and professional services fees, as applicable. Acceptance of the Software is not dependent on any remaining services, conditions or contingencies and there are no other written or verbal agreements with respect to Acceptance. If you do not accept these terms, you must return the Software to Licensor within 48 hours of receipt, cease using the Software and destroy all copies of the Software. The rights granted to Customer under this Agreement are subject to Licensor's review and approval of Customer's purchase order, if any.

1. **License Grant.** Licensor grants to Customer a nonexclusive, nontransferable license to use the indicated components of software through object code and documentation ("Software"), for the number of users, term and other specifications as described in Customer's purchase order solely for Licensee's internal business use. TIBCO Spotfire® products included as part of the Software are licensed solely for research and development applications including but not limited to quality assurance, quality control, solutions and use cases in the fields of healthcare provision, diagnostics, translational medicine, life sciences, environmental, academia, government, biotechnology, chemicals, foods, consumer product goods, agriculture and petrochemicals with the EXCEPTION of clinical development applications in the pharmaceutical industry. Any other use is prohibited. Licensor hereby reserves all rights not expressly granted to Customer.

2. **Title.** Licensor and its Licensors shall retain all right, title and interest to the Software and in all copies, improvements, enhancements, modifications and derivative works of the Software including, without limitation, all rights to patent, copyright, trade secret and trademark. Customer may make up to three (3) copies of the Software for development and testing support, or archival and disaster recovery purposes. All proprietary notices incorporated in or affixed to any Software, documentation or materials shall be duplicated by Customer on all copies and shall not be altered, removed or obliterated. Customer may not, directly or indirectly: (a) modify, translate, reverse engineer, decrypt, disassemble, decompile, create derivative works based on, or otherwise attempt to discover the Software source code or underlying ideas, techniques or algorithms, including the review of data structures or similar materials produced by the Software; (b) lease, rent, loan, commercially share (including time-share or electronically transmitting over a network to a third party), or otherwise permit use of the Software in connection with a service bureau or other configuration whereby any third party may use the Software; (c) use versions of third party products embedded in Software, if any, for any use other than the intended use of the Software; (d) combine the Software with prohibited software (software that is distributed as free software, open source software or similar licensing/distribution models or distributed under the GNU General Public License); (e) use the Software in connection with any ultra-hazardous activity; and (f) release the results of benchmark testing using the Licensor Software. Software may provide access either directly or indirectly to database content owned by Licensor and/or third parties and protected under copyright and other laws of the United States, under international conventions or similar laws elsewhere; all rights are reserved by the content owners.

3. **Maintenance.** Upon delivery of the Software, Licensor may provide maintenance services, for the Software to operate in substantial accordance with its documentation, for an annual term provided that Customer purchases such maintenance services in its purchase order. During the maintenance services term, Customer shall notify Licensor of any identified program error and shall provide Licensor with information sufficient to locate and duplicate the error; and Licensor shall use reasonable efforts to provide workarounds for, and to correct reproducible programming errors in, the Software attributable to Licensor, with a level of effort commensurate with the severity of such errors. Licensor is not responsible for (a) errors caused by non-Licensor software or hardware; (b) errors that cannot be reproduced under test conditions; (c) errors caused by unauthorized modifications; (d) errors due to Customer's failure to follow the Software's operating procedures; or (e) maintenance services on releases older than one major release prior to the then-current version of the Software. Customer shall ensure that all of its support contacts receive training in the use of the Software. The hours of operation for customer support are from 8 a.m. until 8 p.m. if in the US, US Eastern Standard Time; if in Europe, CET; and in Asia Pacific, Japan Time, Monday through Friday except holidays. Bug fixes and patches, which are modifications to address functional defects and related documentation, are provided as part of maintenance services. Upgrades, providing new functionality

and enhancements to the Software within the functional domain of the licensed components, are also included as part of maintenance services and term licenses. Maintenance is renewed annually, at the then-current rate as adjusted in accordance with section 6 herein, unless either party provides the other written notice of its intention not to renew at least sixty (60) days prior to expiration of the then-current term. In the event that Customer elects not to renew maintenance, and subsequently reinstates maintenance services at a later date, Customer shall pay to Licensor all maintenance fees that would have been payable from the time Customer discontinued maintenance services.

#### 4. **Professional Services.**

(a) Subject to the terms of a mutually agreed and executed statement of work (a "SOW") and/or Licensor quote, Licensor may provide professional services, including any applicable deliverables ("Deliverables") as may be further described and set forth in such SOW (collectively the "Services") from time to time at Licensor's then-current rates plus reasonable expenses on a time and materials basis. Each SOW will be subject to the terms and conditions of this Agreement and shall become an integral part hereof upon its execution by Licensor and Customer.

(b) Licensor may include its pre-existing Software, software licensed from a third party, and other materials in the Deliverables and Customer will receive a fully paid, royalty-free license to use such Deliverables in accordance with the terms of this Agreement. All Deliverables and derivatives and modifications to such Deliverables shall at all times remain the property of Licensor, subject to the License Grant under this Agreement.

5. **Term.** The Software is licensed for the term specified in Licensor's acknowledgment of Customer's purchase order, unless terminated sooner due to Customer's material breach which remains uncured for thirty (30) days from date of notice. At the end of this Agreement, Customer must cease using the Software and each party will return the other party's property. Sections 2 and 6 through 13 shall survive termination of this Agreement.

6. **Fees.** Customer shall pay fees and expenses net (30) days from receipt by the Auditor/Controller of the Licensor's invoice as certified by the Health Department. Once due, all fees are nonrefundable and non-cancelable. Upon renewal, maintenance and license fees may be subject to an increase of at least the annual percentage increase in the U.S. Consumer Price Index.

7. **Taxes.** Customer is responsible for any applicable taxes, including sales, use, GST, VAT, customs, or excise tax triggered by these transactions, excluding only those taxes based upon the net income of Licensor. Licensor may, at its option, include in its invoices the taxes for which Customer is liable.

8. **Non-solicitation.** In the event that Customer hires or contracts with, either as an employee or an independent contractor, any of Licensor's personnel who provided services to Customer under this Agreement within six (6) months after the provision of such services, then Customer shall promptly pay to Licensor a fee equal to the total compensation (salary, fees, commission and bonus) paid to such person during the last twelve (12) months prior to being retained by Customer.

#### 9. **Confidentiality.**

(a) "Confidential Information" means all non-public information provided by or on behalf of a party to the other party related to the disclosing party's business, including but not limited to Licensor's Software (object, generated and source code), documentation and proposals.

(b) Each party agrees to receive and hold any Confidential Information in confidence and agrees: (i) to protect the Confidential Information against unauthorized use, publication or disclosure; (ii) not to use any Confidential Information except as specifically authorized by the party that has disclosed the Confidential Information; (iii) not to use any Confidential Information to unfairly



compete; (iv) to restrict access to Confidential Information to those of its officers, directors, employees and agents who have a need to know, have been advised of the confidential nature of the Confidential Information, and who are under obligations of confidentiality; and (v) to follow the other party's reasonable on-site security procedures.

(c) Confidential Information does not include information that: (i) is in the public domain at the time of its disclosure; (ii) is disclosed with the prior written consent of the disclosing party; (iii) becomes known to the receiving party from a source other than the disclosing party, provided such source is legally entitled to have and disclose the information. Nothing contained herein shall preclude disclosure to the extent required by a court or regulatory authority or because of laws, rules or regulations.; or, (iv) this License Agreement or any other records subject to disclosure pursuant to the California Public Records Act.

10. Indemnification. Licensor will indemnify and hold Customer harmless from any claim (i) that the Software infringes upon the United States intellectual property rights (IPR claim) of any third party provided the Software has not been modified by Customer or a third party or (ii) that results from the willful or negligent acts or omissions by Licensor, its affiliates, or their respective officers, employees, or agents in performing any Services under this Agreement except to the extent such claim, loss or liability is caused by the willful or negligent acts or omissions of Customer. Customer will indemnify and hold Licensor harmless from any claim from a third party (other than an indemnifiable IPR claim) (i) arising from Customer's use of the Software or (ii) arising from the willful or negligent acts or omissions by Customer, its affiliates, or their respective officers, employees, or agents, except to the extent such claim, loss or liability is caused by the willful or negligent acts or omissions of Licensor. In all instances, the party seeking indemnification must provide prompt written notice describing the claim, and cooperate in all reasonable ways with the indemnifying party. Each party will be entitled to control any proceedings or litigation for which it is indemnifying the other.

11. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE (WHETHER IN CONTRACT, TORT, OR OTHERWISE) EVEN IF EITHER PARTY HAS BEEN ADVISED ABOUT OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR'S LICENSOR BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL; OR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, ARISING FROM THE USE OF THE SOFTWARE OR PROVISIONS OF ANY SERVICES. EXCEPT FOR (i) DAMAGES AWARDED IN FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION IN CONNECTION WITH EITHER PARTY'S BREACH OF SECTION 9 (CONFIDENTIAL INFORMATION), OR (ii) DAMAGES AWARDED IN FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION IN CONNECTION WITH CLAIMS WHICH ARE INDEMNIFIABLE UNDER SECTION 10 (INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE AMOUNT OF FEES PAID TO LICENSOR BY CUSTOMER DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURANCE OF THE CAUSE OF ACTION. TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Security Mechanisms. Licensor and its affiliated companies take all legal steps to eliminate piracy of its software products. Licensor reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to the Software. Customer may not take any steps to avoid or defeat the purpose of any such measures. Use of the Software without the required lock device or authorization key provided by Licensor is strictly prohibited.

### 13. General.

(a) In the event of any dispute, which cannot be readily resolved, the parties will each escalate the matter to senior management who will meet in person or by telephone within 15 days to attempt to resolve the dispute.

(b) Customer shall not assign or delegate any rights or responsibilities under this Agreement without Licensor's prior written consent. Any such attempted assignment shall be void. For the purposes of the foregoing, a change in control of Customer is deemed to cause or attempt to cause an assignment of this Agreement and shall require Licensor's prior written consent.

(c) Licensor and Customer agree that each will, from and after the date of this Agreement, execute and deliver such other documents, including providing written confirmation to Licensor auditors, and take such other actions as may reasonably be requested to accomplish the transactions contemplated hereunder. Licensor reserves the right to audit Customer's compliance under this Agreement once a year.

(d) Neither party will be responsible for performance delays caused by circumstances outside its reasonable control.

(e) The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed as a waiver of any part thereof or the right to thereafter enforce every such provision.

(f) This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all previous agreements, statements and understandings from or between the parties regarding the subject matter hereof. Customer's assent to this Agreement will be presumed from Customer's submission of its purchase order. Where there is a conflict between the terms of this Agreement and a Customer purchase order, the terms of this Agreement shall control. Any pre-printed terms and conditions in Customer's purchase order shall be invalid under this Agreement. No addition to or modification of the terms of this Agreement shall be binding upon Licensor unless specifically agreed to by Licensor in writing. If Customer's purchase order or other correspondence contains terms or conditions contrary to or in addition to the terms and conditions contained herein or in Licensor's quote, acceptance of any order by Licensor shall not be construed as assent to such contrary or additional terms and conditions or constitute a waiver by Licensor of any of the terms and conditions contained herein or in Licensor's quote. Licensor's acceptance of Customer's purchase order (which Licensor may communicate via electronic notification to Customer) is expressly conditioned on Customer's assent to these terms and conditions. This Agreement shall not be modified except in a writing signed by an authorized representative of each party.

(g) Customer acknowledges that the Software is subject to the export control laws and regulations of the United States and agrees to fully comply with such export laws and regulations.

(h) This provision applies to all Software acquired directly or indirectly by or on behalf of the United States Government. The Software is a commercial product, licensed on the open market and was developed entirely at private expense and without the use of any U.S. Government funds. Use, duplication, reproduction, release, modification, disclosure or transfer of the Software, or any related documentation, including technical data, manuals or materials, by the U.S. Government is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies and is further restricted according to the terms of this Agreement and any amendment hereto.

(i) The United Nations Convention on Contracts for the International Sale of goods and the Uniform Computer Information Transactions Act do not apply to this Agreement. If any portion of this Agreement is declared by a court of competent jurisdiction to be overbroad or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted.

(j) The Agreement shall not be interpreted to create an agency or consignment relationship and neither party is a partner, employee, agent or joint venture partner of, or with, the other.

In Witness Whereof, duly authorized representatives of the parties hereto have executed this Agreement as of the Effective Date.

The county of Monterey

PerkinElmer Health Sciences, Inc.

By:

*Contracts/Purchasing Officer*

Date:

By:

*Ray Bullick, Director of Health*

Date:

APPROVED AS TO LEGAL FORM

By:

*Tracey Saelle Deputy*  
*County Counsel*

Date:

*7/15/13*

APPROVED AS TO FISCAL PROVISIONS

By:

*Auditor-Controller*

Date:

*7-16-13*

APPROVED AS TO INDEMNITY/INSURANCE LANGUAGE

By:

*Risk Management*

Date:

By:

*Daniel Dauerty*

Name: Daniel Dauerty

Title: Assistant Secretary

Date:

*8 July 2013*





**Subject: LABWORKS LIMS Software Support Plan Renewal**

TO: Gerry Guibert  
 County of Monterey  
 Health Department  
 1270 Natividad Road  
 Salinas, CA 93906-3198

07/10/2013

**Support ID#: L175**

Quantity	DESCRIPTION	Product Code	Price
1	Software Support for LABWORKS LIMS System <i>EFFECTIVE DATES: 07/01/2013 – 11/01/2015</i>		\$34,398
5	Remote Time & Material Services Days: Remote service work to assist customer with their informatics needs. Service days are deemed accepted upon delivery. Vendor will invoice customer for actual days delivered monthly, or when all days purchased have been provided. One day is eight (8) hours; Partially used days will be billed as a full day. Days unused after one year from purchase date expire.	N0202831	\$11,000
		TOTAL:	\$45,398

**Current Customer Options:**

- Labworks Enterprise SQL
- Report Writer
- NWA QA/QC (5 User LAN Pak)
- Desktop Windows
- Laser Barcode

**LABWORKS Assist** – Provides a fundamental level of support services for LABWORKS. The plan includes the following:

- **License Software and Documentation Updates**
- **800 Support Number, Telephone Help Desk, Email Support**
- **Remote Support Sessions**
- **Escalation Process**
- **Written Resolution Acknowledgement** (Emailed to designated System Manager upon inquiry resolution)
- **Access to LABWORKS LIMS User Site**

**The policy for LABWORKS support is: A client must maintain LABWORKS support in order to receive Technical support, email support, phone support, updates and documentation and access to the LABWORKS User Site. If a client discontinues support and/or support lapses, the client will be responsible to pay the back support, plus the year of upcoming support.**

**Please reference your Ship To and Bill To information along with your LABWORKS Customer ID # on your purchase order and mail or fax to the following:**

Attn: Accounts Receivable / LABWORKS  
PerkinElmer Health Sciences  
710 Bridgeport Ave  
Shelton, CT 06484-4794

Phone #: (800)762-4060  
Fax #: (203)944-2513  
Quotation Validity: 30 Days  
Payment Term: Due Upon Receipt