

# BIONUMERICS® Software End-User License Agreement :

## General Terms and Conditions

This End-User License Agreement (this "License") is a legal agreement between the person, corporation, business, limited liability company or other entity which owns or operates the computer(s) on which this Software is installed, run or executed, as well as each individual employee, agent or other personnel using this BIONUMERICS® Software (each a "User"), and bioMérieux S.A. (hereinafter referred to as "bioMérieux").

By installing or using BIONUMERICS®, User hereby fully agrees to be bound by the present BIONUMERICS® license terms and conditions of bioMérieux (the "Agreement"). The act of placing an order means full acceptance of Agreement by User.

### 1. DEFINITIONS

For all purposes of this Agreement, the following terms shall have the meanings given below : "User's Environment" means any IT system, software, programs, networks, laboratory informatics system (LIS), hardware installed in the User's premises.

"BIONUMERICS® Configuration" means the BIONUMERICS® Software, provided to User as described in the Offer.

"BIONUMERICS® Software" means collectively (i) a machine-executable copy of the object code of the BIONUMERICS® Software, and (ii) the protection key (physical or virtual soft lock) associated with such solution. For the sake of clarity, the BIONUMERICS® Software made available to User corresponds to the version referred to in the Offer, and its updates, new releases and/or new versions, provided that User has paid the related Maintenance Services Fees as agreed in the Services Agreement.

"BIONUMERICS® Software License" means the right hereby granted to User to use the BIONUMERICS® Software as provided under the Agreement.

"BIONUMERICS® Software Documentation" means any related user manual, documentation or training materials, in either printed or electronic form, embodying any modifications, enhancements, updates, new releases and/or new versions, as specifically set forth and priced in the Offer.

"BIONUMERICS® Software License Fees" means the amount set out in the Offer to be paid by User to bioMérieux in consideration of the BIONUMERICS® Software License. The breakdown of BIONUMERICS® Software License Fee is set forth in the Offer. For evaluation or beta copies for which bioMérieux does not charge a license fee, the requirement to pay License Fees does not apply.

"BIONUMERICS® Software Optional Module" means software functionalities accessible to User according to software configuration as described in the Offer.

"Offer" means the commercial offer accepted by User describing the financial conditions, the configuration of BIONUMERICS® Software required as well as technical specifications, optional licenses. The Offer is expressly subject to the Agreement.

"BIONUMERICS® User(s)" means the user declared in BIONUMERICS® user management tool in the Offer to have a valid license string to the BIONUMERICS® Software. Access to the BIONUMERICS® software is limited to a maximum number of simultaneous Users as described in the Offer.

"Simultaneous BIONUMERICS® User(s)" means the maximum number of concurrent User's user(s) entitled to benefit from the BIONUMERICS® Software under the Agreement as set forth in the Offer by default limited to 1 BIONUMERICS® User.

### 2. BIONUMERICS® SOFTWARE LICENSE

#### a. Grant of rights

In consideration of User's payment of the BIONUMERICS® Software License Fees described in the Offer, bioMérieux hereby grants User a perpetual or temporary, non-exclusive, non-transferable and non-sub licensable license to install and use BIONUMERICS® Software (and BIONUMERICS® Software Documentation), for the Term (as defined in

the Offer), solely in object-code form at one location interoperating according to the configuration for User's internal operations in accordance with the Software Use Restrictions.

#### b. Restrictions

Any use of BIONUMERICS® Software not expressly permitted by this Agreement is prohibited. Without limiting the foregoing, User shall not: (i) install or configure the BIONUMERICS® Software other than in accordance with the Specifications and the Software Use Restrictions; (ii) reverse assemble, reverse compile, reverse engineer or otherwise attempt to derive the source code of the BIONUMERICS® Software; (iii) modify, enhance or create derivative works of the BIONUMERICS® Software; (iv) lease, sublease, sublicense, sell, distribute, transfer possession, assign, encumber, rent, or grant other rights in the BIONUMERICS® Software or engage in service bureau work, application service provider services or other commercial hosting or time-sharing arrangements with respect to the BIONUMERICS® Software or take any action that would cause the BIONUMERICS® Software to be placed in the public domain; or (v) allow any third party users direct access to the BIONUMERICS® Software.

#### c. Use of BIONUMERICS® Software

User shall use the BIONUMERICS® Software only on User's Environment. User shall take appropriate action by instruction, agreement, or otherwise with any third party which or who have been granted access to the BIONUMERICS® Software, so as to fully comply with its obligations under the terms of this Agreement.

User shall safeguard BIONUMERICS® Software from any unauthorized use as set forth in Section 2.b. User shall be responsible for all access, use and operation of the BIONUMERICS® Software by BIONUMERICS® User(s), employees, subsidiaries, affiliates, and any third parties. User shall be held liable for any costs associated with any act or omission thereby that would constitute a breach. User acknowledges being aware of the risks related to the use of internet network. User has and shall retain sole responsibility regarding security of its networks, and undertake to implement the proper updated security measures (firewall, antivirus, etc.) as and where necessary.

Without prejudice to the rights granted to the User, User agrees to not install any third party's program nor realizing any modification on the BIONUMERICS® Software without bioMérieux prior written approval. In the event the use of BIONUMERICS® Software requires some hardware upgrades or any other kind of modifications, especially further any change of the User's environment, the costs for such modifications shall be fully borne by the User.

The access to and use of the functionalities of the BIONUMERICS® Software is subject to the use of the protection key associated to it, and provided as part of the BIONUMERICS® Software.

bioMérieux shall have no obligation to provide any upgrades, updates, modifications, additions, new versions or new releases of the BIONUMERICS® Software, if any. Any upgrades, updates, modifications, additions, new versions or new releases BIONUMERICS® Software are subject to the signature of a services agreement between bioMérieux and User.

#### d. Usage Verification

At bioMérieux's request, but not more frequently than annually, User will allow bioMérieux to review User's deployment and use of the BIONUMERICS® Software for compliance with the terms and conditions of this Agreement, at bioMérieux's expenses. Any such reviews shall be scheduled at five (5) days in advance, shall be conducted during normal business hours at User's facilities, and shall not unreasonably interfere with User's business activities. If User's use of the BIONUMERICS® Software is found to be greater than contracted for, User will be invoiced for the additional licenses or license upgrades (based on the applicable units of measure, e.g., servers, server tiers or users) and the unpaid license fees shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the license fees paid for the subject

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BIONUMERICS® Software, then User shall also pay bioMérieux's reasonable costs incurred to carry out the audit.

### 3. OBLIGATIONS OF USER

User shall install, implement and use the BIONUMERICS® Software in the User's Environment under its sole responsibility.

User shall, in particular:

- Meet the prerequisites related to installation and localization, as provided by bioMérieux before installation,
- Ensure that the configuration of the BIONUMERICS® Software is compatible with its IT environment (including but not limited to LIS, third parties software, hardware),
- Comply with the conditions of use of the BIONUMERICS® Software, apply strictly all instructions given by bioMérieux and, in general, comply with the provisions of the Agreement,
- Develop operating measures, implement control points and security mechanisms that are appropriate for backing up and restoring data with no loss, in the event of anomalies in the use of the BIONUMERICS® Software,
- Protect the protection key associated with the BIONUMERICS® Software adequately and secure it against loss, theft or other damages,
- Provide a complete system or full backup scheme in case of a soft lock protection key to protect the NetKey+ license server where a soft lock key has been activated. Changing the hardware configuration (e.g. MAC address, CPU, hard drive) will cause the protection key to render invalid; hence the protection key must be transferred to another (intermediate) computer before modifying the hardware, and transferred back to the source computer after the hardware component(s) have been replaced, as indicated in BIONUMERICS® Software Documentation. This also applies to virtual environments, when moving a virtual NetKey+ server guest image to another host server as this also invalidates the protection key. Any additional costs incurred by bioMérieux to generate a new soft lock key when User licenses became inactivated as a result of not following the installation guidance, shall be borne by the User.

As a consequence, User shall be solely responsible for:

- the protection and back up of any saved data on BIONUMERICS® Software,
- the results obtained by using BIONUMERICS® Software and all use made of such results,
- the implementation of Antivirus (AV) compatible with BIONUMERICS® Software,
- any damage, loss or theft, or improper use of the protection key associated with the BIONUMERICS® Software.

### 4. LIABILITY

#### a. User's liability

User has and shall retain sole responsibility, regarding any statements, questions, other communications, topics, topic areas, industry areas, structured discussions, or any information, items, materials, or other content posted or uploaded on BIONUMERICS® Software by User, User's employees and/or any other third parties, and/or regarding their use, uploading on, display or review on, or printing, copying, or downloading.

User shall indemnify and hold harmless bioMérieux from and against any and all damages that arise out of /or result from any third party claims, suits, proceedings or demands based on any cause other than those for which bioMérieux is liable pursuant to the Agreement.

#### b. bioMérieux' liability

bioMérieux shall defend User against any third-party claim against User in case BIONUMERICS® Software infringes a copyright, trade secret, or any registered patent, falling within the scope of bioMérieux's obligations. bioMérieux shall pay the damages and costs awarded by a French court as a final decision concerning such an infringement.

The triggering of bioMérieux's responsibility is subject to (i) prompt written notification of the claim by User to bioMérieux, (ii) bioMérieux's sole control of the defense and settlement negotiations, and (iii) User's assistance (at bioMérieux's expense).

Where the BIONUMERICS® Software is held to be infringing or where bioMérieux believes it may be infringing, bioMérieux may, at its exclusive discretion and at its own expense, (i) obtain for User the right to continue using BIONUMERICS® Software in a non-infringing way, (ii) replace it with a non-infringing substitute of similar functionality, or (iii) modify it to make it non infringing, or make any other decision.

Notwithstanding the foregoing, bioMérieux shall have no obligation whatsoever to User with respect to infringement claims based on :

- BIONUMERICS® Software containing any of User's contributions, trademarks or logos,
- actions permitted or performed by User, or
- BIONUMERICS® Software used in combination with any product not supplied by bioMérieux; or modified; or use of any obsolete/not updated version of BIONUMERICS® Software.

### 5. CONFIDENTIALITY

Each Party agrees that all material and non-public information, of any nature whatsoever, furnished by the other Party and all copies, extracts, reproductions and translations thereof will be treated as Confidential Information. The terms and conditions of this Agreement shall be deemed Confidential Information of each Party hereunder. In this regard, receiving Party agrees to maintain and have maintained the Confidential Information in confidence and shall take at least the same precautions to avoid disclosure of the Confidential Information as those it would take with its own confidential information, but in no event less than reasonable care. Receiving Party shall not use the Confidential Information for any purpose other than the implementation of this Agreement.

bioMérieux specifically undertakes to take all necessary measures to ensure the confidentiality and security of any Confidential Information pertaining to User to which it may have access in the context of the provision of the services described in the Offer.

Similarly, User specifically commits to take all necessary measures to ensure the confidentiality and security of any Confidential Information pertaining to bioMérieux, its projects, programs and products, and in particular relating to the BIONUMERICS® Software, and not to disclose it to anyone during the Term and for five (5) years following the Term of the present Agreement. As further provided in Section 8 below, upon termination of this Agreement, all licenses granted hereunder by bioMérieux to User shall immediately and permanently cease.

### 6. DATA PRIVACY

#### (the following shall only apply for NON- US Users)

User shall be responsible at all times for any personal data (as such term is defined under the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, the 'GDPR') contained in User's System. As person responsible for the processing of personal data ("Data Controller"), User is in charge of carrying out any formality or obtaining any administrative authorization as may be required due to the Remote Support Services provided by bioMérieux, acting on the

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User's behalf. The Data Controller remains at all times responsible for processing personal data as per applicable data privacy regulations, and in particular the GDPR.

Where necessary, User shall inform bioMérieux of the existence of personal data, which may be accessed by or transmitted to bioMérieux in the context of the Remote Support Services. As Data Controller, User shall also communicate the written instructions and other particular security or confidentiality measures that need to be implemented by bioMérieux acting on the User's behalf ("Instructions"). The Data Controller remains at all times responsible for the compliance of the Instructions with the requirements of the applicable data privacy regulations, and in particular the GDPR. Any additional costs incurred by bioMérieux to implement the Instructions shall be borne by the User.

User acknowledges that anonymous usage data may be collected when consulting on-line BIONUMERICS® Software Documentation. bioMérieux collects usage data with the sole intent of improving BIONUMERICS® Software Documentation and will not share this information with third parties.

### (the following shall apply to US Users Only)

User understands and agrees that it is responsible for the privacy and protection of all data entered into the Software and shall comply with all applicable laws, rules and regulations regarding the privacy and protection of data. Further, User agrees not to enter any data into the Software that could be considered protected health information (PHI). Notwithstanding the foregoing, in the event PHI is entered into the Software, each party hereto will comply with all laws, rules and regulations, including without limitation, all applicable laws and regulations regarding the collection, use and storage of protected health information (as defined in 45 C.F.R. 160.103), including the Health Insurance Portability and Accountability Act of 1996, as amended by (a) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, (b) Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), (c) the Affordable Care Act of 2010; (d) the federal regulations published at 45 C.F.R. parts 160 and 164, and (e) any applicable state privacy and security laws regarding individually identifiable health information as applicable to the agreeing party, which relate this Agreement.

### 7. PAYMENT

User will pay bioMérieux within 30 (thirty) calendar days from the date where bioMérieux sends the invoice the Fees as stated in the Offer. Payment shall be made in accordance with the banking information specified on the invoices.

### 8. TERM AND TERMINATION

This Agreement shall enter into force as from the last date of signature by the Parties (the "Effective Date").

#### a. Term

The right of use for BIONUMERICS® Software granted under this Agreement will remain in effect according to Section 2.a) and until terminated in accordance with Section 8.b below.

#### b. Termination

This Agreement may be terminated (i) by mutual consent of bioMérieux and User, (ii) by one of the Parties, if the other is in breach of the Agreement and fails to cure such breach within thirty (30) days following receipt of a written notice by the non-breaching Party. Upon any termination of this Agreement, User shall immediately cease the use of the BIONUMERICS® Software and shall certify in writing to bioMérieux within thirty (30) days after termination that User has destroyed or returned to bioMérieux such BIONUMERICS® Software and all copies thereof. Termination of this Agreement shall not limit either Party from seeking any remedies available to it, including injunctive relief, nor shall release User from its obligation to pay all Fees that have accrued or have become payable by User hereunder at the effective termination date.

### 9. WARRANTIES

#### a. Generality :

User shall ensure that its environment will be compatible with BIONUMERICS® Software and that its network is configured correctly, as required by bioMérieux. In no event shall bioMérieux bear any responsibility as to the connection of the BIONUMERICS® Software with User's Environment.

Furthermore, User hereby acknowledges that the access to and use of the whole functionalities of the BIONUMERICS® Software is subject to the proper use of protection key associated to such software, the protection of which is under the User's sole responsibility.

Subject to Sections 9 b., c. and d. below, bioMérieux warrants to User that the BIONUMERICS® Software shall:

- (i) be in compliance with the provisions of this Agreement,
- (ii) perform substantially in accordance with its functional specifications as set forth in the BIONUMERICS® Software Documentation provided by bioMérieux to User in connection with that version of the BIONUMERICS® Software, be merchantable, safe and fit for their intended RUO use,
- (iii) be free of any viruses, including without limitation in design, workmanship or operating at the time of delivery of the BIONUMERICS® Software,
- (iv) be free of any defects in title, whereby title means the ownership of the components under normal use.

All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are expressly excluded by bioMérieux.

Notwithstanding the foregoing, this warranty will not apply to the extent that the BIONUMERICS® Software does not conform to and/or functions in accordance with the applicable written technical documentation as a result of a defect arising from (i) any act or omission of the User, such as, without limitation, any loss, damage or theft, or improper use of the protection key associated with the BIONUMERICS® Software (ii) any corporation, joint stock company or any other entity or organization of any kind (other than bioMérieux or any person under the express direction of bioMérieux) making any revisions or modifications to the BIONUMERICS® Software after its provision to the User, (iii) the malfunction of any User-supplied or User-authorized third-party software or equipment, (iv) User operation of the BIONUMERICS® Software (including the associated protection key) other than in accordance with applicable documentation or design, or on hardware not recommended, supplied or approved by bioMérieux as mentioned in Sections 2 and 3, or (v) the occurrence of any Force Majeure event such as, but not limited to, fire, electrical current variation, flood and defect in the installation environment of the BIONUMERICS® Software.

User must report in writing any breach of the foregoing warranties to bioMérieux during the warranty period hereafter described. bioMérieux's sole obligation, for any such breach of warranty shall be, at bioMérieux's sole discretion, (i) to replace the defective media and to provide a workaround for reproducible errors that may have caused a breach of the warranty, within a reasonable time considering the severity of the error and its effect on User or, (ii) to refund the license fees paid for the nonconforming Software upon return of such Software to bioMérieux and termination of the related license hereunder.

For the sake of clarity, bioMérieux shall not be bound to replace the protection key, nor physical nor virtual soft lock, associated to the BIONUMERICS® Software, unless (i) the original protection key is adequately proven to be defective by the User, and is returned by User to bioMérieux by a trackable courier service or (ii) a declaration of loss of license key is provided to bioMérieux accompanied with an official Police 'Statement of Theft'.

#### b. BIONUMERICS® Software

bioMérieux warrants that the BIONUMERICS® Software will be in accordance with the descriptions and specifications in the BIONUMERICS® Software Documentation for a period of ninety (90) days from the date of delivery of the BIONUMERICS® Software by the

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User, as evidenced by a copy of the receipt of purchase receipt. bioMérieux further warrants that the BIONUMERICS® Software is free from any viruses and other malicious code at the time of delivery of the BIONUMERICS® Software to User. User shall take all necessary precautions thereafter. During this warranty period, bioMérieux agrees to provide User with a technical support for the use of the BIONUMERICS® Software, by correcting any deficiency of the BIONUMERICS® Software, exclusive of any redesigning of the BIONUMERICS® Software.

### c. Disk

bioMérieux warrants that the disk(s) on which the BIONUMERICS® Software is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of delivery as evidenced by a copy of the receipt of purchase.

### d. Claims

bioMérieux will evaluate warranty claims upon receipt of written notification.

bioMérieux will make a remote diagnosis and if possible, will correct the defect. If more in-depth evaluations are needed, they will be initiated within three (3) business days, during working days, excluding bioMérieux observed holidays. User will provide access to bioMérieux, in a timely manner, to any technical support, facilities, hardware, software or information in the User's possession necessary for bioMérieux to complete such work.

If repair cannot be made remotely, the non-operational part of the license key shall be either replaced or repaired in bioMérieux premises, upon bioMérieux's sole discretion. In any case, the shipment of the license key by User to bioMérieux may only be made upon bioMérieux's written approval.

bioMérieux will carry out the correction or replacement at no additional cost for User and as soon as practicable. The costs of shipment of the BIONUMERICS® Software will be borne by bioMérieux. At the end of the warranty period as defined above, User shall maintain the BIONUMERICS® Software at its own costs and expenses and may sign a dedicated maintenance agreement with bioMérieux.

### e. Exclusion

IT IS HEREBY EXPRESSLY STATED THAT BIOMÉRIEUX MAKES AND USER RECEIVES NO ADDITIONAL EXPRESS OR IMPLIED WARRANTIES. BIOMÉRIEUX HEREBY EXPRESSLY DISCLAIM ANY AND ALL OTHER CONDITIONS, LIABILITIES, WARRANTIES, OR OTHER TERMS OF ANY KIND OR NATURE CONCERNING THE BIONUMERICS® SOFTWARE (INCLUDING WITH REGARD TO INFRINGEMENT, MERCHANTABILITY, QUALITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE OR USER'S PURPOSE). IN PARTICULAR, BIOMÉRIEUX DOES NOT WARRANT THAT THE BIONUMERICS® SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. THIS SECTION CONTAINS THE SOLE AND EXCLUSIVE REMEDIES OF USER AND ITS EMPLOYEES WITH RESPECT TO ANY CLAIM RELATED TO THE BIONUMERICS® SOFTWARE.

## 10. LIABILITY

In any case, bioMérieux's liability arising out of any cause of action under this Agreement shall be limited to the Fees paid by User for the impacted software.

NEITHER BIOMÉRIEUX NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE BIONUMERICS® SOFTWARE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGE FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE BIONUMERICS® SOFTWARE EVEN IF BIOMÉRIEUX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

Furthermore, in any case, bioMérieux shall not be liable for any difficulties, dysfunctions, incidents, failings, accidents or harmful events of any nature arising out of the following cases:

- failure by User to comply with the BIONUMERICS® Software Documentation and/or installation instructions given by bioMérieux;

- failure to communicate instructions or the communication of erroneous, incomplete and/or non-conforming instructions;
- failure by invalidation of the soft lock protection key by changing the hardware configuration without following the installation guidance.

## 11. GENERAL

User shall not assign or transfer the Agreement or any of its rights and obligations hereunder, or any Order covered hereunder, to any other party, including to an affiliate, without bioMérieux's prior written consent. Any change in the ownership or control of User shall be deemed an assignment, which requires bioMérieux's prior written consent.

bioMérieux may be free to transfer the Agreement or any Order covered herein to any of its affiliates, provided that the rights and obligations of User are not modified by this transfer.

## 12. GOVERNING LAW AND SETTLEMENT OF DISPUTES

### (the following shall only apply for NON- US Users)

The Agreement shall be governed by French laws, irrespective of their conflicts of laws principles.

The Parties shall endeavour to settle any disputes arising in the performance of the Agreement amicably. In the event of continuing dispute (more than two (2) months), the Parties elect the Courts of Lyon that shall alone have jurisdiction to finally settle the dispute.

### (the following shall apply to US Users Only)

The Agreement shall be governed by the laws of North Carolina, irrespective of their conflicts of laws principles.

The Parties shall endeavour to settle any disputes arising in the performance of the Agreement amicably. In the event of continuing dispute (more than two (2) months), the Parties elect the Courts of Durham County, North Carolina as the venue for any dispute.