

**MOLECULAR DEVICES
SOFTWARE LICENSE TERMS**
SoftMax® Pro Software and SoftMax® Pro GxP Software v 7.0

ATTENTION:

**PLEASE READ THIS DOCUMENT CAREFULLY.
THIS SOFTWARE IS LICENSED AND NOT SOLD. THE USE OF THE SOFTWARE
IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, WHICH INCLUDE
RESTRICTIONS, LIMITATIONS AND WARRANTY AND LIABILITY
DISCLAIMERS. BY INSTALLING OR USING THE SOFTWARE YOU
ACKNOWLEDGE THAT YOU HAVE READ THIS DOCUMENT AND AGREE TO BE
BOUND BY ITS TERMS AND CONDITIONS.**

IF YOU DO NOT AGREE TO THESE LICENSE TERMS, THEN (A) DO NOT INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND, OR, IF THE SOFTWARE IS SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS NOTICE, INSTALLING OR OTHERWISE USING THE SOFTWARE INDICATES YOUR ACCEPTANCE OF THESE TERMS.

1. DEFINITIONS.

- (a) The term “**Molecular Devices,**” as used in this EULA, means Molecular Devices LLC and its subsidiaries and affiliates.
- (b) The term “**you**”, “**your**” or “**Licensee**” means the licensee authorized by this EULA to use the Software.
- (c) The terms “**EULA,**” means this Molecular Devices Software License Terms including any and all Appendices
- (d) The term “**Software**” means the one or more computer programs in object form that accompany this EULA including any updates, additions (including but not limited to modules) and copies, and related explanatory materials.
- (e) The term “**Computer**” means a virtual machine or physical machine that conforms to the system requirements of the Software as specified in the user guide.
- (f) The term “**Authorized Number**” means one unless: (a) otherwise specified in this EULA; or (b) the Software uses registration codes, in which case the number of licensed copies of Software is controlled by the registration codes.
- (g) The term “**Software License Key**” means a code issued to you by Molecular Devices to activate certain functionality of the Software not provided with the purchase of the principal software.

2. SOFTMAX PRO SOFTWARE LICENSE GRANT.

- (a) Subject to the terms and conditions of this EULA, Molecular Devices grants you a non-exclusive, non-transferrable, restricted license to use the Software on an Authorized Number of computers (or in an Authorized Number of networks, if your Software is either designated as a network version or is instrument operating software).
- (b) You may make one copy of the Software in machine-readable form solely for backup or archival purposes. You must reproduce on any such copy all copyright notices and any other proprietary legends found on the original. You may not make any other copies of the Software.
- (c) This license does not entitle you to receive upgrades, updates or technical support. Such services may be purchased separately.
- (d) **LOCKED ADDITIONAL CONTENT:** This Software contains principal software and may contain additional locked modules. Your access to the functionality of these additional locked modules requires the purchase of a Software License Key. The license grant under this Section 2 does not extend to any additional locked module unless you purchase the associated Software License Key.
- (e) **TIME LIMITED GRANT:** If you purchased a term license, the license grant under this Section 2 is valid only for the period of time indicated in your purchase documents.
- (f) Software License Keys are valid for a period of 120 days, after which they may be disabled unless activated. You may reactivate disabled keys by contacting Technical Support.
- (g) One Software License Key is required for each Molecular Devices Microplate Reader system, unless a separate

SoftMax Pro Global License is purchased directly from Molecular Devices.

- (h) **USE IN A VIRTUALIZED ENVIRONMENT:** If you use virtualization software to allow a single host computer to create and run one or more virtual environments on a single computer hardware system, each virtual environments / computer, and the physical computer, is hereby considered a separate computer for purposes of this EULA. This EULA allows you to install one license instance of the software for use on ONLY one computer (whether or not such environment or computer is physical or virtual). If you want to access the Software on more than one computer, you must obtain separate copies of the software and a separate license for each copy. Additionally support may be limited for virtualized environments.

IN THE EVENT YOU PURCHASED THE SOFTMAX PRO GXP SOFTWARE LICENSE, THE FOLLOWING SECTION 3 TERMS & CONDITIONS ALSO APPLY:

3. SOFTMAX PRO GXP SOFTWARE LICENSE GRANT.

- (a) In consideration of payment of the license fee, which is part of the purchase price you paid for the Software, Molecular Devices, the licensor, hereby grants a non-exclusive, non-transferable, perpetual, and revocable license to you, the licensee, to use SoftMax Pro GxP Software, GxP Admin Software, and MDC FileServer and its utilities (individually or collectively referred to as the "GxP Software") in object code format for your own internal business use of the purposes described in the documentation. Licensee is granted one copy the Software solely for one backup or archival purposes on one compact disc or other removable storage media device. The backup copy may not be installed or used on any computer. You must produce on any such copy all copyright notices and any other proprietary legends found on the original. You must maintain a record of where such copy is located. You may not transfer the rights to a backup copy.
- (b) The following limitations shall apply to each of the respective GxP Software packages that may be purchased by Licensee:
- (i) Each user of SoftMax Pro GxP represents (1) one named, active human user.
 - (ii) The total number of active users may not exceed the "n" named user licenses purchased.
 - (iii) User licenses from SoftMax Pro 4 Enterprise, SoftMax Pro 5 GxP, or SoftMax Pro 6 GxP must be repurchased for use in SoftMax Pro 7 GxP.
 - (iv) A GxP user may only be deactivated in the case of the user leaving the company or changing roles within the company.
 - (v) Use of purchased user licenses is limited to one (1) physical site, such site defined in the quote or sales order, unless a Global License is purchased.
 - (vi) Licensee may install SoftMax Pro GxP Software on as many computers as necessary to support the "n" number of named users purchased.
 - (vii) SoftMax Pro GxP License Packs may be used in the following configuration, as per your purchase terms & conditions directly from Molecular Devices:
 - (1) Three (3) to ten (10) users
 - (a) Licensee may install GxP Admin Software on a single computer, for use by one (1) primary administrator.
 - (b) Licensee may create one (1) active "User Accounts" (.edb) file. All three (3) to ten (10) users must be listed in the same User Accounts file.
 - (c) License Pack may be extended with the purchase of additional users or Global License.
 - (2) Eleven (11) to fifty (50) users
 - (a) Licensee may install GxP Admin Software on up to three (3) computers, for use by up to three (3) primary administrators.
 - (b) Licensee may create up to three (3) active "User Accounts" (.edb) files.
 - (c) License Pack may be extended with the purchase of additional users or Global License.
 - (3) Fifty one (51) to two hundred (200) users
 - (a) Licensee may install GxP Admin Software on up to ten (10) computers, for use by up to ten (10) primary administrators.
 - (b) Licensee may create up to ten (10) active "User Accounts" (.edb) files.
 - (c) License Pack may be extended with the purchase of a Global License.
 - (4) Global License
 - (a) Licensee may install GxP Admin Software on unlimited computers, for use by unlimited primary administrators.
 - (b) Licensee may create unlimited "User Accounts" (.edb) files.
 - (c) Licensee has use of unlimited user licenses at unlimited sites located in unlimited zip codes or countries.

- (c) **Regulated Uses:**

You acknowledge that the GxP Software has not been cleared, approved, registered or otherwise qualified (collectively, the "Approval") by Molecular Devices with any regulatory agency for use in diagnostic or therapeutic procedures, or for any other use requiring compliance with any federal or state law regulating diagnostic or

therapeutic products, blood products, medical devices or any similar product (hereafter collectively referred to as "federal or state drug laws"). The GxP Software may not be used for any purpose that would require any such Approval unless proper Approval is obtained. You agree that if you elect to use the GxP Software for a purpose that would subject you or the GxP Software to the jurisdiction of any federal or state drug laws, you will be solely responsible for obtaining any required Approvals and otherwise ensuring that your use of the GxP Software complies with such laws, including, but not limited to your validation that the Software is working.

4. RESTRICTIONS.

- (a) If the Software is instrument operating software, you may use the Software only for the operation of the instrument on which the Software is installed and you may only use the Software in the manner described in the documentation with the instrument in a manner recommended by Molecular Devices.
- (b) You may not sublicense, copy, merge, modify, sell, resell, rent, lease, assign, transfer, or distribute the Software, or create derivative works based on the Software, or any part thereof or any interest therein.
- (c) You may not attempt, cause or permit others to reverse assemble, disassemble, decompile, modify, create any derivative works, or otherwise attempt, cause, or permit any reverse engineering of the Software or any part thereof, or attempt, cause, or permit any conversion of the Software into any human readable or perceivable form.
- (d) You may not remove any proprietary, copyright, trade secret or warning legend from the Software.

4. THIRD PARTY SOFTWARE & RESTRICTIONS. This Software includes software products licensed by the following third party provider(s): SafeNet, Inc., Infragistics, bioPDF, Launch4j , © 2004, 2011 Grzegorz Kowal, Massachusetts Institute of Technology (MVVM Light Toolkit Copyright (c) 2009 - 2011 Laurent Bugnion), PStill and Eigen licensed under the Mozilla Public License 2.0. Eigen is subject to the terms of the Mozilla Public License, v. 2.0. If a copy of the MPL was not distributed with this file, you can obtain one at <http://mozilla.org/MPL/2.0/>. In addition, the Software may enable you to run multiple instances of third-party software and application programs. Such third party's software is provided "As Is" and use of such software shall be governed by the terms and conditions as set forth in Appendix A (Third Party Products Additional Licensing Terms & Conditions). In the event such terms and conditions are not provided in Appendix A, such third party's software are provided "As Is" without any warranty of any kind and this EULA shall apply to all such third party software providers and third party software as if they were Molecular Devices and the Software respectively. You are responsible for reviewing and complying with any licenses necessary to use any such third-party software. Such licenses may be included in your Molecular Devices installation package.

5. OWNERSHIP.

- (a) You acknowledge that the Software in human-readable (source code) form, including its structure, sequence, and organization, is and remains the confidential trade secret of Molecular Devices. The Software, including its structure, organization, code, user interface and associated documentation, is a proprietary product of Molecular Devices or its suppliers, and is protected by international laws of copyright. The law provides for civil and criminal penalties for anyone in violation of the laws of copyright.
- (b) Title, ownership rights and intellectual property rights in and to the Software shall at all times remain with Molecular Devices or their respective owners. All rights not specifically granted by this EULA, including Federal and international copyrights, are reserved by Molecular Devices or their respective owners.

6. TRIAL VERSIONS. If the Software is provided to you on a trial basis, you are hereby notified that license management software may be included to automatically cause the Software to cease functioning at the end of the trial period.

7. EXPORT REQUIREMENTS. If you export, re-export or import the Software, technology or technical data licensed hereunder, you assume responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. You will not export, re-export or import, directly or indirectly, the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder or other applicable United States law. Molecular Devices may terminate this EULA immediately if you are in violation of any applicable laws or regulations.

8. U.S. GOVERNMENT END USERS. The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

9. EUROPEAN COMMUNITY END USERS. If this Software is used within a country of the European Community, nothing in this EULA shall be construed as restricting any rights available under the European Community Software

10. LIMITED WARRANTY and LIMITATION OF REMEDIES.

- (a)** Molecular Devices warrants that for a period of ninety (90) days from the date of shipment to you of the media on which the Software is stored ("**Warranty Period**"), (a) such media will be free from defects in materials or workmanship and (b) the Software will comply substantially with the written specifications for the Software. If during the Warranty Period, the media on which Software is delivered proves to be defective, Molecular Devices will repair or replace such media, at Molecular Devices' option. If during the Warranty Period, the Software fails to comply substantially with its written specifications, Molecular Devices will repair or replace the Software so that it shall so comply, or, at Molecular Devices' option, refund the fees paid by you for the Software that exhibits such noncompliance. The foregoing shall be your sole remedy and Molecular Devices' sole responsibility for any breach of warranty hereunder. You assume full responsibility for: (i) the selection of the Software; (ii) the proper installation and use of the Software; (iii) verifying the results obtained from the use of the Software; and (iv) taking appropriate measures to prevent loss of data. Notwithstanding anything to the contrary in this EULA and without in any way limiting Molecular Devices' other disclaimers of warranties, Molecular Devices does not warrant that the quality or performance of the Software will meet your requirements or that you will be able to achieve any particular results from use of the Software or that the Software will operate free from error.
- (b)** EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SOFTWARE IS LICENSED TO YOU "AS IS" MOLECULAR DEVICES MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR THAT THE SOFTWARE IS NON-INFRINGEMENT. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED.

11. LIMITATION OF LIABILITY. IN NO EVENT SHALL MOLECULAR DEVICES BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF MOLECULAR DEVICES IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL OR BUSINESS OR OTHER FINANCIAL LOSS. IN ANY CASE, THE ENTIRE LIABILITY OF MOLECULAR DEVICES AND ITS AGENTS, CONSULTANTS, CONTRACTORS AND SUPPLIERS UNDER THIS EULA, OR ARISING OUT OF THE USE OF THE SOFTWARE, SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL FEES PAID UNDER THIS EULA.

12. TERMINATION. You may terminate this EULA by discontinuing use of the Software, removing all copies from your computers and storage media, and returning the Software, and all copies thereof, to Molecular Devices. Molecular Devices may terminate this EULA if you fail to comply with all of its terms, in which case you agree to discontinue using the Software, remove all copies from your computers and storage media, and return the Software, and all copies thereof, to Molecular Devices.

13. GENERAL.

This EULA shall be governed by laws of the Commonwealth of Massachusetts, U.S.A., exclusive of its conflict of laws provisions. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. This EULA contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. If a court of competent jurisdiction holds any provision of this EULA invalid or unenforceable for any reason, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this EULA will remain in full force and effect. The controlling language of this EULA, and any proceedings relating to this EULA, shall be English. The headings to the sections of this EULA are used for convenience only and shall have no substantive meaning. All questions concerning this EULA shall be directed to: Molecular Devices, 500 Old Connecticut Path, Framingham MA U.S.A., Attention: Legal Department.

APPENDIX A
THIRD PARTY PRODUCTS ADDITIONAL LICENSING TERMS & CONDITIONS

MASSACHUSETTS INSTITUTE OF TECHNOLOGY SUBLICENSE GRANT, TERMS AND CONDITIONS

(This Section is based on the terms of Molecular Devices' license agreements with Massachusetts Institute of Technology ("M.I.T.") and only applies where LICENSEE purchases a license to Software that includes M.I.T. software.)

Licensee agrees that, to the extent permitted by applicable law, (i) the M.I.T. software is provided "As Is" without any warranty of any kind; and (2) M.I.T. shall not be liable for any damages, whether direct, indirect, incidental or consequential, arising from Licensee's use of M.I.T. software or related materials.