

# MOLECULAR DEVICES SOFTWARE LICENSE TERMS

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PLEASE READ THIS DOCUMENT CAREFULLY.

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### THIS EULA APPLIES TO:

1. SoftMax® Pro - Standard 7.1
2. SoftMax® Pro - Imaging 7.1
3. SoftMax® Pro - GxP 7.1
4. GxP Admin 3.0
5. GxP Admin - Portal 3.0
6. GxP Admin - EDB converter tool 1.0
7. GxP Admin - Backup 1.0

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

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- (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 Directive, O.J. Eur. Comm. (No. L. 122) 42 (1991).

#### **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.
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**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 any 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., without regard to its principles 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, 3860 N. First Street, San Jose CA 95134, 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.)

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## APPENDIX B

### Molecular Devices Privacy Policy

**Effective Date: April 30, 2018** ([View archived versions](#))

This privacy policy (“Privacy Policy”) explains how we handle the Personal Data provided to us as described in this Privacy Policy, including through websites, mobile sites, mobile applications, and other digital services and products controlled by Molecular Devices, LLC, 3860 N. First St., San Jose, CA 95134, USA, that link to this Privacy Policy (collectively, “Molecular Devices Sites”). Molecular Devices is the data controller for the processing of Personal Data under applicable law.

This Privacy Notice does not apply to Molecular Devices Sites that do not link to this Privacy Policy or to third-party Web sites to which Molecular Devices Sites may link.

#### TYPES OF INFORMATION WE COLLECT ONLINE

The types of Personal Data that we may collect while you use the Molecular Devices Sites are described in this section and include both information that you provide to us and information that we collect automatically when you use the Molecular Devices Sites.

For purposes of this Privacy Notice, “**Personal Data**” means information that identifies you or that could reasonably be used to identify you. Examples of Personal Data include name, address, telephone number, and email address.

#### Information You Provide

You do not have to register for a service or program to receive much of the information available through Molecular Devices Sites. However, some of our content is available only to registered or identified users and will require you to set up a profile or provide specific information about yourself in order to provide you the service.

#### Personal Data You Provide When Visiting Molecular Devices Sites

Molecular Devices collects Personal Data that you provide on Molecular Devices Sites, for example, when purchasing a product, to receive marketing products and information, contact Molecular Devices customer service, or respond to Molecular Devices questionnaires or surveys. This could include:

- Contact Information such as your name, address, phone number, or email address.
- Registration Information such as your username and password.
- Employment, education and other background information when you inquire about employment with Molecular Devices.
- Payment information (such as banking information, payment card number, expiration date, delivery address, and billing address).

- Content you may provide (for example, when you complete our Online Contact Form or submit other information).

## **Personal Data You Share During Other Interactions with Molecular Devices**

You may contact Molecular Devices to ask questions, discuss your concerns, or report issues regarding our products. If you communicate with or request information from Molecular Devices, you may be prompted to provide your contact information as well as any Personal Data that is relevant to your request.

## **INFORMATION THAT MAY BE COLLECTED AUTOMATICALLY**

When you use the Molecular Devices Sites, we also may collect certain usage and device information automatically as described below.

### **IP Address**

We may record the Internet Protocol (“IP”) address of your computer or other electronic device when you visit the Molecular Devices Sites. An IP address identifies the electronic device you use to access the Sites, which allows us to maintain communication with your computer as you move about Molecular Devices Sites and to customize content.

### **Cookies and Other Tracking Technologies**

We also collect information about your use of Molecular Devices Sites through tracking technologies such as cookies and web beacons. A “cookie” is a unique numeric code that is transferred to your computer to track your interests and preferences and to recognize you as a return visitor. A “Web beacon” is a transparent graphic image placed on a Web site, e-mail or advertisement that enables the monitoring of things such as user activity and site traffic. These technologies help remember your preferences and allow us to bring you the content and features that are likely to be of greatest interest to you on the basis of “clickstream” data that shows your previous activities on Molecular Devices Sites.

We utilize Google Display Advertising (such as Retargeting with Google Analytics, Google Display Network Impression Reporting, DoubleClick Campaign Manager integration, and Google Analytics Demographics and Interest Reporting) to (1) show you our ads on other websites based on your prior visits to Molecular Devices Sites, and (2) better understand our ad impressions and use of ad services. In connection with the Google Analytics Demographics and Interest Reporting service, we may use data from Google's interest-based advertising or third-party audience data (such as age, gender and interests) with Google Analytics to understand and improve our marketing campaigns and Site content.

Some of our online advertising takes place through Google Display Advertising. As part of this program, we use Google Analytics features such as Retargeting. In connection with that feature and others offered by ad networks, we and the operators of ad networks, including Google, may use third-party cookies (such as the DoubleClick cookie) – and in some cases first-party cookies (such as the Google Analytics cookie) – to inform, optimize and serve ads across the Internet, based on a user's past visits to Molecular Devices Sites. We also may show you ads from some of our affiliated companies when you visit Molecular Devices Sites.

You can opt out of Google Ads by visiting <http://www.google.com/ads/preferences>. If you do not want your data used by Google Analytics, you can install the Google Analytics opt-out browser add-on at the [Google Analytics opt-out page](#).

This Molecular Devices Site is not designed to respond to "do not track" signals received from browsers.

To learn more about cookies and other tracking technologies, including how to disable them, please visit <http://www.allaboutcookies.org/>. Please note that some cookies are essential to the functioning of our Sites and deleting or disabling them will reduce the site's functionality.

### **Mobile Tracking**

Some Molecular Devices Sites are available either as mobile applications or mobile sites that you can use on your mobile device. If you use a mobile device to access and use the Molecular Devices Sites, we may collect the following mobile-specific information in addition to the other information described above: device or advertising ID, device type, hardware type, media access control ("MAC") address, international mobile equipment identity ("IMEI"), the version of your mobile operating system, the platform used to access or download the Molecular Devices Site (e.g., Apple, Google, Amazon, Windows), location information and usage information about your device and your use of the Molecular Devices Sites.

### **Information Collected from Other Sources**

We may combine information about you from a visit to one Molecular Devices Site with information about you from visits to other Molecular Devices Sites. We may also combine information about you that is collected through the Molecular Devices Sites with information that we have collected offline, as well as with information provided to us by third parties.

### **HOW WE USE YOUR INFORMATION**

We use your Personal Data to provide you the product and services you request, communicate with you, improve your experience on the Molecular Devices Sites, generally improve our products and services and for other internal business purposes.



The Personal Data we collect about you may be stored as long as it is required for the purposes identified when you provided the information for such specific purposes or for any new purposes identified by us and consented to by you, and for any appropriate time thereafter including a sufficient time following to permit you to ask any questions regarding its use, after which point it will be archived only for so long as reasonably necessary for the purposes set out above, in accordance with applicable laws.

### **Providing Product and Services You Request**

If you choose to purchase a product or receive our services, we use the Personal Data that you provide through Molecular Devices Sites to manage your orders and invoices, to process payments, to respond to your questions, provide you the services you request and offer an optimal customer experience.

### **Marketing**

You may also receive marketing information from Molecular Devices and related affiliates, such as offers regarding Molecular Devices related products or services, invitations to participate in surveys about our products, or notifications about special promotions. In such cases, we will use your contact and other Personal Data to send you marketing information.

### **Customized User Experiences**

The Personal Data that you provide may be used to create customized offers, information, or services tailored to your interests and preferences. Also, we may use your IP address and the data that we obtain automatically through the use of cookies or similar tracking technologies to make our Molecular Devices Sites easier to use and navigate as well as to personalize the content provided on Molecular Devices Sites by anticipating the information and services that may be of interest to you.

### **Business and Product Improvement**

In order to discover new facts that could help Molecular Devices better understand customer needs and help improve, develop, and evaluate product, services, materials, and programs. Molecular Devices analyzes the information that you have provided. For these purposes Molecular Devices does not use information that can directly identify you.

### **Site Analytics and Improvement**

We may use the information that you provide and the information we collect automatically about your use of the Molecular Devices Sites to monitor user traffic patterns and preferences for site improvement, analytics and optimization.

### **Legal Basis for Processing**

Under data protection laws, Molecular Devices must have a legal basis to process your Personal Data. The legal basis that applies in an instance will depend on for which of the specific purposes described above Molecular Devices is processing your Personal Data:

- In certain cases, Molecular Devices may ask for your consent to collect and process your Personal Data. Should you choose to provide your consent, you may later withdraw your consent by contacting us as described in the “Your Privacy Choices” section. Please note that the withdrawal of consent will not affect processing which has already occurred.
- In other instances, the processing of your Personal Data may be necessary in order to comply with an applicable law or regulation or for the performance of a contract to which you are subject. You may not be able to opt-out of this processing, or your choice to opt-out may impact our ability to perform a contractual obligation otherwise owed to you.
- In still other instances, Molecular Devices may process your Personal Data based on Molecular Devices’ legitimate interests in communicating with you about our products and services, and about scientific research and educational opportunities. You have the right to opt-out of all such processing of your Personal Data. You may do so by contacting us as described in the “Your Privacy Choices” section.

## INFORMATION WE SHARE

We only share your Personal Data with third parties as described below. We do not sell or rent Personal Data to third parties for their own marketing purposes.

### **Third-Party Advertising and Online Behavioral Advertising**

You may be provided with online advertisements of Molecular Devices products and services on third-party websites and mobile services that are tailored to you, for example, on the basis of information that you provide to Molecular Devices or a third-party website you are visiting, or of your browsing activity, purchases, or interests. These types of tailored online advertisements may come through several sources, such as the following:

- We may share with our advertising service providers your non-identifying information that we have obtained from cookies and other tracking technologies on our Molecular Devices Sites.
- Some Molecular Devices Sites participate in online behavioral advertising (this is also sometimes called re-target advertising or interest-based advertising). You can identify these sites by the “Advertising Choices” link in the footer. Our advertising network partners may place and use cookies on Molecular Devices Web sites and on other third-party Web sites to collect information about your activities in order to provide you with online advertisements that are based on your interests.
- Some Web browsers may transmit “do-not-track” signals to Web sites with which the browser communicates. As of the Effective Date of this Privacy Notice, an industry standard has not yet been established on how to respond to these signals. Therefore, Molecular Devices does not currently respond to these signals. As discussed above, you can opt-out from advertisers that use your browsing history to deliver online behavioral advertisements by clicking on the AdChoices icon.

## **Affiliates, Vendors and Suppliers**

We have relationships with suppliers and affiliated companies who help us operate our business and for whom it may be necessary to have access to your Personal Data in the course of providing services to Molecular Devices. We will not authorize these parties to use your Personal Data for any purpose that is not related to Molecular Devices' and its related affiliates' business operation. We may also share your Personal Data with affiliates to offer and provide information about related products and services. We do not share Personal Data from countries that require consent, unless consent has been obtained in advance to sharing with related affiliates. We require these parties to handle Personal Data in accordance with this Privacy Notice.

## **Co-branded Sites**

We may partner with other companies to provide you with content or services on a joint or "co-branded" basis. At a co-branded site, you will see both the Molecular Devices logo and the logo of the co-branding partner displayed on your screen. You should read the individual privacy policies of our co-branding partners, as they may differ in some respects from ours. Reading these policies will help you to make an informed decision about whether to provide your information to a given site.

## **Product Reports**

If you contact Molecular Devices regarding your experience in using one of our products, we may use the information that you provide in submitting reports to the designated government regulatory authority, as required of us by law.

## **Legal Rights and Obligations**

In certain limited circumstances, Molecular Devices may need to disclose your Personal Data in order to comply with a legal obligation or demand, such as to comply with reporting obligations to our governing regulatory authorities regarding the safety of our products, or in connection with the sale or transfer of one of our product lines or divisions, which includes the services provided through one or more of the Molecular Devices Sites. In such instances, we will take measures to protect your Personal Data to the extent possible. We also reserve the right to use Personal Data to investigate and prosecute users who violate our rules or who engage in behavior that is illegal or harmful to others or to others' property.

## **Change in Organization**

In the event Molecular Devices decides to reorganize or divest our business through sale, merger, or acquisition, Molecular Devices may share Personal Data about you with actual or prospective purchasers. We will require any actual or prospective purchasers to treat this Personal Data in a manner consistent with this Privacy Policy.

## CHILDREN PRIVACY

Molecular Devices does not knowingly collect or use any Personal Data directly from children on Molecular Devices Sites (for the purposes of this Privacy Policy, “children” means minors younger than 18). We do not knowingly allow children to order our products, to communicate with us, or to use any of our online services. If you are a parent and become aware that your child has provided us with information, please contact us using one of the methods specified below, and we will work with you to address this issue.

## YOUR PRIVACY CHOICES

You may contact us at any time if you have questions about this Privacy Policy or the Personal Data we collect about you. You can also opt-out or unsubscribe from our marketing communications.

You have the right to see and get a copy of Personal Data about you that we maintain as well as to ask us to make corrections to inaccurate or incomplete Personal Data about you. You have the right to receive data you have provided to us in a machine-readable format and to transmit that data to another controller. You may also request the erasure of your Personal Data or the restriction of its processing, or object to the processing of Personal Data about you. To seek access to Personal Data about you, to file a concern, complaint, or request for correction, email us at [privacy@moldev.com](mailto:privacy@moldev.com). Alternatively, you may also send a letter to the following address:

Molecular Devices  
Attn: Privacy  
3860 N. First St.  
San Jose, CA 95134

The local Data Protection Authority is responsible for making sure that privacy law is followed in your country. For more information about your privacy rights, or if you are not able to resolve a problem directly with us and wish to make a complaint, contact your country’s Data Protection Authority.

In all communications to Molecular Devices, please include your email address, the Web site address, mobile application, and/or the specific Molecular Devices product to which you provided Personal Data (e.g., Molecular Devices.com), and a detailed explanation of your request. If you would like to delete, amend, or correct your Personal Data and are contacting us by email, please put “Deletion Request” or “Amendment/Correction Request” in the subject line of the email. We will respond to all reasonable requests in a timely manner and may need to further confirm your identity in order to process certain requests.

## DATA SECURITY

Molecular Devices maintains reasonable technical, administrative and physical controls to secure any Personal Data collected through the Molecular Devices Sites. However, there is always some risk that an unauthorized third party could intercept an Internet transmission, or that someone will find a way to thwart our security systems. We urge you to exercise caution when transmitting Personal Data over the Internet, especially your financial-related information. Molecular Devices cannot guarantee that unauthorized third parties will not gain access to your Personal Data; therefore, when submitting Personal Data to Molecular Devices Sites, you must weigh both the benefits and the risks.

### THIRD PARTY SITES AND SOCIAL MEDIA PLUG-INS

This Privacy Notice does not apply to Molecular Devices Sites that do not link to this Privacy Notice, or to third-party Web sites to which Molecular Devices Sites may link. Molecular Devices Sites may use social media plug-ins (e.g., the Facebook “Like” button, “Share to Twitter” button) to enable you to easily share information with others. When you visit Molecular Devices Sites, the operator of the social plug-in can place a cookie on your computer or other electronic device that enables that operator to recognize individuals who have previously visited our Site. If you are logged into the social media Web site (e.g., Facebook, Twitter) while browsing on our Molecular Devices Site, the social media plug-in allows that social media Web site to receive information that you have visited our Molecular Devices Site. The social media plug-in also allows the social media Web site to share information about your activities on our Molecular Devices Site with other users of their social media Web site. These sharing settings are managed by the social media Web site and governed by its privacy policy.

### Accessing Our Sites Globally

This site is owned and operated by Molecular Devices in the United States, but the information you provide will be accessible to our affiliates, vendors, and suppliers in other countries in accordance with this policy. Furthermore, if you are visiting this site from a country other than the United States, your communication with us will necessarily result in the transfer of information across international borders. The level of legal protection for Personal Data is not the same in all countries; however, we will take the security measures described in this Privacy Notice in an effort to keep your information secure. By using this site, you consent to storage and processing of your Personal Data in the United States and in any country to which we may transfer your information in the course of our business operations.

### Notice to California Residents

Subject to certain limits under California Civil Code § 1798.83, California residents may ask us to provide them with (i) a list of certain categories of Personal Data that we have disclosed to third parties for their direct marketing purposes during the immediately preceding calendar year, and (ii) the identity of those third parties. To make this request, California residents may contact us at [privacy@moldev.com](mailto:privacy@moldev.com).

## CHANGES TO OUR PRIVACY POLICY

We will only use Personal Data in the manner described in this Privacy Policy in effect when the information was collected from you or as authorized by you. However, and subject to any applicable consent requirements, we reserve the right to change the terms of this Privacy Policy at any time. Any changes to this Privacy Policy will be reflected on this page with a new effective date. Molecular Devices encourages you to review this Privacy Policy regularly for any changes. Any Personal Data collected upon your continued use of Molecular Devices Sites will be handled in accordance with the currently posted Privacy Policy.