

## **End-User License Agreement LI-COR® IMAGE STUDIO SOFTWARE**

This End-User License Agreement (“EULA”) governs the rights granted by LI-COR, Inc. (“LI-COR” or the “Licensor”) to an end user, including, but not limited to a natural person, a university, a not-for-profit entity or a company (“Licensee” or “You” or “Your”) of the LI-COR Image Studio computer software (“SOFTWARE”) which includes computer software in object code, associated media, printed materials and online or electronic documentation. The SOFTWARE is intended to be used solely with LI-COR’s instrument products (collectively “LI-COR Instruments”). By clicking on the “I agree” ICON at download or installation of the Software, or by installing, copying, or otherwise using the Software, You agree on Your behalf and on behalf of Your affiliates and any of Your officers, directors, employees, agents or representatives to (i) pay all fees and charges related to the SOFTWARE in the amounts and at the times set forth in purchase orders accepted and invoiced by LI-COR and or otherwise invoiced to You by LI-COR and (ii) to be legally bound by the terms of this EULA effective from the date thereof. If You do not agree to the terms of this EULA, do not install or use the Software and if You have paid for the Software You may contact LI-COR for a full refund.

**THIRD PARTY SOFTWARE: THE SOFTWARE CONTAINS THIRD PARTY SOFTWARE ("THIRD PARTY SOFTWARE") THE USE OF WHICH IS SUBJECT TO ADDITIONAL TERMS AND CONDITIONS IMPOSED BY THE THIRD PARTIES. SEE BELOW. NOTICES RELATING TO THE USE OF THIRD PARTY SOFTWARE AND TERMS AND CONDITIONS FOR ITS USE ARE LOCATED AT THE IMAGE STUDIO SOFTWARE HELP ICON OR BUTTON. SUCH NOTICES AND TERMS AND CONDITIONS ARE MADE A PART OF AND INCORPORATED BY REFERENCE INTO THIS EULA. BY ACCEPTING THIS EULA, YOU ARE ALSO ACCEPTING THE ADDITIONAL TERMS AND CONDITIONS IMPOSED BY THE THIRD PARTIES SET FORTH THEREIN. WARRANTIES FOR THE THIRD PARTY SOFTWARE ARE PROVIDED SOLELY BY THE THIRD PARTIES. LICENSES FOR THIRD PARTY SOFTWARE CAN BE FOUND AT:**

[http://biosupport.licor.com/docs/software\\_licenses.pdf](http://biosupport.licor.com/docs/software_licenses.pdf)

**1. GRANT AND SCOPE OF LICENSE.** This Agreement grants You the following nonexclusive and nontransferable limited rights:

**1.1 Applications Software.** You may install and use one copy of the SOFTWARE, only on a single computer, unless You have licensed the Software under a multiple user license for use with multiple computers.

**1.2 Storage/Network Use.** You may install and use the SOFTWARE from a network server used only to install or run the SOFTWARE on Your computers over Your internal network; however if You install and run the Software on Your internal network, You must acquire and dedicate a license for each separate computer that will access and use the SOFTWARE from the network server. The SOFTWARE may not be shared and used concurrently on different computers at the same time, unless a multiple user license is obtained from LI-COR for each computer.

**1.3 Multiple Users License.** If Your purchase order for the Software is for a license for use on multiple computers, You may copy and install and or use the Software on the number of computers indicated.

**1.4 Certificate.** For reference and software audit documentation purposes only, LI-COR will provide You from time to time and on request, a certificate evidencing Your license of the Software and the number of Your computers on which the SOFTWARE may be installed and used in conjunction with LI-COR Instruments.

**2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.** Notwithstanding the license granted above, LI-COR retains all rights in and to the Software and Confidential Information, as defined herein, not expressly granted to You in this Agreement and there are no implied licenses granted hereunder.

**2.1 Not for Resale.** The SOFTWARE is licensed and not sold to You. You may not sell or otherwise assign Your rights under this EULA or transfer the SOFTWARE to any other person with or without value. The SOFTWARE is only licensed to be used on computers and with LI-COR Instruments owned by You. In event that the SOFTWARE is installed on a computer that is to be sold or transferred by You to a third party, You agree to remove the SOFTWARE from the computer before delivering it to the third party even if You also sell or transfer the LI-COR Instrument with which the SOFTWARE is associated. In the event that SOFTWARE is not removed, the license granted under this EULA shall automatically terminate.

**2.2 Limitations on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, adapt, translate, disassemble, or create derivative works based up any portion of the SOFTWARE, except and only to the extent that such activity is expressly permitted under a Third Party Software license, by applicable law or by LI-COR's express written consent. You do not have the right to obtain or use any source code for the Software.

**2.3 Separation of Components.** The SOFTWARE is licensed as a single product for use only with LI-COR Instruments. Its component parts may not be separated for use on more than one computer.

**2.4 Rental.** You may not rent, lease or lend the SOFTWARE to any third party, even if You rent, lease or lend the LI-COR Instrument to a third party with which the SOFTWARE is associated.

**2.5 Support Services.** LI-COR may provide You with support services related to the SOFTWARE ("Support Services"). Use of Support Services is governed by LI-COR policies and programs described in the user manual, in "online" documentation, and/or in other LI-COR-provided materials. Any supplemental software code provided to You as part of the Support Services shall be considered part of the SOFTWARE and is subject to the terms and conditions of this Agreement. With respect to technical information You provide to LI-COR as part of the Support Services, LI-COR may use such information for its business purposes,

including for product support and development. LI-COR will not utilize such technical information in a form that personally identifies You.

**2.6 Treatment of Licensor Confidential Information.** You shall maintain all proprietary and confidential information embodied in the Software, including, without limitation the source and object code, all information regarding LI-COR's operations and business systems contained in the Software or provided separately by LI-COR and any Intellectual Property, as defined herein, related thereto ("Confidential Information"), in trust and confidence and shall not use such Confidential Information for any purpose other than the use of the Software and the purposes contemplated by this Agreement. As used in this Agreement, the term "Intellectual Property" means all copyrights, trade secrets, patents, patent applications, moral rights, contract rights, trademarks, service marks, and other proprietary rights owned or licensed to LI-COR. You shall not disclose such Confidential information to any person, and You shall require all of Your employees, vendors and agents that legally obtain access to such Confidential Information to be subject to policies, procedures or agreements that run to LI-COR's benefit and which are reasonably designed to protect the confidentiality of such Confidential Information. The obligation to not use and maintain the confidentiality of Confidential Information as set forth in this paragraph shall survive the expiration and termination of this Agreement.

**2.6.1. Exceptions.** Notwithstanding Section 2.6:

**2.6.1.1.** You may only disclose Confidential Information: (a) to those persons who have a need to know such information to accomplish the purposes of this Agreement and who or which are subject to policies, procedures or agreements that run to LI-COR's benefit and which are reasonably designed to protect the confidentiality of such Confidential Information; or (b) upon the prior written approval of Licensor.

**2.6.1.2.** The obligations of Section 2.6 shall not apply to information that is: (a) in Your possession without an obligation to maintain its confidentiality in trust to Licensor before receipt thereof from LI-COR; (b) available to the public without Your fault; or (c) is disclosed to Licensee, without restriction, by a third party who is not under any legal obligation (either by agreement with LI-COR or otherwise) prohibiting such disclosure.

**2.6.1.3.** You may disclose Confidential Information to governmental agencies or in litigation, as compelled or otherwise required by law, however, to the extent compelled or otherwise required to disclose any Confidential Information to the government or in litigation, You shall give LI-COR notice of such disclosure in the greatest amount of time in advance of the disclosure as may be reasonably and legally practical.

**2.7 Return of Confidential Information.** Upon expiration or termination of this Agreement, You shall deliver to LI-COR Confidential Information that is in Your possession and not otherwise destroyed.

**2.8 Irreparable Harm.** You acknowledge and agree that money damages would be both incalculable and an insufficient remedy for any breach of Section 2.6 and that any such breach would cause LI-COR irreparable harm. Accordingly, You agree that in the event of any breach or threatened breach of Section 2.6 of this Agreement by You or any of Your affiliates or any of Your or their officers, directors, employees, agents or representatives, LI-COR, in addition to any other

remedies it may have at law or in equity, shall also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.

**3. UPGRADES/ENHANCEMENTS.** If the SOFTWARE is labeled as an upgrade, You must be properly licensed to use a product identified by LI-COR as being eligible for the upgrade in order to use the SOFTWARE. SOFTWARE labeled as an upgrade replaces and/or supplements the product that formed the basis for Your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this Agreement. If the SOFTWARE is an upgrade component of a package of software programs that You licensed as a single product, the SOFTWARE may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

**4. COPYRIGHT.** All right, title to and copyrights in the SOFTWARE (including but not limited to any source and object code, images, photographs, animations, video, audio, and text incorporated into the SOFTWARE) are owned by LI-COR or licensed to LI-COR by its suppliers. The SOFTWARE is protected by copyright laws and international treaty provisions.

**5. U.S. GOVERNMENT RESTRICTED RIGHTS.** The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227- 19, as applicable. Manufacturer is LI-COR, Inc./4647 Superior Street/Lincoln, NE 68504.

#### **6. REPRESENTATIONS AND WARRANTIES**

**6.1 Warranty.** Licensor warrants that (a) the Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of installation.

**6.2 Limitations: SUBJECT TO SECTION 6.1, LICENSOR DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LI-COR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF LI-COR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, LI-COR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER AMOUNT OF ACTUALLY PAID BY YOU FOR THE SOFTWARE OR U.S. \$5.00; PROVIDED, HOWEVER, IF YOU HAVE ENTERED INTO A LI-COR SUPPORT SERVICES AGREEMENT, LI-COR'S ENTIRE LIABILITY REGARDING SUPPORT SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT.**

**6.3 EXCLUSIVE REMEDY: TO THE EXTENT THAT THE LICENSOR IS**

**LIABLE, THE EXCLUSIVE REMEDY, AT LI-COR'S OPTION SHALL BE EITHER (A) RETURN OF THE GREATER OF AMOUNT ACTUALLY PAID, IF ANY, BY YOU FOR THE SOFTWARE OR U.S. \$5.00, OR (B) REPAIR OR REPLACEMENT OF THE LICENSED PROGRAM.**

This Limited Warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Outside of the United States, neither of these remedies nor any product support services offered by LI-COR are available without proof of purchase from an authorized international source.

## **7. DISPUTE RESOLUTION**

**7.1** In the event of a dispute involving the interpretation or application of any provision of this Agreement, the parties agree not to commence litigation until they have first notified each other of their intent to implement the terms of this Section after first having employed their best efforts to jointly resolve such dispute. If the parties cannot resolve their differences in such fashion within thirty (30) days of either party's receipt of such notice of the intent of the other party to implement the terms of this Section, the following alternative dispute resolution process (the venue of which shall be Lincoln, Nebraska) shall be immediately implemented:

**7.2** Upon written request of either party, the dispute will be referred for negotiation to representatives of the parties who have no direct operational responsibility for the matters involved in the dispute and who have authority to resolve the dispute.

**7.3** If these representatives have not agreed on a resolution of such dispute within ten (10) Business Days of its referral to them, the dispute shall be promptly submitted to a neutral adviser (the "Adviser") who shall be chosen from the list of arbitrators registered with the American Arbitration Association. For purposes of this Section, "Business Day" shall mean each weekday and the hours of such weekday in which You are open for business. The Adviser shall, within fourteen (14) days of the submission, recommend, in writing, a procedure for resolving the dispute and shall specify in such writing whether such procedure shall be binding, non-binding or involve a combination of binding and non-binding procedures.

**7.4** If the parties do not mutually agree upon the process recommended by the Adviser within ten (10) Business Days of their receipt of the Adviser's written recommendation, they shall promptly convene a non-binding hearing (the "Mediation"). The rules for Mediation will be established by the Adviser, after consultation with the parties.

**7.5** If the dispute cannot be resolved, either through the procedure recommended by the Adviser or through the Mediation, within such period as the Adviser shall deem reasonable, the Adviser shall, at the request of either party, certify to the parties that the matter is incapable of resolution.

**7.6** No litigation may be commenced concerning the dispute until the Adviser has certified in writing that the dispute is incapable of resolution, provided that any party may commence litigation: (a) on any date after which such litigation could be barred by an applicable statute of limitations; or (b) if litigation is otherwise necessary to prevent irreparable harm to the moving party.

**7.7** Each party shall bear its own expenses in connection with the alternative dispute resolution procedures set forth in this Section, except that the parties shall split equally the fees and expenses of the Adviser, including the costs

associated with any Mediation, and the fees and expenses of any other person designated by the Adviser to assist the parties.

**7.8** All communications made in connection with the alternative dispute resolution procedure set forth in this Section shall be treated as communications for the purpose of settlement and as such shall be deemed to be confidential and inadmissible in any subsequent litigation by virtue of Rule 408 of the Federal Rules of Evidence, as the same may be amended from time-to-time.

## **8. TERMINATION**

**8.1 Termination:** This agreement shall be effective from the date that You click on the "I agree" ICON at download or installation of the Software, or by installing, copying, or otherwise using the Software and shall terminate as follows:

**8.1.1. By Licensor:** Licensor may terminate this Agreement immediately with written notice to You upon Your uncured breach of any the terms and conditions of this Agreement. In this event, You shall not be entitled to any refund or credit whatsoever.

**8.1.2. By Licensee:** You may terminate this Agreement: (a) immediately, upon Licensor's breach of the obligations in Article 6; or (b) upon thirty (30) days prior written notice thereof to Licensor.

**8.1.3 Effect of Termination:** Upon termination for any reason, all rights granted to You by this agreement shall cease and You shall immediately cease using the Software. In addition, without further demand You shall remove the Software from any computer or network server on which it has been installed or copied and You shall otherwise destroy any and all copies of the Software and any related materials in Your possession.

**8.2 Bankruptcy Termination:** In the event Licensor enters bankruptcy, the laws and rules of the Bankruptcy Code will govern the enforceability of this agreement.

## **9. MISCELLANEOUS**

**9.1 Headings:** Unless otherwise stated, all references to Articles and Sections refer to the articles and sections of this Agreement. The headings of the Articles and Sections of this Agreement are for convenience only and in no way limit or affect the terms or conditions of this Agreement.

**9.2 Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska (without regard to the principles of conflicts of laws embodied therein) applicable to contracts executed and performable in such state if the product was acquired in the United States. If the product was acquired outside the United States, then local law may apply.

**9.3 Severability:** If any provision or any portion of any provision of this Agreement is construed to be illegal, invalid or unenforceable, such provision or portion thereof shall be deemed stricken and deleted from this Agreement to the same extent and effect as if it were never incorporated herein, but all other provisions of this Agreement and the remaining portion of any provision that is construed to be illegal, invalid or unenforceable in part shall continue in full force and effect; provided that the resulting construction of the Agreement does not frustrate the main purpose of the Agreement.

**9.4 Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, between the parties

with respect to the subject matter hereof. Any modification and/or amendment to this Agreement must be in writing and executed by both parties.

**9.5 Survival:** The provisions of Sections 2, 4, 5, 6, 7, 8 and 9 shall survive termination or expiration of the Agreement.

**9.6 Successors and Assigns; Change of Control:** All the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and permitted assigns. In the event of a change of control by Your merger or sale of substantially all of Your assets with a third party, You may transfer, lease, assign or sublicense its entire right, interest and obligation hereunder to such third party, provided that You give LI-COR prior written notice of such merger or sale transaction and such third party enters into a substitute version of this Agreement.

**9.7 No Relationship Between the Parties:** Neither party shall represent itself as the agent or legal representative of the other or joint venture for any purposes whatsoever, and neither shall have any right to create or assume any obligations of any kind, express or implied, for or on behalf of the other in any way whatsoever.

**9.8 Non-Waiver:** A failure of either party to enforce at any time any term, provision, or condition of this Agreement, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein, in no way whatsoever shall a waiver of any term, provision or condition of this Agreement be valid unless in writing, signed by the waiving party, and only to the extent set forth in such writing.

**9.9 Notices:** Unless expressly stated otherwise, all notices required herein shall be given in writing and shall be delivered (and notice shall be deemed effective upon delivery) in person, by courier, or sent by certified United States mail, postage prepaid, return receipt requested, to the following address:

LI-COR, Inc.

4647 Superior Street

P.O. Box 4000

Lincoln, Nebraska 68504 USA

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