End-User Software License Agreement

Last updated: January 11, 2019

Please read this End-User Software License Agreement (hereinafter the “Agreement”) carefully before clicking the “I Agree” button, downloading or using Hologic Connect™ or Unifi™ Analytics (hereinafter the “Licensed Software”).

By clicking the “I Agree” button, downloading or using the Licensed Software, You are agreeing to be bound by the terms and conditions of this Agreement. If You are accepting these terms of behalf of another person or company or other legal entity, You represent and warrant that you have full authority to bind that person, company or legal entity to these terms.

If You do not agree to the terms of this Agreement, do not click on the “I Agree” button and You cannot download or use the Licensed Software.

“You” or “Your” means the person or entity who is being licensed to use the Licensed Software in association with any sales or service agreement (“Usage Agreement”). “We”, “Our” and “Us” means Hologic, Inc.

1. License Grant. We grant You a revocable, non-exclusive, non-transferable, limited right to access and use the Licensed Software on a device owned and controlled by You, and to access and use the Licensed Software strictly in accordance with the terms and conditions of this Agreement, the Usage Agreement and any service agreement, sales agreement or any other agreement with You, (collectively, “Related Agreements”).

2. Restrictions on Use. You shall use the Licensed Software strictly in accordance with the terms of the Related Agreements and shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, maliciously penetrate any system or network which runs or stores, or decrypt the Licensed Software; (b) make any modification, automation, conversion, adaptation, improvement, enhancement, translation or derivative work to or from the Licensed Software; (c) remove, circumvent or create, or use any workaround to any copy protection or security feature relating to the Licensed Software; (d) violate any applicable laws, rules or regulations in connection with Your access or use of the Licensed Software; (e) remove, alter, or obscure any proprietary notice (including any notice of copyright or trademark) of Ours or Our affiliates, partners, suppliers or licensors; (f) use the Licensed Software for any revenue generating endeavor, commercial enterprise, or other purpose for which it is not designed or intended; (g) install, use or permit the Licensed Software to be used only on the originally designated Equipment for the Licensed Software; (h) make the Licensed Software available over a network or other environment permitting access or use by multiple devices or users at the same time; (i) use the Licensed Software for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any product, services or software offered by Us; (j) use the Licensed Software to send automated queries to any website or to send any unsolicited commercial e-mail; (k) connect the Licensed Software to any online service or other applications, software or services not provided or permitted by Us; (l) use any proprietary information or interfaces of Ours or other intellectual property of Ours in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the Licensed Software; (m) own title, or transfer title to the Licensed Software to any third party; (n) distribute, or sublicense or otherwise provide copies or any rights in relation to the Licensed Software to any third party; or (o) pledge, hypothecate, alienate or otherwise encumber the Licensed Software to any third party.

3. Consent to Use of Content. You agree that We may collect and use device data and related information, including but not limited to technical information about Your devices, products, system and application software, and peripherals, that is gathered to facilitate the provision of software updates, product support and other services to You related to the Licensed Software (collectively, “Data”). You may also have agreed to provide information, feedback, de-identified images, and other content in connection with Your
use of the Licensed Software (together with the Data, collectively, “Content”). You agree that We may use the Content to improve the products and services or to provide products and services to You, and You hereby grant Us a non-exclusive, worldwide, royalty-free, fully paid-up, transferable and sub-licensable license in and to the Content, including all intellectual property rights therein, for Us to use, modify and create derivative works of the same in connection with or related to any business purposes. You represent and warrant to Us that (i) you have the necessary rights to grant the licenses and rights in the Content, and (ii) the Content and Our use thereof as permitted in this Agreement will not infringe, violate or misappropriate any third party right. Content will not include any patient health information (“PHI”).

For the avoidance of doubt, "Protected Health Information" or "PHI" shall mean individually identifiable health information regardless of the form in which it is maintained or transmitted. We may, at our sole discretion, aggregate and de-identify any and all PHI obtained under this Agreement and use all such de-identified data in accordance with the de-identification requirements at 45 CFR 164.514(b). With respect to de-identification, the aggregated and de-identified data We produce or use either: (i) will not include any identifiers listed in 45 CFR 164.514(b)(2)(i), or (ii) will have been determined by a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable and applying such principles and methods, that the risk is very small that the aggregated and de-identified data generated under this Agreement could be used, alone or in combination with other reasonably available information, by an anticipated recipient, to identify an individual who is a subject of the information, thereby forming a "statistically de-identified data set" and rendering the information not PHI under HIPAA. De-identified information does not constitute PHI and is not subject to the terms of this Agreement.

4. Intellectual Property Rights. You acknowledge and agree that the Licensed Software and Our documentation are provided under license, and not sold, to You. You do not acquire any ownership interest in the Licensed Software or Our documentation under this Agreement, or any other rights thereto, other than to use the Licensed Software in accordance with Our documentation, subject to all of the terms, conditions and restrictions under this Agreement and any Usage Agreement. We reserve and shall retain all right, title and interest in and to the Licensed Software and all intellectual property rights arising out of or relating to the Licensed Software, except as expressly granted to You in this Agreement. You shall safeguard the Licensed Software from infringement, misappropriation, theft, misuse or unauthorized access. You shall promptly notify Us if You become aware of any infringement of Our intellectual property rights in the Licensed Software and fully cooperate with Us in any legal action taken by Us to enforce Our intellectual property rights. Further, We will be free to use any ideas, concepts, know-how or techniques contained in such Content for any purpose whatsoever, including, without limitation, developing, making, marketing, distributing and selling products and services incorporating such Content. We will have no obligation to consider, use, return or preserve any of the Content you provide to Us. Any Content You provide to Us may or may not be treated confidentially by Us, and We will have no obligation or liability to You for the use or disclosure of any of the Content. You should not to expect any compensation of any kind from Us with respect to the Content You provided.

5. Limited Warranty and Disclaimer.
   a) Limited Warranty. We warrant that, for a period of ninety (90) days following the date the Licensed Software is made available to You for Your use, the Licensed Software will perform substantially in accordance with Our documentation (the “Limited Warranty”).
   b) Exclusive Remedy. In case of any breach of the above Limited Warranty, as your exclusive remedy and Our entire obligation and liability, We will: (i) repair or replace the Licensed Software; or (ii) if such repair or replacement would in Our opinion be commercially unreasonable, upon Our receipt of Your written representation and promise that you have removed all instances of the Licensed Software and will not use the Licensed Software, refund the price paid by You for the applicable Licensed Software.
c) **Exclusion of Warranty.** THE ABOVE LIMITED WARRANTY WILL NOT APPLY IF: (i) THE LICENSED SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR OUR DOCUMENTATION; (ii) THE LICENSED SOFTWARE OR ANY PART THEREOF HAS BEEN MODIFIED BY YOU OR ANY ENTITY OTHER THAN US; OR (iii) A MALFUNCTION IN THE LICENSED SOFTWARE HAS NOT BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT APPROVED OR SUPPLIED BY US.

d) **Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE LICENSED SOFTWARE IS PROVIDED “AS IS” AND WE MAKE NO REPRESENTATIONS OR WARRANTIES, AND WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY, REPRESENTATION, OR GUARANTEE THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE FAILSAFE, UNINTERRUPTED, OR FREE FROM ERRORS OR DEFECTS.

6. **Limitation of Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL WE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE LICENSED SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Our total liability to You for all damages exceed the Licensed Software fee paid by You for the applicable term. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law.

7. **Intellectual Property Indemnity.**

   a) **Indemnity.** We will indemnify, and at our election, defend, You against claims asserted against You in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for misappropriation of third party trade secrets; (ii) the claim is asserted against the Licensed Software, alone and not in combination with any third party software or systems.

   b) **Exclusions.** Notwithstanding anything else in this Agreement, We have no obligation to indemnify or defend you for claims asserted, in whole or in part, if (i) the Licensed Software is not used in accordance with this Agreement or Our documentation; (ii) the Licensed Software or any part thereof has been modified by You or any entity other than Us; or (iii) a malfunction in the Licensed Software has been caused by any equipment or software not approved or supplied by Us.

   c) **Conditions.** As a condition of Our obligations under this Section 7, You must provide Us with: (i) prompt written notice of the claim and Your agreement to give Us sole control over the defense and settlement of the claim; and Your full and timely cooperation. We will not be responsible for any costs, expenses or compromises that You make or incur without Our written consent.

   d) **Remedies.** We may, at Our sole discretion and expense: (i) procure for you the right to continue using the Licensed Software; (ii) replace the Licensed Software with non-infringing Licensed Software; (iii) modify the Licensed Software so that it becomes non-infringing; or (iv) upon Your return of the Licensed Software to Us, and/or removal of the Licensed Software from your systems, refund the residual value of the Licensed Software fee paid by You for the infringing Licensed Software,
depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Licensed Software to You. This indemnity section states Our entire obligation and Your exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, made in whole or in part against the Licensed Software.

8. **Export.** You may not use or otherwise export or re-export the Licensed Software except as authorized by United States law and the laws of the jurisdiction in which the Licensed Software was obtained. In particular, but without limitation, the Licensed Software may not be exported or re-exported: (i) into any U.S. embargoed countries; or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. By using the Licensed Software, You represent and warrant that You are not located in any such country or on any such list and that You will not use the Licensed Software for any purposes prohibited by United States law.

9. **Term.** The term of this Agreement will commence on the date of Your agreement to these terms and shall continue for the same term as the Usage Agreement. Hologic may terminate this Agreement at any time for any reason, including to the extent that any Usage Agreement has been terminated or expired.

10. **General.**

    a) **Governing Law, Jurisdiction.** Upon acceptance of these terms, this Agreement is governed by the laws of the Commonwealth of Massachusetts, without regard to any conflict of law principles to the contrary. You hereby irrevocably consent to jurisdiction of the state and federal courts located in Boston, Massachusetts with respect to any proceeding regarding this Agreement or the Licensed Software. The 1980 UN Convention for the International Sale of Goods or any successor thereto does not apply to this Agreement. You will not prosecute any action, suit, proceeding or claim arising under or by reason of this Agreement or the Licensed Software except in such courts.

    b) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will remain in full force and effect, and the remaining provisions will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force.

    c) **Assignment.** You may not assign or otherwise transfer the Licensed Software or this Agreement, or assign, sub-license or otherwise transfer to any other person or entity any of Your rights under this Agreement without Our prior written consent, and any attempted assignment without such consent will be void.

    d) **Notices.** All "notices" provided by You under this Agreement shall be in writing sent to the contact information associated with the user account to access the Licensed Software or other means providing proof of delivery.

    e) **Revisions to this Agreement.** We may at any time revise the terms of this Agreement by updating these terms and by providing notice to You of that change upon You accessing the Licensed Software at the time of said change and agreeing to the revised terms.

11. **Entire Agreement.** This Agreement together with the Related Agreements sets forth Our entire agreement with respect to Your use of the Licensed Software and supersedes all prior and contemporaneous understandings and agreements with respect to the Licensed Software and Your use thereof whether written or oral. In the event of a conflict, the Usage Agreement shall supersede and control over the terms of this End-User Software License Agreement.