Agilent Technologies

TERMS OF USE - BENCH LAB/ALISSA/ONESIGHT/ONE PGT (US/Canada)   **Exhibit E440**

These terms of use ("**Terms of Use**") and the **Offer** together with the respective Product Data Sheet are a legal binding agreement between **Customer** and the Agilent entity issuing the Offer, ("**Agilent**"). These Terms of Use shall supersede any other provisions, terms and conditions set forth by Customer, and the rights of the parties shall therefore be governed exclusively by the provisions, terms and conditions set forth herein.

1. **DEFINITIONS**

   a) "**Agreement**" means the Terms of Use and the Offer.

   b) "**Authorized Users**" means the individual registered users of the Software that are entitled to use of the Software; Authorized Users are the only users that can log in to the Services and Software and must be known by Agilent.

   c) "**Confidential Information**" means any non-public information that a party to the Agreement marks as being confidential or, if disclosed orally, reduced to writing and further disclosed to the receiving party within thirty (30) days of disclosure. Notwithstanding the foregoing, Confidential Information includes, but is not limited to the Services, Documentation and Software, the contents of the Agreement, the Data and Agilent's business policies or practices.

   d) "**Customer**" and "Customer's" means the legal entity specified in the Offer to which Agilent will provide the Services and Software.

   e) "**Customization(s)"** means any software that Agilent develops at Customer's specific request and delivers to Customer.

   f) "**Data**" means the information including but not limited to Personal Data that Customer inputs into the Software and/or the information resulting from the use of the Software.

   g) "**Documentation**" means the manual containing the instructions for use of the Software.

   h) "**Fees**" means the set up and Service fees due by Customer.

   i) "**Initial Term**" shall be for the period of one (1) year and shall commence on the date upon which access to the Software is granted to Customer.

   j) "**Offer**" means the proposal made by Agilent to Customer specifying (i) the Software; (ii) if applicable, Customizations (iii) the number of Authorized Users; (iv) the Fees due by Customer; (v) the set up and support and maintenance options Customer selected; (vi) use for internal purposes and for the number of users of the Software ("Permitted Use"); (vii) the Initial Term; (viii) if applicable, the Renewal Term; (ix) the Services and the terms of these Services and (x) the terms of license of the open software used by Agilent, if any.

   k) **"Performance Criteria"** means the descriptions, standards, criteria, information contained in the Instructions for Use and Product Data Sheet (if applicable), and specifications contained in the Documentation, Offer, and this Agreement.

   l) **"Personal Data"** means Data that can directly or indirectly identify individuals.

   m) "**Renewal Term**" means any subsequent one (1) year period commencing upon expiration of the Initial Term or of any previous Renewal Term.

   n) "**Services**" means the services that Agilent will provide, as detailed in the Offer together with the respective Product Data Sheet and herein, including but not limited to access and use of the Software and Documentation, storage and back-up of Data, support, maintenance and training, and Customizations.

   o) "**Software**" means Agilent's software contained in the Offer together with the respective Product Data Sheet and/or any of its components (including those installed onsite) as further described in the Offer and, if applicable, (i) additional functional and knowledge modules; and/or (ii) Customizations.

   p) "**Subscription Term**" means the Initial Term and Renewal term(s).

   q) "**Third Party Components**" means any third party software or database (e.g., medical taxonomies) that is *integrated* with but not *included* in the Software. Third Party Components are subject to a separate agreement.

2. **Services**

   a) **Access to and use of the Software.** Subject to the terms and conditions of the Agreement, Agilent grants Customer a non-exclusive and non-transferable license to access and use the Software and Documentation within Customer's Permitted Use during the Initial Term and, if applicable, Renewal Term. Customer may only allow Authorized Users to access and use the Software and Documentation. An Authorized User may not share its right to use with other users. Customer will not make available, directly or

indirectly, by any technical means, the Software or the Documentation accessible to other users than the Authorized Users.   The actual number of Authorized Users may never exceed the number of Authorized Users referred to in the Offer.

b) Customer may at any time purchase additional Authorized Users from Agilent.   Any additional Authorized User will be subject to the terms of the Agreement.   The Software and Documentation will operate on Agilent's servers and Customer will access and use the Software through the Internet in an application service provider (ASP) mode.

c) **Availability and Interruption.** Agilent will pursue commercially reasonable efforts to ensure that the Software will be available to Customer 99.0 % of the time. Any period of non-availability will be deemed to start from when Customer notifies Agilent about the non-availability.   Notwithstanding the foregoing, the following factors shall not be included in calculating the   periods of availability: (i) the suspension or termination of the Agreement; or (ii) factors outside of Agilent's reasonable control, including but not limited to any force majeure event; or (iii) any actions or inactions of Customer, or any other third party; or (iv) any problems with the Internet, Customer's infrastructure, Customer's equipment, Customer's software or other technology and/or third party's infrastructure, equipment or software (other than third party's equipment within Agilent's direct control); (v) scheduled maintenance, if Agilent notified Customer by e-mail one (1) day prior to the commencement of the maintenance work; and (vi) onsite installation or onsite partial installation.

d) **Storage and Backup of Data.** Data will be stored on Agilent's online and offline servers as defined in the Product Data Sheet (if applicable).

e) **Support and Maintenance.** Support and maintenance will be provided in accordance with the Product Data Sheet (if applicable).

f) **Training.**   Training will be provided in accordance with the Product Data Sheet (if applicable).

3. OBLIGATIONS

a) **Minimum software, infrastructure and communication requirements.**   Customer agrees to access and use the Services and Software in accordance with the minimum software, infrastructure and communication requirements that Agilent will communicate to Customer prior to entering into the Agreement (or from time to time thereafter), and to the terms of license of the open software used by Agilent. Agilent does not make any commitments with respect to use or performance of the Services and Software in case these minimum requirements or are not complied with. Customer is solely responsible for acquiring, maintaining, updating and troubleshooting all software, hardware and communications means (such as Internet and network connections) by which Customer accesses and uses the Services and/or Software.

b) **Restrictions on Use of Software.** Except as otherwise expressly provided for in the Agreement, Customer agrees to: (i) only use the Services and Software in accordance with the Permitted Use, and for the purposes, expressly specified in the Agreement; (ii) not decompile or reverse assemble the Software except to the extent this is expressly allowed by law; (iii) not sublicense, rent, lease or export the Services and Software; (iv) unless as permitted under the Agreement, not copy, reproduce, transmit or distribute the Software or any portion thereof, or facilitate a third party to do so; and (v) not use any device or software to interfere with the proper operation of the Software and Services.

c) **Intended Use**.   Customer will use Software in accordance with its intended use, instructions for use and all applicable software labeling as described in the Product Data Sheet accompanying the software and the Offer. Customer is responsible for ensuring that the way that it uses Software complies with all applicable laws and regulations.

4. DISCLAIMER & WARRANTY

Except as otherwise expressly provided in the Agreement and to the maximum extent permitted by applicable law: (i) the Services and the Software are provided "as-is" (ii) AGILENT MAKES NO WARRANTIES   OR REPRESENTATIONS OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, AND AGILENT SPECIFICALLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, regarding the Services and Software; (iii) Agilent does not warrant that the Services and Software will be accurate, complete or without error; (iv) the use of the Services and Software is entirely at Customer's risk and Agilent makes no warranties as to the accuracy, quality or reliability of the reports, results, Data or other information obtained by or from accessing and using the Services and Software; (v) Agilent does not

warrant that the communications to or through the use of the Services and Software will be un-interrupted or error free, and (vi) Agilent does not warrant that the communications will be secure or that Data will not be lost, damaged or corrupted.   In the event of any loss or damage to Customer's Data by Agilent during the Initial Term or, if applicable, Renewal Term, Customer's sole and exclusive remedy shall be for Agilent to use commercially reasonable efforts to restore the lost or damaged Data.

Agilent represents and warrants during the Subscription Term that: (i) the Software shall perform in all material respects in accordance with the Performance Criteria; (ii) it has used commercially reasonable efforts to scan for viruses within the Software; and (iii) it has used commercially reasonable efforts to ensure the Software does not contain any disabling code designed to interfere with the normal operation of the Software.

5. CONFIDENTIALITY

Each party agrees to keep confidential the Confidential Information received from the other party and to protect the confidentiality thereof in the same manner as it would protect the confidentiality of its own Confidential Information. Each party shall exercise at least a reasonable degree of care in the protection of Confidential Information. Information shall cease to qualify as Confidential Information which is (i) publicly available without breach of this Agreement, (ii) rightfully obtained by the receiving party from another source without a duty of confidentiality, (iii) independently developed or ascertained by the receiving party, (iv) already in the receiving party's possession without a duty of confidentiality, or (v) required to be disclosed under operation of law provided the disclosing party has been given reasonable advance notice to object to such disclosure.

6. FEES AND PAYMENT

a) **Fees.**   Agilent will issue invoices for the Fees in accordance with the invoicing schedule defined in the Offer.   Unless provided otherwise, Agilent's invoices are payable within thirty (30) days of the invoice date.   Agilent may suspend access to Services if Customer fails to pay any sum due, if after ten (10) days written notice, the failure has not been cured.

b) **Taxes; Other Charges.**   Customer shall be responsible for, and shall pay or reimburse Agilent for all applicable taxes, duties or charges or any kind, including but not limited to sales and use tax, which may be levied upon either party in connection with the service delivered to Customer in this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

a) Subject to the limited rights expressly granted herein, all right, title and interest in and to the Services, Documentation, Software and Customizations, including all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in the Services, Documentation, Software and Customizations will remain with Agilent.   No rights are granted to Customer hereunder other than as expressly set forth herein.

b) Customer acknowledges and agrees that Agilent will own all right, title and interest in and to any suggestions, recommendations or feedback ("Feedback") provided by Customer to incorporate into or improve the Services.   Agilent will be entitled to use the Feedback without restriction or compensation to Customer. Customer hereby irrevocably assigns to Agilent all right, title, and interest in and to the Feedback.

c) Customer will not (i) modify, copy or create derivative works based on the Services; (ii) reverse engineer the Services; or (iii) remove, deface, cover, alter or obscure any copyright or trademark notices and/or legends or other proprietary notices associated with the Services.

d) As between Customer and Agilent, and subject to the limited rights granted by Customer herein, Customer owns all right, title and interest in and to all Customer's Data.   Customer grants to Agilent during the term of this Agreement a non-exclusive, royalty-free, fully-paid, transferable license to host, cache, record, copy, transmit, store and display Customer's Data solely for the purpose of providing the Services to Customer.   Agilent will not access Customer's Data, except as necessary to provide or improve the Services, respond to service or technical problems, comply with the law or an order of a government or regulatory body, or at Customer's request.

e) To the extent that Customer loads third party Data from external sources such as public or private databases, Customer warrants that it has all appropriate rights and licenses from such external sources to access, upload, and use such Data.

8. TERM AND TERMINATION

a) **Term.** The Agreement is concluded for the Initial Term and if a party to the Agreement does not terminate the Agreement at least thirty (30) days prior to the expiry of the Initial Term or of any subsequent Renewal Term, the Agreement is automatically renewed for the Renewal Term.

b) **Termination**

   i) Notwithstanding anything to the contrary in this Agreement, Agilent may terminate this Agreement on thirty (30) days written notice if, in Agilent's sole discretion, termination is required by law or an order of a government or regulatory body.

   ii) Either party may terminate this Agreement for cause unless the other party cures the breach within thirty (30) days after written notice of such breach (unless a shorter cure period is provided in another clause of this Agreement).

   iii) This Agreement will terminate automatically (without requirement for notice) if either party is subject to a voluntary or involuntary bankruptcy petition, becomes insolvent, is unable to pay its debts as they become due, ceases to do business as a going concern, makes an offer or assignment or compromise for the benefit of creditors, or there is a substantial cessation of its regular course of business, or a receiver or trustee is appointed for such party's assets.

   iv) Effect of Termination. Upon termination Customer will no longer have access to the Services and agree to pay Agilent for all Fees up to the date of termination.   If the sum of such amounts is less than any advance payment received by Agilent, Agilent will refund the difference within thirty (30) days of receipt of an invoice from Customer.

   v) Return of Data.   During the thirty (30) days following termination or the expiration of the Agreement, Agilent will not erase Customer's Data and Customer may retrieve Customer's Data from the Services or request Agilent to provide Customer with a copy of Customer's Data stored online or offline servers in a tab-delimited format.   After the thirty (30) day period, Agilent will have no obligation to retain or make Customer's Data available to Customer. Agilent shall have the right to retain copies of the data in accordance with its legal and regulatory obligations.

9. PROCESSING OF DATA INCLUDING PERSONAL DATA

a) Agilent recommends that Customer should not input Personal Data into the Software and that all inputs of Personal Data are anonymized. In the event that any Customer Data may contain Personal Data, Customer acknowledges and agrees that Agilent:

   i) at Customer's request, will execute appropriate data processing agreements, including but not limited to: for covered entities in USA Business Associate Agreements to the extent that Personal Data processing is subject to the HIPAA privacy rules; and, in Canada, agreements for processing to the extent that any such processing is subject to the PHIPA/ PIPEDA (Canada) regulations. (In the event of any conflict between (a) any executed Business Associate Agreement or PHIPA/ PIPEDA (Canada) agreement, referred to above in this Clause 9 and (b) this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict); and

   i) during the course of Customer's relationship, will process non-sensitive Personal Data relating to Customer and its employees and contractors ('Customer Personal Data'), solely for the purposes of enabling Customer to order products or services, make requests, register for customized communications programs and enhance Customer's experience on Agilent's websites, in accordance with Agilent's privacy statement (http://www.agilent.com/home/privacy-policy).

b) Customer warrants that, in view of the use of the Personal Data referred to above under (i), and (ii):

   i) it is legally entitled to transfer all Personal Data to Agilent for the purpose of delivering the Services, and to process any and all Personal Data, as contemplated herein, and

   ii) any and all transfers and processing of Personal Data comply in full with all laws, statutory rules and codes of practice, to which Customer is subject; and

iii)   it has ensured that it has obtained all appropriate permits, certifications and consents (including but not limited to, from the relevant data subjects/ patients, institutional review board (IRB) legal and ethical approval, for submitting Data (including Personal Data into consortia), whether submitted by Customer through the automated submission features in the software, or submitted at the request of Customer.

10. LIMITATION OF LIABILITY

A)   SUBJECT TO CLAUSE 10C BELOW: IN NO EVENT WILL AGILENT, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS OR LOST REVENUE, THE COST OF PROCURING SUBSTITUTE SERVICES REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF AD-VISED OF THE POSSIBILITY OF SUCH DAMAGES.   IN ADDITION, AGILENT WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND ARISING FROM (I) CUSTOMER'S INABILITY TO ACCESS OR USE THE SERVICES, IN CASE OF TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S ACCESS TO THE SERVICES OR DISCONTINUATION OF THE SER-VICES, OR (II) ANY UNAUTHORIZED ACCESS, ALTERATION OF, DELETION, CORRUPTION OR LOSS OF CUSTOMER'S DATA, OR (III) ANY FAILURE TO TRANSMIT OR RECEIVE ANY DATA.

B)   IN NO EVENT WILL AGILENT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID BY THE CUS-TOMER TO AGILENT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

C)   THE EXCLUSIONS AND LIMITATIONS IN CLAUSE 10A) and 10B) SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW BUT AGILENT DOES NOT EXCLUDE AND/OR LIMIT LIABILITY FOR   DEATH OR BODILY INJURY CAUSED BY THE GROSS NEGLIGENCE OF AGILENT, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS.

D)   THE REMEDIES IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

11. INDEMNIFICATION BY CUSTOMER

Customer will defend, indemnify and hold Agilent and Agilent's officers, directors, employees, consultants, agents, and suppliers harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any suit, action or claims (a "Claim") made or brought against Agilent by a third party arising out of or related to Customer's Data, or Customer's use of the Services in violation of this Agreement,   provided Agilent promptly notifies Customer in writing and provides control of the defense or settlement, and assis-tance to Customer.   If Customer does not diligently pursue resolution of the Claim nor provide Agilent with reasonable assurances that Customer will diligently pursue resolution, then Agilent, without in any way limiting its other rights and remedies, may defend the Claim.

12. MISCELLANEOUS

Entire Agreement – Modifications. The Agreement constitutes the entire understanding and agreement between Customer and Agilent. The Agreement replaces all prior negotiations and dealings between Customer and Agilent pertaining to the Software and Services.   The Agreement cannot be modified unless by an instrument in writing signed by Customer and Agilent.

a)   **Severability.**   If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.   If a provision of these Terms of Use is found to be incompatible with a provision of the Offer, the Offer shall prevail.

b)   **Law Compliance.** The parties agree to comply with applicable laws and regulations.   Agilent may suspend performance if Customer is in violation of applicable laws or regulations.

c)   **Governing Law and Jurisdiction.**   This Agreement shall be governed by the laws of the country where the Agilent entity issuing the Offer is located as identified on the Offer. Customer hereby consents to the jurisdiction and venue of such courts. The Uniform Laws of the United Nations Convention of Contracts for the International Sale of Goods shall not apply. This is without prejudice to

Agilent's right to initiate legal proceedings against Customer for the recovery of unpaid invoices under Customer's local laws before the competent courts of Customer's domicile.

d) **Assignment.** Customer may not assign or transfer this Agreement without Agilent's prior written consent, which may be subject to applicable charges and terms and which consent may not be unreasonably withheld.   Agilent may assign or transfer any of its rights or obligations under this Agreement upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of Agilent, or its permitted successive assignees or transferees. Any assignment in violation of this Clause will be null and void.

e) **Independent Contractors.**   Agilent and Customer are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

f) **Privacy.**   Subject to Clause 9 of this Agreement, during the course of Customer's relationship with Agilent, Agilent may process: (i) non-sensitive Customer Personal Data relating to Customer and its employees and contractors only to enable Customer to order products or services, make requests, register for customized communications programs and enhance Customer's experience on Agilent's websites; and (ii) regulated and/ or sensitive Personal Data which Agilent processes as a data processor, on behalf of Customer, pursuant to Customer utilizing the Software and the Services.   Agilent will store and process Customer Personal Data in accordance with the terms of this Agreement, and Agilent's Privacy Statement available at http://www.agilent.com/home/privacy-policy.   Agilent will not sell, rent or lease any Customer Personal Data to others.   CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY PERSONAL DATA WHICH CUSTOMER PROVIDES TO AGILENT IN AGILENT'S CAPACITY AS A DATA PROCESSOR, IN CONNECTION WITH CUSTOMER'S USE OF THE SOFTWARE AND/ OR THE SERVICES WILL BE MADE AVAILABLE TO ANY THIRD PARTY (INCLUDING ANY CLOUD SERVICES OR OTHER HOSTING PROVIDER). ONLY TO THE EXTENT THAT SUCH THIRD PARTY IS USED TO PROVIDE THE SERVICES, AS SUB-PROCESSOR. Personal Data will be protected by such third parties with the same level of protection as Agilent's protects such Personal Data.

g) **Export Control.**   If Customer, including its affiliates or collaborators, exports, re-exports, transfers products, technology/software/technical data purchased and/or subject to this Agreement, Customer assumes all responsibility for complying with all applicable U.S., EU and/or all relevant local export controls laws and regulations and embargoes/sanctions regimes. Customer, including its Affiliates, shall obtain all the necessary governmental authorizations prior to an export, re-export and/or transfer. Customer, including its affiliates or collaborators, also expressly agrees not to, unless it has obtained all necessary governmental authorizations to directly or indirectly sell, authorize, facilitate and/or transfer any products, technology, software or technical data subject to this Agreement and/or allow any access to the Software and/or up/down load any data (including but not limited to Personal Information) , and/or to provide or receive Personal Information to or from end-destinations, entities and/or individuals subject to U.S., EU and/or relevant local export controls and embargoes/sanctions regimes. For the avoidance of doubt, embargoed end-destinations shall include, but not be limited to Cuba, Iran, North Korea, Sudan and Syria. Agilent may, without notice, suspend performance if Customer is in violation of Applicable Laws. Further information on restricted destinations can be obtained from http://www.bis.doc.gov and https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx,   and   https://eeas.europa.eu/topics/sanctions-policy_en.

h) **Delays.**   Agilent will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.

i) **U.S. Federal Government.** The Services, including related software and technology, are provided to the federal government in accordance with the following: software and technical data rights granted to the federal government include only those rights customarily provided to end user customers.   Agilent provides this customary commercial license in software and technical data pursuant to FAR 12.211 (Technical Data) and 12.212 (Computer Software) and, for the Department of Defense, DFARS 252.227-7015 (Technical Data – Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

j) **Waiver.** The failure by Agilent to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit Agilent's right to enforce such provision at a later time. All waivers by Agilent must be in writing to be effective.

k) **English.**   The parties to this Agreement have agreed that all correspondence and related documentation to this Agreement and associated with the Software shall be rendered in English.

Agilent Technologies

13.   (COMPONENT(S) OF) OPEN SOFTWARE

The Software may utilize third party software made available under various open source software licenses ("Open Source Components"). The terms associated with the Open Source Components are available in the user guide, help documentation, and/or the release notes for the Software. You agree to comply with any and all applicable terms. In addition to the warranty disclaimers contained in the terms associated with the Open Source Components, Agilent makes the following disclaimers regarding the Open Source Components on behalf of itself, and the copyright holders, contributors, and licensors of the Open Source Components: To the maximum extent permitted by applicable law, the Open Source Components are provided by the copyright holders, contributors, licensors, and Agilent "as is" and AG-ILENT MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER WRITTEN OR ORAL, EX-PRESSED OR IM-PLIED, AND AGILENT SPECIFICALLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MER-CHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, regarding the Open Source Components. In no event will the copyright owner, contributors, licensors, or Agilent be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use of the Open Source Components.