

End User License Agreement

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The following terms of this End User License Agreement govern Your access and use of the Ingenuity Pathways Analysis™ Software, except to the extent there is a separate signed agreement between You and Ingenuity governing Your use of the Software. To the extent of a conflict between the provisions of this End User License Agreement and a separate signed agreement, the separate signed agreement shall control and have precedence.

1. Definitions.

“Agreement” means this End User License Agreement.

“API” or “IPA-IM” means the HTTP-based proprietary application programming interface or integration module within the Software that enables other software applications to link to, and automatically interface with, the Software and Content.

“Biological Data” means the biological data that You provide as input to the Software during the term of this Agreement.

“Concurrent License Number” means the maximum number of Concurrent Users who may access the Licensed Materials in connection with a Concurrent Use License at any one time, as set forth in the applicable Purchase Order.

“Concurrent Use License” means a license which, if granted to You pursuant to the terms set forth in this Agreement (as indicated in the applicable Purchase Order), enables any Concurrent User to use and access the Licensed Materials, provided that only the Concurrent License Number of users may use and access the Licensed Materials at any one time.

“Concurrent User” means any individual provided access to the Licensed Materials by Ingenuity in connection with a Concurrent Use License who meets the concurrent user requirements set forth in the applicable Purchase Order.

“Content” means any information made available through the Software, including without limitation, Ingenuity’s proprietary biological database, diagrams, graphs, analysis reports and third-party content.

“Customer Application” means (a) Your proprietary software application(s) developed internally for Your internal research or internal business use and/or (b) third-party software applications licensed to You for internal business use, e.g., MS Office, **but excluding** any software applications that are competitors of the Licensed Materials.

“Documentation” means any written materials related to the Software provided to You, including, without limitation, on-line help, and getting started and tutorial information made available through Ingenuity’s web-site.

“IPA-IM” or “API” means the HTTP-based proprietary application programming interface or integration module within the Software that enables other software applications to link to, and automatically interface with, the Software and Content.

“Licensed Materials” means, collectively, the Content, Documentation, Results, and Software, including API and IPA-IM.

“Link(s)” means one or more URLs or APIs embedded within the Customer Application that enable access to the Software and/or the Content.

“Named User(s)” means the specific individual(s) (if any) provided access to the Licensed Materials by Ingenuity in connection with a Named User License, or granted Trial access to the Licensed Materials by Ingenuity.

“Named User License” means a license which, if granted to You pursuant to the terms set forth in this Agreement (as indicated in the applicable Purchase Order or as a participant in a Trial), enables only You as an individual to access and use the Licensed Materials through Your User Account.

“Organization” means that organization, division, group or location of Yours, as applicable, identified in the applicable Purchase Order.

“Results” means the analysis results generated by the Software based on the Biological Data, including without limitation the network lists and diagrams, and the functional analysis of the networks.

“Software” means the Ingenuity Pathways Analysis web-based application hosted by Ingenuity and made accessible to You pursuant to the terms of this Agreement.

“Trial” means a special limited license in which You are granted access to the Licensed Materials by Ingenuity on a evaluation basis for a specified time at no license fee charge. Except for payment of license fees, all other license terms and conditions of this Agreement apply to Trial use of the Licensed Materials.

“User Account” means a single user ID and password associated with one user of the Licensed Materials. For purposes of clarification, each user of the Licensed Materials requires a unique User Account, regardless of whether such user is a Named User or a Concurrent User.

2. **License Grant.** Conditioned upon Your compliance with the terms and conditions of this Agreement, Ingenuity Systems, Inc. (“Ingenuity”), grants to You a limited, nonexclusive, nontransferable and non-sublicensable license to use the Licensed Materials **solely** for Your internal research and internal business purposes, and the foregoing license to use the Licensed Materials is limited to access through Your unique User Account. If You are obtaining a Named User License, the individual who has the Named User License must be confirmed by the applicable Purchase Order which has been accepted by Ingenuity and for which You have paid to Ingenuity the required license fee. If You are obtaining a Concurrent User License, Your license to use the Licensed Materials shall be limited to that number of Concurrent Users indicated by the applicable Purchase Order which has been accepted by Ingenuity and for which You have paid to Ingenuity the required license fee. If You are a participant in a Trial, all the license terms and conditions of this Agreement apply to Trial use of the Licensed Materials except for payment of license fees.

With respect to the API or IPA-IM, Ingenuity grants You a limited, nonexclusive, non-transferable, non-sublicensable license to use the API or IPA-IM solely for the purposes of: (i) creating custom interfaces and Links from the Customer Application to the Software and Content, and (ii) accessing the Software and Content via Links from the Customer Application, provided, however that only end users who have been assigned a unique User Account shall have the right to access the Software and Content from the Customer Application.

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- (ii) use the API or IPA-IM, Content and/or Results to develop functionality, data or content similar to or competitive with the Licensed Materials;
- (iii) use the API or IPA-IM (a) in connection with any product or service that is similar to or competitive with the Licensed Materials, or (b) to extract Content from the Software and incorporate it into the Customer Application;
- (iv) use the Licensed Materials in a clinical diagnostic setting, or to provide a diagnostic product or service;
- (v) reproduce, modify, translate any portion of the Licensed Materials or create any derivative work based on all or any portion of the Licensed Materials;
- (vi) allow or permit any other person to use the User Account licensed to You;
- (vii) sell, rent, lease, loan, distribute or otherwise transfer all or any portion of the Licensed Materials to a third party;
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(xii) cause, permit or assist any third party to do any of the foregoing.

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4. **Your Obligations.**

(a) **General.** You acknowledge and agree that: (i) the results generated from the use of the Licensed Materials are scientific hypotheses and are not intended to be statements of fact or truth and are starting points for further experimental validation by You; and (ii) Ingenuity may add new features, upgrade or modify the Licensed Materials at any time.

(b) **User Account.** You will provide Ingenuity with relevant information to enable Ingenuity to register and provide You with a single User Account to access the Software. Each User Account is for a single individual and may not be shared with any other individual.

(c) **Your Equipment and Software.** You shall provide, at Your own expense, any equipment and software that You may require to access the Licensed Materials. You acknowledge and agree that: (i) it may be necessary for You to obtain separate licenses from third parties for use of certain software in connection with Your analysis or use of the Licensed Materials hereunder, and (ii) Ingenuity will not provide such license rights to You. Without limiting the foregoing, if You intend to access Swiss-Prot data in connection with Your exercise of Your rights hereunder, then You will be required to obtain a separate license for such database from Swiss-Prot.

(d) **Payment.** In consideration for the license granted in Section 1, You shall pay Ingenuity the fees set forth in the applicable Purchase Order (if any), in accordance with the payment terms set forth therein. In addition, You shall pay or reimburse Ingenuity for all federal, state or local sales, use or other taxes, fees or duties arising out of this Agreement or the transactions contemplated by this Agreement, if any (other than taxes based on the net income of Ingenuity).

5. **Intellectual Property.**

(a) **Licensed Materials.** You acknowledge that Ingenuity and its supplier(s) owns and shall retain all intellectual property rights and other proprietary rights in and to the Licensed Materials and any other materials and information Ingenuity provides to You as part of this Agreement, including without limitation any derivatives, improvements or modifications of the foregoing, whether or not made by Ingenuity. Biological discoveries that You make while using the Licensed Materials in conjunction with the Biological Data are not considered to be Ingenuity intellectual property.

(b) **Feedback.** To the extent You provide to Ingenuity any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Licensed Materials (“Feedback”), You hereby grant Ingenuity a fully paid-up, irrevocable, perpetual, worldwide, nonexclusive license, with full rights to sublicense, to: (i) use and exploit such Feedback to improve Ingenuity’s products and services and, (ii) use, reproduce, prepare derivative works of, perform, display, make, sell and otherwise distribute products and services incorporating or utilizing such Feedback.

6. **Support.** You acknowledge and agree that the license to the API or IPA-IM does not grant You any right to technical support or other assistance for the API or IPA-IM. Ingenuity may revise or cease to provide the API or IPA-IM, in whole or in part, at any time. However, technical support to You for the

API or IPA-IM is available upon separate contractual arrangement with Ingenuity for the applicable technical support fees.

7. **Biological Data and Security.** You understand and agree that Ingenuity will have the right to use the Biological Data solely for the purpose of processing Your requests, transactions, and analyses. Ingenuity maintains security procedures with respect to access and storage of the Biological Data. These procedures are intended to provide reasonably appropriate technical and organizational safeguards against unauthorized disclosure or access.

8. **Confidentiality.**

(a) **Confidential Information.** Ingenuity and You each agree to retain in confidence all non-public information disclosed pursuant to this Agreement that is designated as proprietary and/or confidential (the “Confidential Information”). Notwithstanding the foregoing, all Licensed Materials, and the results of any evaluations or testing of such Licensed Materials by You, shall constitute trade secrets and Confidential Information of Ingenuity without need for any marking or designation and all Biological Data shall constitute Confidential Information of You without need for any marking or designation. Each party to this Agreement agrees to: (i) preserve and protect the confidentiality of the other party’s Confidential Information; (ii) refrain from using the other party’s Confidential Information except as contemplated herein; and (iii) not disclose such Confidential Information to any third party except to its employees or agents as is reasonably required to exercise its rights or perform its obligations under this Agreement. Notwithstanding the above, Confidential Information shall not include information that: (w) has become publicly known and made generally available other than through any act or omission of the receiving party; (x) was already or becomes known by the receiving party from a third party who was not under a duty of confidential restriction as to use or disclosure; (y) was independently developed by the receiving party as evidenced by appropriate records, or (z) is disclosed by court order or as otherwise required by law or regulation, provided that the party required to disclose the information provides prompt advance notice to enable the other party to seek a protective order or otherwise prevent such disclosure.

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12. **Term and Termination.** This Agreement commences when You click “ACCEPT” below and terminates on the date Ingenuity identifies in the email or document that specifies Your User Account information or license term, unless earlier terminated as provided herein. Your rights under this Agreement will terminate immediately without notice from Ingenuity if You fail to comply with any provision of this Agreement; in addition, Ingenuity has the right to terminate this Agreement at any time if the terms of this Agreement are breached and You fail to remedy such breach within ten (10) days after written notice thereof. Upon termination, You must destroy all copies of the Licensed Materials in Your possession or control. Except as otherwise expressly provided herein, the rights and obligations of Ingenuity and You in Sections 3 through 15 shall survive termination or expiration of this Agreement. Nothing contained herein shall limit any other remedies that either party may have for the default of the other party under this Agreement nor relieve the other party of any of its obligations incurred prior to such termination.

13. **Export.** You agree to comply with all export and re-export restrictions and regulations of the Department of Commerce or other agency or authority of the United States or other applicable countries, and not to transfer, or authorize the transfer of, the Licensed Materials, to a prohibited country or otherwise in violation of any such restrictions or regulations.

14. **Government Restrictions.** The Software is provided to any unit or agency of the U.S. Government (“Government”) on a “restricted rights” basis only: use, duplication or disclosure by the Government is subject to the restrictions set forth in this License, pursuant to DFARS 227.7202-3(a) and 252.227-7013(c), or its equivalent and pursuant to subparagraph (c)(1) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19, as well as to FAR 12.212(b), or their equivalents. The manufacturer of the Software is Ingenuity Systems, Inc., who reserves and retains all rights in the Software not granted to the Government in this License pursuant to DFARS 252.227-7013(c), to FAR 12.212(b), or their equivalents.

15. **General.** This Agreement is governed and interpreted in accordance with the laws of the State of California, U.S.A., without reference to its conflict of law principles. The parties hereby consent to the exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California, U.S.A. The United Nations Convention on Contracts for the Sale of Goods shall not apply to this Agreement. You shall not transfer, assign or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of Ingenuity. Any such purported transfer, assignment or delegation shall be null and void. Ingenuity may transfer, assign or delegate this Agreement. Subject to the foregoing, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to it and their respective heirs, successors, assigns and legal representatives. This Agreement constitutes the entire agreement between Ingenuity and You with respect to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard thereto, and supersedes any and all other written or oral agreements existing between the parties hereto regarding the subject matter of this Agreement. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the party to be charged. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable under any applicable statute or rule of law, such provision shall, to that extent, be deemed omitted, and the remaining portions of this Agreement shall remain in full force and effect. Headings are solely for reference and shall not affect the meaning of any term.

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USER AND/OR GOVERNMENT AGENCY THAT YOU REPRESENT (COLLECTIVELY, "YOU") AND (II) YOU ARE CONSENTING TO BE BOUND BY, AND BECOME A PARTY TO, THIS AGREEMENT. IF YOU EMPLOYER DO NOT AGREE TO (OR CANNOT COMPLY WITH) ALL OF THE TERMS OF THIS INGENUITY PATHWAYS ANALYSIS LICENSE AGREEMENT, CLICK ON THE "CANCEL" BUTTON AND YOU WILL NOT ASSENT TO THE AGREEMENT AND WILL NOT BE PERMITTED TO USE OR ACCESS INGENUITY PATHWAYS ANALYSIS SOFTWARE.