



KEYSIGHT ON-PREMISES, CLOUD (SAAS), AND SERVICES TERMS AND CONDITIONS

These On-Premises, Cloud (SaaS), and Services Terms and Conditions ("Terms") set forth the terms and conditions under which Keysight Technologies, Inc. on behalf of itself and its Affiliates ("Keysight") will license On-Premises Software or grant access to Cloud Hosted Software, perform Services, and provide Deliverables according to an Order.

By accessing or using Software or Services, Customer agrees that Customer has read, understands, and agrees to be bound by these Terms. Any changes, additions, or deletions that Customer makes to these Terms are not acceptable, and Keysight may refuse access to Software or Services for noncompliance with any part of these Terms.

1. DEFINITIONS

- a) "Affiliates" means any subsidiary, parent, subsidiary of the parent or other entity that controls or is controlled by such party, where control means ownership or control, direct or indirect, of more than fifty percent (50%), but only so long as such ownership or control exists; provided, however, that in any country where the local law does not permit foreign equity participation of at least fifty percent (50%), then an Affiliate will include any company in which a party owns or controls, directly or indirectly, the maximum percentage of such outstanding stock or voting rights permitted by local law, provided that such party exercises actual control over the Affiliate's operations.
- b) "Authorized Users" means Customer's employees whose job duties require access to the Software and third parties designated as authorized users in a Statement of Work, provided such employees and third parties have agreed in writing to comply with restrictions at least as limiting as are provided in these Terms. Such Authorized Users will be deemed agents of Customer.
- c) "Change Order" means an agreed upon change or modification to the Deliverables, Services or other material aspect of a Statement of Work.
- d) "Cloud Hosted Software" or "SaaS" means Software installed on a computer located on Keysight's or Keysight's delegate's site where Customer is authorized to access and use the Software for Customer's internal business purposes.
- e) "Confidential Information" means Customer Data, User Credentials and any other materials marked confidential by Customer or Keysight.
- f) "Customer Data" means Customer's electronic data, information or files used by the Cloud Hosted Software or in connection with the Services, including Customer Personal Data.
- g) "Customer Personal Data" means Customer's Personal Data or other Personal Data in Customer's control, including but not limited to names, telephone numbers and e-mail addresses.
- h) "Deliverable(s)" means the Services and the tangible result(s) of the Services provided by Keysight to Customer as described in a Quotation and may include one or more copies of Software licensed in accordance with these Terms.
- i) "Delivery Date" means the date the license to On-Premises Software or access to Cloud Hosted Software is made available to Customer.
- j) "Documentation" means the operating manuals, user instruction manuals, technical literature and all other related materials, including on-line help files, regarding the use of the Software or Services, as updated, and which can be accessed via Keysight's website or otherwise made available by Keysight.
- k) "On-Premises Software" means Software licensed by Keysight for installation on a computer or instrument controlled by Customer for Customer's internal business purposes.
- l) "Order" means a written or electronic purchase order issued by Customer to Keysight for the purchase of Software or Services consistent with a Keysight Quotation.
- m) "Order Initial Term" means the initial term of the Deliverable(s) to be provided or the duration of the On-Premises Software license, Cloud Hosted Software and the Services as specified in a Quotation.
- n) "Order Renewal Term" has the meaning set forth in [Section 15\(a\)](#).
- o) "Order Term" means the Order Initial Term and any Order Renewal Terms together.
- p) "Personal Data" means any information relating to an identified or identifiable natural person.
- q) "Quotation" means the documentation (which may include a Statement of Work or "SOW") describing the Software and Services Keysight offers for sale to Customer.

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- r) "Sensitive Personal Data" means Personal Data relating to an individual's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health (including genetic or biometric data), sex life, sexual orientation or criminal convictions or offenses and related security measures.
- s) "Services" means services provided by Keysight including professional services, technical support, maintenance, and cloud hosting services as described in a Quotation, Exhibit A, or in documentation associated with the Order.
- t) "Software" means one or more computer programs in object code format for installation on a computer or instrument and related documentation. Software may be licensed to Customer for installation on a computer or instrument controlled by Customer ("On-Premises Software") or Customer may access Software hosted by Keysight in the cloud ("Cloud Hosted Software").
- u) "User Credentials" means the usernames, passwords and/or any other authentication tokens provided to Customer by Keysight (notwithstanding that Keysight may permit Customer to change or customize the same) to enable Authorized Users to access the Software and/or use the Services. User Credentials will be provisioned to a single administrator or to multiple Authorized Users as may be indicated in a Quotation.

2. CUSTOMER SITE INSTALLED SOFTWARE ("ON-PREMISES SOFTWARE")

If Customer purchases Keysight On-Premises Software as specified in a Quotation, Keysight grants Authorized Users a non-exclusive, worldwide, license to use the On-Premises Software for Customer's internal business purposes in accordance with Keysight's Software End-User License Agreement www.keysight.com/find/sweula. The type of license and Order Term is specified in the Quotation.

3. KEYSIGHT CLOUD HOSTED SOFTWARE (SaaS)

If Customer purchases access to Cloud Hosted Software, Keysight grants Authorized Users access to use Cloud Hosted Software for Customer's internal business purposes and in accordance with these Terms, the use parameters and Order Term specified in the Quotation.

4. KEYSIGHT SERVICES AND CHANGE ORDERS

- a) Keysight will provide Services according to a Quotation.
- b) Keysight shall have the right to make any changes to the Deliverables which are necessary to comply with any applicable law or security requirement, or which do not materially affect the nature or quality of the Deliverables. Keysight will use reasonable efforts to notify Customer in any such event, but no Change Order is required.
- c) All Change Orders must set forth the details of the modification and any adjustments to the price, delivery schedule, payment schedule, Services, and acceptance tests and criteria.
- d) All Change Orders must be mutually agreed by the parties in writing. Pending such agreement, Keysight will continue to perform and be paid as if such Change Order had not been requested or recommended, provided that if either party proposes a Change Order which, in Keysight's judgment, represents a material change in the Services or Deliverables and such Change Order remains outstanding for thirty (30) days or is rejected by Customer, Keysight will have the right to terminate these Terms pursuant to Section 15 (Term and Termination).
- e) Except for professional services, Orders for Software and Services are non-cancellable and non-returnable.
- f) If Customer purchases Eggplant products and services including but not limited to Digital Automation Intelligence (DAI), Real Customer Insights (RCI), Performance (EPP) Software, Managed Load Testing Services (MLT Services), Monitoring Insights (MI) ("Eggplant Products and Services"), the terms of Exhibit A apply.

5. KEYSIGHT OBLIGATIONS

- a) Keysight will use reasonable commercial efforts to perform the Services and provide the Deliverables described in a Quotation in accordance with these Terms. The Quotation should address at least the following areas: scope of Services, nature of Deliverables, price, payment, delivery schedules, technical specifications, acceptance criteria, company representatives, and Authorized Users.
- b) Unless otherwise agreed in a Quotation, Services will be performed during Keysight's normal business hours.

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- c) Keysight will use reasonable commercial efforts to provide the Deliverables and perform the Services in accordance with the delivery schedule specified in the Quotation. If no delivery schedule is specified, Keysight will perform Services and provide Deliverables subject to Keysight personnel or equipment availability.
- d) Keysight may select qualified and reputable subcontractors to perform Services and/or provide Deliverables.
- e) Keysight will appoint a representative to supervise and coordinate Keysight's performance of Services. Keysight may change its representative upon written notice to Customer.
- f) Unless otherwise agreed in writing or as provided in Exhibit A, Keysight is not responsible for providing support for any Deliverables.

6. CUSTOMER OBLIGATIONS

- a) Customer will promptly comply with the general obligations specified below and any specific Customer obligations described in a Quotation. Customer will:
 - i) provide Keysight, its agents, subcontractors, consultants and employees with full and timely cooperation, and access to, and use of, all information, data, documentation, computer time, network and internet access, facilities, working space and office services to the extent reasonably necessary to enable Keysight to perform its obligations under these Terms; and
 - ii) appoint a representative who will provide professional and prompt liaison with Keysight, have the necessary expertise and authority to commit Customer, and meet with the Keysight representative at agreed upon intervals.
- b) Customer is responsible for maintaining an external procedure for reconstruction of lost or altered files, data or programs to the extent deemed necessary by Customer, and for reconstructing any such materials.
- c) If the delivery schedule specified in the Quotation is delayed for reasons attributable to Customer, Keysight may adjust the affected delivery schedule accordingly.
- d) If Customer purchases a license to On-Premises Software, Customer will be responsible at all times for the supervision, management and control of the Deliverables and any results obtained from the Deliverables, including without limitation all responsibility for maintenance of proper machine configuration, audit controls, operating methods, error detection and recovery procedures, back-up plans, security, insurance, maintenance and all other activities necessary to enable Customer to use the Deliverables.
- e) Unless otherwise set forth in a Quotation, Customer is responsible for obtaining all applicable permits, licenses, zoning approvals, and similar required authorizations that may be required for performance of the Services and delivery of the Software.
- f) Customer is responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and will promptly notify Keysight of any such unauthorized access or use.
- g) Customer will be responsible, at Customer's sole expense, for providing and maintaining necessary equipment and Internet service to use the Software and Services and to ensure appropriate connections between the Software and Services and Customer's applications and/or systems. The quality and speed of Customer's hardware and Internet connection will affect Customer's use of the Software and Services.
- h) Customer will take all reasonable measures to ensure that the Software is operated by personnel properly trained in its use and the use of any equipment on which it is loaded or operates.

7. PRICE AND PAYMENT

- a) Prices for Services and Deliverables are specified in the Quotation. Prices are valid for the period indicated on the Quotation. Prices include materials and labor, but are exclusive of value assessed, goods and services, sales, use, customs duties or similar taxes. Customer shall be responsible for payment of all value added, goods and services, sales, use, custom duties or similar taxes, if any, levied on or deducted from any amounts payable to Keysight pursuant to these Terms. Prices for Order Renewal Terms are subject to applicable pricing at time of renewal and will be set forth in the Quotation.
- b) If Customer is required under any applicable law, regulation or government order to withhold any taxes on any amounts payable by Customer to Keysight under these Terms, then the amount payable shall be increased to such amount which, after making all required withholdings or deductions of taxes therefrom, will equal the amount payable hereunder had no such withholding taxes or deductions been required. For avoidance of doubt, such withheld amounts may not be claimed as a reduction or offset against any payments due to Keysight under these Terms. Each party shall provide any

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necessary documents to ensure payments made under these Terms qualify for the benefit of a reduced rate of withholding tax under an applicable tax treaty. Customer shall be solely liable for, and shall indemnify and hold Keysight harmless against, any penalties, interest and expenses incurred by or assessed against Keysight as a result of Customer's failure to timely remit such taxes to the appropriate taxing authority.

- c) Keysight will issue invoices in accordance with the payment schedule specified in the Quotation. Unless otherwise indicated in the Quotation, charges for travel expenses may be invoiced separately. Customer will pay all invoices within thirty (30) days from the date of invoice. Keysight may change credit terms at any time should Customer's financial condition or previous payment record so warrant.
- d) Keysight may discontinue performance or suspend Customer's license or access to Software or Services if Customer fails to pay any sum due, or fails to perform under these Terms if, after ten (10) days written notice, the failure has not been cured. If any payment owed to Keysight is not paid when due, it will bear interest from the due date until paid at a rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if less).
- e) If installation is not purchased or included in the purchase price, acceptance occurs upon the Delivery Date. If installation is purchased or included in the purchase price, acceptance occurs when the Software passes Keysight's installation and test procedures. If Customer schedules or delays installation by Keysight more than thirty (30) days after delivery, acceptance occurs on the thirty-first (31st) day the Delivery Date.

8. WARRANTIES

- a) Customer warrants:
 - i) Customer has the authority to enter into an agreement based on these Terms and perform its obligations hereunder;
 - ii) Customer understands and possesses the necessary technical requirements to access and make use of the Software; and
 - iii) Customer and Authorized Users will only use the Software for lawful purposes and will not use Software to violate any law of any country or the intellectual property rights of any third party.
- b) Keysight warrants:
 - i) Keysight has the authority to enter into an agreement based on these Terms and perform its obligations hereunder;
 - ii) the Software will substantially conform to the specifications; and
 - iii) the Services will be provided in a professional and workmanlike manner. Keysight will re-perform any Services not performed in accordance with the foregoing warranty, provided Keysight receives notice from Customer within thirty (30) days after such Services were performed.
- c) Keysight does not warrant that the operation of the Software will be uninterrupted or error free or conform to any reliability or performance standards beyond those specified. Keysight also does not warrant that the Software will be compatible with future Keysight products or those of other vendors.
- d) Customer acknowledges that the Software has not been produced to meet Customer's individual requirements and accepts responsibility for the selection of the Software to achieve its intended results.
- e) If Keysight is unable within a reasonable time to comply with the foregoing obligations, Keysight will refund a reasonable portion of the price stated in the Quotation upon prompt certification of the destruction of the On-Premises Software or suspension of access to Cloud Hosted Software.
- f) The above warranties will not apply to non-conformances resulting from improper or inadequate maintenance, site preparation, installation, repair or calibration performed by Customer or a third party not authorized by Keysight; Customer's breach of these Terms or a SOW; Customer or third party supplied hardware or software, interfacing, or supplies; unauthorized modification; improper use or operation of the Software or any portion thereof, or Customer's failure to comply with the applicable environmental specification; abuse, negligence, or accident.
- g) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LOCAL LAW, KEYSIGHT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. ADMINISTRATION

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- a) Customer will be assigned User Credentials to access the Cloud Hosted Software. Customer is solely responsible for maintaining its own internet connection necessary to use the Software. Customer is responsible for all activities of anyone using User Credentials and will ensure the secrecy and security of the User Credentials is maintained.
- b) Customer will ensure Authorized Users will not:
 - i) Sell, lease, sublease, relicense, sublicense or rent the Software;
 - ii) Copy, modify, change, alter, translate, create derivative works from, reverse engineer, discover, disassemble, identify or decompile or disable any features of the Software;
 - iii) Provide, disclose, divulge, perform or make available to, or permit use of the Software by any third party (except as expressly provided for herein);
 - iv) Knowingly interfere, or attempt to interfere, with the Software in any way;
 - v) Use the Software to engage in spamming, mail-bombing, spoofing or any other fraudulent, illegal or unauthorized use or use the Software to store or transmit any viruses, Trojan horses, worms, time bombs, or any other similar malware or malicious software, data, or programs;
 - vi) Introduce into or transmit through the Software any virus, worm, trap door, or back door;
 - vii) Remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed or contained within the Software;
 - viii) Copy or make available the Software on any public or distributed network or service bureau;
 - ix) Reproduce any portion or content of the Software in any form or by any means, except as expressly permitted hereunder;
 - x) Overwhelm the Software or Services by making unreasonably large requests on Keysight resources, including (without limitation) by intentionally overloading the Software or Services whether for the purposes of service denial or otherwise;
 - xi) Circumvent usage limits and/or licensed metrics, such as number of concurrent users or executions; or
 - xii) Publicly disclose details regarding the internal systems and operation of the Software or Services, including (without limitation) server log files, console output or error messages.
- c) All restrictions in Section 9(b) apply to Market Share Data. "Market Share Data" means the data and reports produced by the Software giving details of the coverage of testing of devices and operating systems.
- d) Keysight may suspend Customer access to the Cloud Hosted Software immediately upon notice to Customer if Customer fails to perform under these Terms and if, after ten (10) days written notice, the failure has not been cured or Keysight determines Customer's access to the Cloud Hosted Software:
 - i) Poses a security risk to Keysight or any third party;
 - ii) Adversely impacts the Services or the data or systems of any Keysight customer;
 - iii) Risks subjecting Keysight or a third party to liability;
 - iv) May be fraudulent; or
 - v) May be in violation of law or regulation.
- e) If access to the Cloud Hosted Software is suspended, Keysight may in its discretion re-commence Customer access to the Cloud Hosted Software and may require assurance, satisfactory to Keysight, that access and use of the Cloud Hosted Software will be in accordance with these Terms. Keysight's rights of suspension are in addition to Keysight's right to terminate these Terms in accordance with Section 15 (Term and Termination).
- f) Customer is responsible for violations of these Terms by third parties who have gained access to the Cloud Hosted Software through Customer (whether with Customer's permission or otherwise). If Customer becomes aware of any violation of these Terms by any person, Customer will inform Keysight as soon as reasonably practicable.

10. CONFIDENTIAL INFORMATION, DATA PRIVACY, DATA SECURITY, AND DATA BACK UP

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- a) Each party acknowledges and agrees:
- i) as a receiving party, it will use the disclosing party's Confidential Information solely in accordance with these Terms and Customer will disclose Keysight's Confidential Information only to Authorized Users;
 - ii) it will take all reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information including, at a minimum, those precautions taken by a party to protect its own Confidential Information, which in no event shall be less than a reasonable degree of care;
 - iii) Keysight may disclose Confidential Information to its Affiliates for purposes of performing its obligations under these Terms;
 - iv) Confidential Information will not include information that is:
 - a. publicly available at or prior to disclosure by the disclosing party;
 - b. obtained by the receiving party from any source without any obligation of confidentiality;
 - c. independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or
 - d. required to be disclosed by order of a court or other governmental entity, provided that the disclosing party is given at least ten (10) days' notice so the disclosing party may seek a protective order or other equitable relief.
- b) Customer acknowledges and agrees that the Software or Services may contain Confidential Information that is owned by Keysight and its Affiliates, licensors, and suppliers (as applicable). Customer shall not use such Confidential Information in any way except to use the Software or Services in compliance with these Terms and the Keysight Software End User License Agreement if applicable.
- c) Each party will comply with any applicable obligations it may have under all applicable privacy and data protection laws ("Data Protection Requirements"), as well as any regulations, guidance and directives implementing such Data Protection Requirements, including the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and any successor thereto.
- d) Customer acknowledges and agrees it may provide, and Keysight may receive, Customer Personal Data in connection with ordering, registration, activation, updating, validating entitlement to, auditing, monitoring, and installation of the Cloud Hosted Software or Services. Keysight will process such Customer Personal Data as a data controller and as set forth in Keysight's Customer Privacy Statement, available at www.keysight.com/go/privacy. Keysight will not sell, rent, or lease such Customer Personal Data to others.
- e) Customer shall take all necessary steps to ensure that the provision of the Cloud Hosted Software or Services will not result in the capture or transmission of Personal Data to Keysight. Subject to [Section 10\(f\)](#), Customer and Keysight acknowledge and agree that no Personal Data will be intentionally collected or processed by Keysight via the Cloud Hosted Software or Services.
- i) Keysight shall not be required to verify whether Personal Data has been unintentionally processed by Keysight in connection with the Cloud Hosted Software or Services.
 - ii) Keysight will notify customer if it discovers that it has unintentionally obtained Personal Data as a result of providing the Cloud Hosted Software or Services. Within 5 (five) business days of receiving this notification, Customer shall instruct Keysight to return or delete the Personal Data. If Customer fails to provide any instructions to Keysight, Keysight shall be entitled to delete such Personal Data.
 - iii) If Keysight discovers unintentional processing of Personal Data, Keysight may suspend provision of the Cloud Hosted Software or Services. Keysight shall not be required to recommence provision of the Cloud Hosted Software or Services until it has received Customer's confirmation that it has taken the steps necessary to ensure Keysight shall not process Personal Data as a result of providing the Cloud Hosted Software or Services.
 - iv) If Customer cannot configure its implementation of the Cloud Hosted Software or Services to prohibit the capture or transmission of Customer Personal Data to Keysight, Keysight shall process such Customer Personal Data in accordance with Keysight Customer Data Processing Addendum, which will be made to Customer upon request by contacting Keysight's Privacy Advocate at privacy_advocate@keysight.com.
- f) Customer acknowledges and agrees that it shall not via any means provide or make available any Sensitive Personal Data to Keysight in connection with these Terms.
- g) Keysight may utilize encryption technology related to Customer Data. Customer agrees encryption is not a guarantee of confidentiality and Keysight is not liable for any breach of confidentiality that may occur as a result of decryption by a third party.

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- i) If Customer purchases a license to On-Premises Software and unless otherwise agreed in writing, Customer is responsible for taking appropriate measures to maintain security and protection of Customer Data. Customer will rely on Customer back-up copies of any Customer Data. Should Customer Data become lost or damaged for any reason, Customer is responsible for recovering or retrieving all Customer Data.
- ii) If Customer purchases access to Cloud Hosted Software and unless otherwise agreed in writing, Keysight is responsible for taking appropriate measures to maintain security and protection of Customer Data. However, access to Cloud Hosted Software involves transmission of Customer Data over networks not owned, operated or controlled by Keysight, its subcontractors or suppliers, and Keysight is not responsible for Customer Data that is lost, altered or intercepted across such networks. Keysight performs regular system-wide back up procedures, but Customer understands there is an inherent risk in electronic storage.

11. INTELLECTUAL PROPERTY RIGHTS

- a) The Software is owned and copyrighted by Keysight and its third-party suppliers. Keysight and Keysight's third party suppliers may protect their rights in the event of any violation of these Terms. A Customer's license to On-Premises Software and grant of access to Cloud Hosted Software confers no title or ownership in the On-Premises Software or Cloud Hosted Software, confers no rights in any associated source code, and will not be construed as a sale of any rights.
- b) Subject to the licenses provided in these Terms, each party will retain all copyrights, trade secrets, trademarks and other intellectual property rights in its pre-existing intellectual property.
- c) Customer Data is owned by Customer. Customer grants Keysight a non-exclusive, worldwide, royalty-free license to use, copy, make derivative works of, distribute, display, disclose, perform and transmit Customer Data and Customer's pre-existing copyrighted works or other intellectual property rights necessary for Keysight to perform its obligations under these Terms. To the extent any of Customer's pre-existing intellectual property is incorporated within any Deliverable owned by Keysight, Customer grants to Keysight a non-exclusive, worldwide, perpetual, non-cancelable, royalty-free, transferable license to make, have made, sell, offer for sale, copy, make derivative works of, distribute, display, disclose, perform, import and sublicense such pre-existing intellectual property.
- d) Keysight will own all copyrights, patents, trade secrets, trademarks and other intellectual property rights, title and interest in or pertaining to all Deliverables developed by Keysight pursuant to these Terms. For Deliverables that do not include Software, Keysight grants Customer a non-exclusive, worldwide, perpetual license to use the Deliverable for Customer's internal business purposes.
- e) Comments, suggestions, improvements or other communications from Customer to Keysight regarding the Software or Services ("Feedback") is the sole property of Keysight. Keysight may use Feedback and practice the intellectual property relating thereto without compensation or attribution to Customer.

12. INTELLECTUAL PROPERTY CLAIMS

- a) Keysight will defend or settle any claim against Customer that the Software or a Deliverable infringes a third-party intellectual property right, provided Customer promptly notifies Keysight in writing and provides control of the defense or settlement, and assistance, to Keysight.
- b) In defending or settling an infringement claim under [Section 12\(a\)](#), Keysight will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Keysight may, at its option, modify or replace the Software or a Deliverable or procure any necessary license. If Keysight determines that none of these alternatives is reasonably available, Keysight will refund Customer's purchase price upon return of the Deliverable.
- c) Keysight has no obligation for any claim of infringement arising from: Keysight's compliance with, or use of, Customer's designs, specifications, instructions or technical information; Deliverable modifications by Customer or a third party; Deliverable use prohibited by or outside the scope of specifications or related application notes; or use of the Deliverable with products not supplied by Keysight.

13. INDEMNITY

- a) Keysight will defend or settle any third party claims against Customer, its officers, directors, employees, and agents for (i) bodily injury or death, (ii) direct damage to tangible property, to the extent caused by Keysight's negligence or willful misconduct in performing its obligations under these Terms, or (iii) breach of [Section 10](#) (Confidential Information, Data Privacy, Data Security, and Data Backup) with respect to Customer Data, to the extent caused by Keysight's negligence or willful misconduct in performing its obligations under these Terms, provided Keysight is given prompt written notice and the opportunity to control the defense of the claim and settlement, and subject to the limitation of liability set forth in [Section 14](#).

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- b) Customer will indemnify and hold harmless Keysight, its officers, directors, employees, and agents from and against any third-party claims arising out of (a) Customer's breach or failure to perform any obligations, provisions, or conditions contained in these Terms; or (b) Keysight's use and processing of Customer Data in accordance with these Terms.

14. LIMITATION OF LIABILITY AND REMEDIES

- a) In no event will Keysight, its subcontractors, or suppliers be liable for special, incidental, indirect, consequential damages, downtime costs, loss of data, restoration costs, lost profits, or lost revenue. In addition, Keysight, its subcontractors, or suppliers will not be liable for damages related to Customer's or any end user's network or operating environment, use of, or inability to use, its network or operation environment. These limitations apply regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion shall apply even if any remedy set forth in these Terms fails its essential purpose.
- b) Keysight's liability to Customer is limited to the total amount paid (including amounts payable to Keysight) by Customer under these Terms in the immediately preceding twelve (12) months, except that Keysight's obligation to make warranty refunds under Section 8(e) is limited to the amount paid for the non-conforming Deliverable.
- c) The limitations set forth in Sections 14(a) and 14(b) above will not apply to claims under Section 12 (Intellectual Property Claims), to damages for bodily injury or death, or to damages resulting from willful misconduct or fraudulent misrepresentation.

The remedies in these Terms are Customer's sole and exclusive remedies.

15. TERM AND TERMINATION

- a) These Terms commence on the date Keysight accepts Customer's Order, the start date specified in the Quotation, or upon Customer's use of the Software or Services, whichever is earliest, and unless terminated pursuant to this Section, shall continue for the Order Initial Term. Following the Order Initial Term, these Terms shall automatically renew for successive periods of twelve (12) months (each an "Order Renewal Term"), unless and until either party provides the other party with not less than ninety (90) days' notice of its intent not to renew the Order before the expiration of the then current Order Initial Term or Order Renewal Term.
- b) These Terms may be terminated immediately upon notice in writing:
- by either party if the other party is in material breach of any of its obligations hereunder and fails to remedy such breach within thirty (30) days of receipt of a written notice by the other party which specifies the material breach; or
 - by Keysight, in the absence of mutual agreement regarding a Change Order which represents a material change under Section 4(d) or if Customer fails to pay any sums due under these Terms within the time period specified in Section 7(c).
- c) The Terms will terminate automatically 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.
- d) Except as provided in a Change Order, upon expiration or termination of these Terms, Customer will immediately pay Keysight for all Services performed and charges and expenses incurred by Keysight up to the date of expiration or termination, and Customer will receive all work in progress for which Customer has paid. Unless otherwise specified in a Quotation, Customer may terminate an Order for professional services for convenience upon thirty (30) days written notice to Keysight, provided Customer pays Keysight for all Services performed and charges and expenses incurred by Keysight up to the effective date of termination.
- e) If Customer purchases an On-Premises Software subscription, upon expiration or termination, Customer is no longer licensed to use the On-Premises Software except Customer may use the On-Premises Software solely to extract Customer Data within thirty (30) days from the date of expiration or termination prior to destruction of all copies of the On-Premises Software. Customer will promptly provide Keysight with a written certification signed by an authorized representative certifying that all copies of the On-Premises Software have been destroyed. If Customer purchases access to Cloud Hosted Software, upon expiration or termination and for thirty (30) days thereafter, Customer may request and Keysight will provide Customer with a copy of the Customer Data. Customer may request and Keysight will provide such data at any time during the Term upon payment of the then current administrative fee for such service. Keysight will provide Customer Data in a mutually agreeable format.
- f) Customer acknowledges and agrees that the Software includes digital rights management protection and that following expiration of any Order Term, the Software may become encrypted or unusable. Keysight shall have no liability to Customer in respect of the foregoing, and further use of the Software will require Customer to execute a new Order.

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- g) Keysight retains ownership of all hardware provided by Keysight for Customer's use of the On-Premises Software during the Term. If Keysight has provided Customer with hardware, Customer will return the hardware to Keysight within thirty (30) days of expiration or termination of these Terms. If any hardware is missing, damaged, or cannot be returned to Keysight, Customer will be billed for Keysight's cost to replace the hardware.
- h) Provisions herein which by their nature extend beyond the Term will remain in effect until fulfilled.

16. GENERAL

- a) These Terms do not cover purchase of standard Keysight hardware products. Any such transactions will be governed by the terms of Customer's Keysight purchase agreement or, in the absence of a signed purchase agreement, Keysight Terms of Sale.
- b) Keysight and any of its subcontractors will, when at Customer's site, conduct their activities so their equipment, working conditions and methods are safe and without risk to health for their own and Customer's employees and for any other users of Customer's site.
- c) Keysight may provide the same or similar Software, Services and Deliverables to other customers.
- d) Nothing contained in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
- e) Customer may not assign or transfer a license to On-Premises Software or a grant to access Cloud Hosted Software without Keysight's prior written consent and payment of any applicable fees. Any attempted assignment or transfer without such consent will be void.
- f) Customer expressly agrees that it assumes full responsibility for obtaining any required export authorizations from all applicable government authorities prior to exporting, re-exporting or importing Deliverables, technology or technical data and for complying with all applicable laws and regulations relating to any such transfer or transaction. Customer shall not sell or transfer Deliverables, technology or technical data to any entity designated or identified by the U.S. Government as a restricted person or included on any U.S. Government-maintained restricted person list, including, but not limited to, (i) the Specially Designated Nationals and Blocked Persons List, (ii) the Foreign Sanctions Evaders List, (iii) the Sectoral Sanctions Identification List, (iv) the Entity List, (v) the Denied Persons List, and (vi) the Unverified List (collectively, "US Restricted Lists"). Further information on these and other applicable lists can be found at www.treasury.gov or www.bis.doc.gov. Keysight may, in its sole discretion, suspend performance or cancel all or part of the Order if Customer is designated on US Restricted Lists or does not comply with the provisions of this Section and may, in its sole discretion, refuse to perform any post-sale services with respect to the Deliverables (including, but not limited to, any repair or replacement under warranty) if such activities would involve in any way, an entity on any US Restricted Lists. Keysight may, in its sole discretion, require Customer to provide an end user certificate and/or an export license prior to Keysight's delivery of any Software, Deliverable, or item to Customer.
- g) For Services performed at Customer's site, Customer is responsible for screening all employees and other individuals who may receive technology or technical data from Keysight under U.S. export control laws, and for determining whether any such person is a) not a U.S. person as defined under the Export Administration Regulations (e.g., U.S. citizen, U.S. legal permanent resident); b) on the Denied Person's List, Specially Designated Nationals and Blocked Persons List, or any other list published by the U.S. Government (collectively "Lists of Designated Parties"). Customer will notify Keysight in writing prior to Keysight's arrival at Customer's site if any employee or individual is not a U.S. person or is on any of the Lists of Designated Parties. Customer agrees to indemnify and hold Keysight and its subcontractors harmless from all loss, damage, expense or liability that may arise out of any breach of this Section.
- h) A party is excused from and not liable for performance of its obligations under these Terms for any occurrence beyond its reasonable control and without its fault or negligence including, but not limited to, acts of God (such as fires, floods, storms, earthquakes, hurricanes or other natural disasters), acts of the public enemy (such as civil war, rebellion, revolution or terrorist activities), regulations, acts or restraints of a government in either its sovereign or contractual capacity, epidemics, quarantine restrictions, strikes, lockouts, interruption or failure of utilities, or acts or omissions of common carriers ("Force Majeure Event"). The impacted party will provide written notice of the Force Majeure Event to the other party as soon as possible. The impacted party will (i) use reasonable efforts to avoid or minimize the consequences of the Force Majeure Event; or (ii) carry out its obligations in such other way as may be reasonably practical. A Force Majeure Event will not excuse Customer from its obligation to pay any amounts due to Keysight.
- i) All notices required under or regarding these Terms will be in writing and will be considered given one (1) day after being sent by a recognized overnight courier service with packaging tracking capabilities or five (5) days after being sent by certified or registered mail, return receipt requested. Notice may be given by email and will be deemed delivered on receipt, as verified by written or automated receipt or by electronic log.
- j) Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.
- k) If any part of these Terms is held invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

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- l) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- m) Disputes arising in connection with these Terms will be governed by the laws of the entity against which the Order was placed.
- n) Deliverables are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Deliverables purchased by Customer are used for these applications. Customer will indemnify and hold Keysight harmless from all loss, damage, expense or liability in connection with such use.
- o) If conflict occurs between the provisions of these Terms and a SOW or an Exhibit, the provisions of the SOW will take precedence over an Exhibit which will take precedence over these Terms.
- p) These Terms, including Exhibits, and the Quotation constitute the entire agreement between Keysight and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Terms. Customer's additional or different terms and conditions will not apply. Customer's Order will constitute Customer's acceptance of these Terms.
- q) The parties agree to comply with applicable laws and regulations.
- r) Each party agrees not to publicize or disclose the existence or terms of these Terms to any third party without the prior written consent of the other, except as may be required by law. No press releases will be made without the mutual written consent of each party.
- s) Keysight may refer to Customer as a customer by name in sales presentations, marketing vehicles, and related activities. In addition, Customer agrees to become part of Keysight's reference program by working with a representative from Keysight's marketing team to develop a customer profile for use on Keysight's website. The profile will include a quote from a Keysight user or project leader from Customer and Customer's logo. Customer also agrees to participate in other promotional activities, to be agreed upon by both parties, which could include, without limitation, press release mentions, verbal references and case studies.
- t) Except as otherwise expressly provided in these Terms, no provisions of these Terms which confer rights upon any third party shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any such third party.

KEYSIGHT ON-PREMISES, CLOUD (SAAS), AND SERVICES TERMS AND CONDITIONS**EXHIBIT A****EGGPLANT PRODUCTS AND SERVICES****1. DEFINITIONS**

- a) "Beacon API Contract" means the structure and content of the beacon, configured to ensure the beacon contains appropriate and correctly formatted data properties.
- b) "Emergency Maintenance" means any error corrections, updates or upgrades required to implement a critical security patch or otherwise facilitate the availability of the Software or Services.
- c) "Error" means any failure by the Software to operate in accordance with the Documentation which can be reproduced by Keysight using unmodified Software.
- d) "Instrument" means the action of adding relevant source code to Customer's application for the purposes of enabling beacons of data to be generated when Customer interacts with the application (and "Instrumenting" and "Instrumented" shall be construed accordingly).
- e) "License Key" means the alpha-numeric code or license file, generated by Keysight based on information provided to Keysight by Customer, required to use the Software.
- f) "Online Technical Support" means forum, e-mail or other internet-based means of obtaining assistance service provided by Keysight during Service Hours including clarification of the functions and features of the Software, guidance on its operation and the Documentation, but excluding (a) installation or a general consulting service, or (b) telephone assistance, even if the call originates from the Internet.
- g) "Output" means the data and results of the services performed by the Software.
- h) "Portal" means the online portal made available for Customer to access the Output from time to time.
- i) "Receiving Hosted Tenancy" means the environment configuration prepared by Keysight for the purposes of accepting, validating and processing incoming beacons on behalf of Customer.
- j) "Response" means a response from Keysight's support personnel to a Specified Contact acknowledging a report of an Error.
- k) "Scheduled Downtime" means periods of unavailability of the Software or Services which may be scheduled by Keysight for a period not to exceed four (4) hours in any one calendar month (unless explicitly notified by Keysight) and of which Keysight shall aim to provide Customer with at least forty-eight (48) hours' prior notice, specifying in each case the planned start and completion times.
- l) "Service Hours" means between the hours of 8:30 and 17:30 (UK time) and 8:30 and 5:30 (Mountain Time) during business days.
- m) "Specified Contact(s)" means the individuals Customer designates as contacts in the Order and/or their replacements notified to Keysight by Customer.
- n) "Telephone-Based Technical Support" means the telephone assistance service provided by Keysight during Service Hours, including clarification of the functions and features of the Software, guidance on its operation and the Documentation, but excluding installation or general consulting services.
- o) "Updates" means a release, update or version of the Software that may contain minor functional enhancements, modifications, extensions, error corrections, or bug fixes. Keysight will, in its sole discretion, determine the content of all Updates. The Updates for On-Premises Software may be provided by means of electronic download or other formats/media as determined by Keysight.
- p) "Upgrade" means a major release that includes significant new functionality and/or other enhancements to the Software.

2. LICENSE KEYS

- a) For On-Premise Software, Keysight will provide Customer a License Key for access to and use of the On-Premises Software during the Order Term.
- b) Customer will comply with Keysight's process for the generation, issue, and exchange of License Keys as notified by Keysight from time to time.
- c) Customer shall only be permitted to exchange a License Key when:
 - i) it has certified to Keysight in writing that the current License Key will no longer be used; and

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- ii) Keysight has verified that Customer holds a current license to use the Software.
- d) Prior to effecting any exchange, Keysight may require Customer to update the Software for which the License Key is generated where that product is not a currently supported version or release.

3. SOFTWARE SUPPORT AND MAINTENANCE

- a) Subject to payment by Customer of all applicable fees, Keysight will provide, for the Order Term, support and maintenance services during Service Hours. Such support and maintenance shall only be provided for the most recent release of the Software and for earlier releases of the Software for a period of six (6) months from the date of issue of the immediately subsequent release.
- b) The support and maintenance services provided by Keysight will comprise the provision of:
 - i) Updates and related Documentation;
 - ii) Telephone-Based Technical Support for Specified Contacts;
 - iii) Online Technical Support.
- c) Customer will report any Errors for which it requires support and maintenance services:
 - i) via email to Keysight at eggplant.support@keysight.com ;
 - ii) using the "Help->report a bug" feature in the Software;
 - iii) using the form provided on the Keysight online service portal at <http://www.eggplantsoftware.com/support> .
- d) Keysight will not be obliged to respond to or act on and will have no liability to Customer for any Error report not made by a Specified Contact.
- e) The Software is designed to send a message to a Keysight server whenever it is opened or closed to enable Keysight to provide support and maintenance services, including the following: Open/Close; the Licence Number; a time stamp; and the Operating System and version No. No Personal Data will be transmitted or accessible to Keysight.
- f) Keysight will use reasonable efforts to:
 - i) prioritize all Error reports based on its reasonable assessment of the severity level of the Error (as determined in its sole discretion);
 - ii) provide a Response to all Error reports within four (4) Service Hours; and
 - iii) resolve reported Errors during Service Hours according to the Keysight designated severity level as follows:

Severity Level	Category of Error	Keysight Resolution
1 – CRITICAL	A critical malfunction that is blocking Customer from using the application and having a significant impact on Customer's business and/or a high number of its staff.	Keysight will work the issue until a workaround is determined or a fix is supplied.
2- SERIOUS	A serious degradation of application functionality or performance and/or repetitive error conditions. Business-critical operations are being affected.	Keysight will work the issue until the problem is identified. A fix or workaround will be provided within a two-week target. The fix will be incorporated into the next product update.
3 - SIGNIFICANT	A feature or function is not operating as expected. Limited business or end-user impact.	Keysight will work the issue until the problem is identified. A fix or workaround will be provided within a four-week target. The fix will be

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		incorporated into the next product update.
4 - ROUTINE	Minor annoyance – workaround available.	Keysight will review the issue and consider providing a fix in the next product update.

- g) The support and maintenance services apply only to the correction of Errors. Keysight shall not be responsible for the resolution of any other malfunction of the Software, including any malfunction attributable to:
- i) Customer's failure to implement any Update;
 - ii) changes to the operating system or environment which adversely affect the Software;
 - iii) use of the Software to test software on an operating system other than the operating systems specified in the Documentation;
 - iv) any alterations of or additions to the Software performed by parties other than Keysight or at the direction of Keysight;
 - v) use of the Software in a manner for which it was not designed;
 - vi) accident, negligence, or misuse of the Software;
 - vii) operation outside of environmental specifications;
 - viii) interconnection of the Software with other software products; or
 - ix) use of the Software on equipment other than the equipment for which it was designed and licensed.
- h) Keysight may at its sole discretion provide services for:
- i) a problem with Customer's use of the Software which is not attributable to an Error; or
 - ii) unsupported versions of the Software,
- provided Keysight shall be entitled to charge Customer for any such services at Keysight's then current standard charging rates.
- i) Customer shall designate up to two (2) individuals within Customer's organization in the relevant Order as Specified Contacts to serve as primary contacts between Customer and Keysight and to receive support through Keysight's telephone support center. All Customer support inquiries shall be initiated through these Specified Contacts.
- j) To enable Keysight to provide support and maintenance services, Customer shall, during normal business hours, to the extent reasonably necessary, provide Keysight with suitable access to relevant Customer personnel and to equipment upon which the Software is loaded, operating or accessed. This access shall, where necessary, include the ability to dial-in or connect remotely to equipment on which the Software is operating. Keysight will inform Customer of the specifications of the equipment needed, and Customer will be responsible for the costs and use of any such equipment at Customer's premises. If Customer is only able to provide restricted access to Customer's systems, Keysight may only be able to provide limited support and Customer shall bear any additional costs incurred in compliance with additional security requirements.
- k) In the event of Errors or malfunction of the Software or any system on which the Software is loaded or operates or with which it interfaces, Customer shall:
- i) provide supervision, control and management of the use of the Software; and
 - ii) implement procedures for the protection of systems under test, their information and the implementation of backup procedures for such systems.
- l) Customer shall document and promptly report to Keysight all Errors affecting the Software and shall comply with all reasonable Keysight instructions and procedures for their resolution, as soon as reasonably practicable after notification by Keysight.
- m) Customer shall maintain a current backup copy of all programs and data relevant to its operation of the Software.
- n) Keysight reserves the right to charge Customer for work undertaken to address any problem with the Software which is reported as an Error but found to be attributable to a failure by Customer to operate the Software in accordance with the Documentation.

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- o) Except as expressly authorized by Keysight, Customer shall, where the Software is On-Premise Software, replace the current version of the Software with any updated or upgraded version or new releases provided by Keysight on receipt of such version or release.

4. WARRANTIES AND LIABILITY

- a) Keysight warrants that the Software will conform in all material respects to the Documentation for a period of thirty (30) days from the Delivery Date (the "Warranty Period"). If, within the Warranty Period, Customer notifies Keysight in writing of any material defect or fault in the Software where Software fails to conform to the Documentation, and such defect or fault does not result from Customer, or anyone acting with Customer's authority, having amended the Software or used it outside these Terms, for a purpose or in a context other than that for which it was designed or in combination with any other software not provided by Keysight, Keysight shall, at its option:
- i) repair or replace the Software; or
 - ii) terminate this license immediately by written notice to Customer and refund any of the amounts paid by Customer as of the date of termination (less a reasonable sum for Customer's use of the Software up to the date of termination) on return of the Software and all copies thereof, provided Customer provides all the information that may be necessary to assist Keysight in resolving the defect or fault, including sufficient information to enable Keysight to re-create the defect or fault. This Section sets forth Customer's sole remedy for breach of the warranties in [Section 4\(a\)](#).

5. CLOUD HOSTING SERVICE AVAILABILITY AND UPDATES

- a) Subject to the Terms, the cloud hosted services (which shall include both Keysight's collection of data and the Output) shall be made available (i.e. accessible) to Customer 99.9% of the time in each calendar month (the "Service Level"). Should the availability of the Software or Service fall below the Service Level, the following service credits shall be credited or payable to Customer by Keysight:

Availability Level	Credit payable
Less than 99.9% but greater than or equal to 99.0%	10%
Less than 99.0% but greater than or equal to 95.0%	25%
Less than 95.0%	50%

- b) In the event of a failure in the availability of the Software, Customer shall notify Keysight within seven (7) business days.
- c) Following the receipt of a written request from Customer, Keysight shall issue Customer with a Service Level report, which shall set out details of the availability of the Software or Services in the preceding calendar month.
- d) Service credits shall be applied to open invoices against the relevant Order. If there are no open invoices, Keysight will issue a credit to Customer.
- e) The service credits above are Customer's sole remedy and Keysight's sole liability for availability of the Software or Service falling below the Service Level, and Keysight shall not in any circumstances be obliged to pay any other amounts or make any refund to Customer in respect of availability falling below the Service Level.
- f) The Service Level measurement will exclude unavailability caused by or due to:
 - i) Force Majeure;
 - ii) Scheduled Downtime;
 - iii) use of unsupported equipment, software or other services; and/or
 - iv) Emergency Maintenance.
- g) Customer acknowledges and agrees that Keysight shall be entitled to Update or otherwise implement a critical security patch to the Cloud Hosted Software at any time during the Order Term, and that such operations will be carried out as either Emergency Maintenance or Scheduled Downtime (as applicable).

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6. TERMS APPLICABLE TO THE PROVISION OF MANAGED LOAD TESTING SERVICES (“MLT Services”)

- a) If Customer places an Order for MLT Services for an unspecified date, Customer will provide Keysight with at least fourteen (14) days advance written notice of its desired testing dates. Keysight reserves the right to decline specific testing date requests if it is unable to provide MLT Services on such date, in which case Keysight and Customer will agree in writing on the period in which the MLT Services shall be provided.
- b) Customer acknowledges that MLT Services may cause tested websites to fail and other load associated problems. Customer agrees that, all MLT Services are carried out entirely at Customer’s risk and that Keysight shall have no liability for any costs, losses, damages or expenses arising because of or in connection with the effects of the MTL Services on Customer or any third party.
- c) Customer confirms that it has procured the consent of the ultimate owner of the website(s) and any relevant third parties providing application infrastructure, including (without limitation) hosting and connectivity providers, to the provision by Keysight of the MLT Services and, Keysight shall have no liability for any costs, losses, damages or expenses incurred because of or in connection with Customer’s failure to obtain the necessary consent.
- d) MLT Services must be carried out within the period stated on the Order or within the period agreed pursuant to Section 6(a) (the “Testing Window”). Any MLT Services ordered but still unused within the Testing Window will expire at the end of the Testing Window and Customer will remain liable for payment of the fees for such MTL Services.
- e) If Customer wishes to cancel or rearrange the Testing Window, Customer must provide Keysight with at 48 hours’ notice prior to the agreed start time of the Testing Window. If Customer provides less than 48 hours’ notice, the following cancellation or rescheduling fees will be payable by Customer (in addition to the prices in the Order):
 - i) if Customer provides at least 12 hours’ notice but less than 48 hours’ notice of cancellation or rescheduling of MLT Services, it shall pay a cancellation fee of 25% of the amounts payable or paid for the MLT Services;
 - ii) if Customer provides at least 3 hours’ notice but less than 12 hours’ notice of cancellation or rescheduling of MLT Services, it shall pay a cancellation fee of 50% of the amounts payable or paid for the MLT Services; and
 - iii) if Customer provides less than 3 hours’ notice of cancellation or rescheduling of the MLT Services, it shall pay a cancellation fee of seventy-five percent (75%) of the amounts payable or paid for the MLT Services,and Customer agrees that such cancellation fees are not disproportionate, extravagant or unconscionable and do not exceed a genuine pre-estimate of Keysight’s loss.
- f) Keysight shall not be required to reschedule or provide the MLT Services until Customer has approved in writing Keysight’s proposal in respect of the cancellation fees payable by Customer.

7. TERMS APPLICABLE TO THE PROVISION OF EGGPLANT INGESTION ENGINE, RCI ENGINE AND RCI FOR ECOMMERCE

- a) Keysight shall prepare the Receiving Hosting Tenancy and, to the extent relevant and necessary, configure the Software. Keysight shall provide the Beacon API Contract, together with reasonable instructions for its use, to Customer within three (3) business days of the date of the Order although the time for provision of the Receiving Hosting Tenancy and performance of any associated Services more generally shall not be of the essence.
- b) Customer shall:
 - i) Instrument the relevant section of the application in relation to which it wishes Keysight to perform data ingestion;
 - ii) ensure that the minimum data set as defined in the current Beacon API Contract is captured; and
 - iii) comply with the reasonable instructions and requests of Keysight regarding the Instrumentation of the application.
- c) Customer accepts and acknowledges that the Output may not be meaningful unless it complies with its obligations under Section 7(b). Customer further accepts and acknowledges that it may receive less accurate and/or useful Output if it does not Instrument all areas of the application. Keysight shall have no liability in respect of the failure or degradation of the application or the Output as a result of Customer’s failure to properly Instrument the application or otherwise comply with its obligations as described herein and advised by Keysight.
- d) The effectiveness of the Eggplant Ingestion Engine, RCI Engine and RCI for eCommerce is dependent on the Instrumented application being able to communicate with the servers operated by Keysight such that the servers may receive raw event data from the Instrumented application. Such

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communication will take place over standard HTTPS connections. Customer accepts and acknowledges that such communication with Keysight servers may not be possible in all circumstances (for example, if a firewall operated by Customer does not allow such communication, or if Customer does not have Javascript enabled), and this may affect the Output.

- e) Customer shall ensure that the Instrumentation is constructed and operates in such a way so as to prohibit the capture or transmission of Personal Data.
- f) Keysight is permitted a limited right, strictly in accordance with this Section, to:
 - i) use the Output and other data generated by the Instrumentation for its own business purposes, provided that such use is for the exclusive purpose of monitoring the performance of the RCI services, and developing and enhancing the features and functionality of the same for all Keysight customers; and
 - ii) publish such data along with the data of other Keysight customers in an aggregated and anonymized form for the purposes of advertising the RCI services.
- g) Customer warrants that it has all necessary rights and permissions for Keysight to provide the Software and Services and to access the application in accordance with these Terms.