

KEYSIGHT TERMS OF SALE FOR EGGPLANT SOFTWARE LICENSES AND SERVICES

These Terms of Sale for Eggplant Software Licenses and Services ("Terms") set forth the terms and conditions under which Keysight Technologies, Inc. on behalf of itself and its Affiliates ("Keysight") will license Software, perform Services, and provide Deliverables according to an Order from a Customer. Software Support and Maintenance is described in [Exhibit A](#). If Customer purchases access to Keysight Hosted Software, [Exhibit B](#) applies. If Customer purchases Performance as a Service ("PaaS Services"), [Exhibit C](#) applies. If Customer purchases Augmentation related Services such as Eggplant Professional Services, Eggplant Consultancy Services, or Subscription Services For Eggplant Software, [Exhibit D](#) applies.

1. DEFINITIONS

- a. "Affiliates" means any subsidiary, parent, subsidiary of the parent, or other entity that controls or is controlled by a party, where control means ownership or control, direct or indirect, of more than fifty percent (50%) equity or voting rights, 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 entity in which a party owns or controls, or which owns or controls in respect to such party, directly or indirectly, the maximum percentage of such outstanding stock or voting rights permitted by local law, provided that such entity exercises actual control over the other's operations.
- b. "Annual Services" means any Services offered over a 12-month period.
- c. "Confidential Information" means data created by Customer using the Software and any other materials marked confidential by Customer or Keysight or reasonably understood to be confidential under the circumstances of disclosure.
- d. "Deliverable(s)" means the tangible result(s) of Services Keysight provides to Customer as described in a Quote, including without limitation reports and automation assets (e.g., directed test cases, automation strategies and architectures, test scripts, models, code, custom Software).
- e. "Documentation" means the operating manuals, user instruction manuals, technical literature, and all other related materials, including Keysight supplied online help files, regarding the use of the Software, accessible via Keysight's website or otherwise made available by Keysight.
- f. "Error" means any failure by the Software to operate in accordance with the Documentation which can be reproduced by Keysight using unmodified Software.
- g. "Items" means Products, Software, Technology, Deliverables, and any other items received from Keysight or as part of Services, Support, or Maintenance.
- h. "License Term" means the duration of the Software license as specified in a Quote.
- i. "Licensed Users" means Customer's employees, authorized agents, representatives, subcontractors, and consultants acting on Customer's behalf solely for Customer's internal business use.
- j. "Order" means a written or electronic purchase order issued by Customer to Keysight for the purchase of a Software license or Services consistent with a Quote.
- k. "Project Representative" means the primary point of contact from each party who will professionally and promptly liaise with the other party, possess the expertise and authority to act on their party's behalf, and meet with the other party's representative at agreed-upon intervals.
- l. "Quote" or "Quotation" means the Keysight offer, which may include a Statement of Work ("SOW") to Customer describing the Software and Services.
- m. "Service Hours" means between business hours in the UK, US, and MY excluding local holidays.
- n. "Services" means professional services offered by Keysight as described in a Quote. Services shall not include Support and Maintenance.
- o. "Software" means one or more computer programs including Updates in object code format offered by Keysight as described in a Quote for installation on a computer controlled by Customer and related Documentation.
- p. "Specifications" means technical information about Products published by Keysight and in effect on the date Keysight ships the order.
- q. "Support and Maintenance" means the provision of (i) Updates and related Documentation, (ii) correction of Errors, and (ii) Technical Support, as described in [Exhibit A](#).
- r. "Technical Support" means the assistance service provided by Keysight via telephone, email, or online during Service Hours, including clarification of the functions and features of the Software, guidance on its operation and Documentation, but excluding installation or general consulting services.
- s. "Technology" means any information, including Specifications, generated by Keysight or otherwise provided by Keysight to Customer.
- t. "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. Software Updates may be provided using electronic download or other formats/media as determined by Keysight.



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2. LICENSE TO SOFTWARE

- a. Keysight grants Customer a non-exclusive, worldwide license to use the Software for Customer's internal business purposes in accordance with the Keysight Software End-User License Agreement ("EULA") available at www.keysight.com/find/sweula. The Quote specifies the license type and License Term. Acceptance of the Software occurs on the date Keysight makes the Software license available to Customer.
- b. The Software is owned and copyrighted by Keysight and its third-party suppliers. A Customer's license to Software confers no title or ownership in the Software or rights in any associated source code and will not be construed as a sale of any rights.
- c. Customer may not permit anyone except Licensed Users with the appropriate skills and training to use the Software. Customer is responsible for compliance with and breach of these Terms by Licensed Users.
- d. Customer will use all reasonable efforts to ensure Licensed Users will not: (i) use the Software to engage in spamming, mail-bombing, spoofing, or any other fraudulent, illegal, or unauthorized use; (ii) use the Software to store or transmit any viruses, Trojan horses, worms, time bombs, or any other similar malware or malicious code, software, data, or programs; or (iii) 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.
- e. If Customer becomes aware of any violation of these Terms by any person, Customer will inform Keysight as soon as reasonably practicable.

3. KEYSIGHT SERVICES AND DELIVERABLES

- a. Keysight may select subcontractors to perform Services and/or provide Deliverables. Keysight is responsible for the performance of its subcontractors.
- b. Customer responsibilities are described in a Quote and, if applicable, Exhibit D. Customer will appoint a Project Representative and cooperate with Keysight by providing access to and use of Customer Confidential Information, network, internet, and facilities to the extent reasonably necessary for Keysight to perform Services and/or provide Deliverables.
- c. If Customer's action or inaction causes a delay in the provision of Services or schedule specified in the Quote, Keysight may adjust the affected Services or schedule accordingly.
- d. Subject to the licenses provided in these Terms, each party will retain all pre-existing intellectual property rights.
- e. Customer is responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Confidential Information. Customer is responsible for maintaining Customer Confidential Information and reconstructing lost or altered files, data, and programs.
- f. Customer grants Keysight a non-exclusive, worldwide, royalty-free license to use Customer Confidential Information and Customer's pre-existing intellectual property to the extent necessary for Keysight to perform Services and/or provide Deliverables. With the exception of Customer Confidential Information, Keysight will own all intellectual property rights, title, and interest in or pertaining to all Deliverables developed by Keysight under these Terms. Keysight grants Customer a non-exclusive, worldwide, perpetual license to use Deliverables for Customer's internal business purposes.
- g. Keysight will perform Services during the period set forth in the Quote, not to exceed twelve (12) months from the Order date. Any unused Service days will be forfeited. Annual Services are non-cancellable and non-refundable.

4. PRICE AND PAYMENT

- a. Prices are specified in the Quote and are valid for the period indicated. Prices exclude any applicable sales, value-added, or similar tax payable by Customer. Prices for Order renewals are subject to applicable pricing at the time of renewal as set forth in the Quote.
- 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. 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 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 Quote. Unless otherwise indicated in the Quote, travel expenses may be invoiced separately. Payment terms are stated in the Quote or acknowledgment documentation and are subject to change if Customer's financial condition or payment record merits such change.
- d. Keysight may discontinue performance of Services or suspend Customer's license to Software if Customer fails to pay any sum due if, after ten (10) days written notice, the failure has not been cured. Customer is liable for all expenses including legal fees relating to the collection of past due amounts and/or Keysight's enforcement of these Terms.

5. WARRANTIES

- a. Keysight warrants the Software will substantially conform to the Documentation. The warranty begins upon acceptance of the Software and continues for the License Term.
- b. Keysight warrants the Services will be provided, and the Deliverables will be prepared, in a professional and workmanlike manner. Keysight warrants Support and Maintenance will be performed in a professional and workmanlike manner during the License Term.
- c. Keysight does not warrant that the operation of the Software or Deliverables will be uninterrupted, error-free, or conform to any reliability or performance standards beyond those specified in the Documentation. Keysight also does not warrant that the Software or Deliverables 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 requirements. Keysight does not warrant that the Software or Deliverables will achieve Customer's intended results.
- e. If Keysight receives notice of non-conformance during the License Term, Keysight will, at its option, repair or replace the affected Software or reperform the Services. Customer will provide Keysight with all information necessary to assist Keysight in resolving the non-conformance, including sufficient information to enable Keysight to re-create the non-conformance. If Keysight is unable within a reasonable time to repair or replace the affected Software or reperform the Services, Keysight will issue a pro-rata refund of the fees paid related to the non-conformance upon Customer's prompt certification of the destruction of the Software.
- f. The above warranties will not apply to non-conformances resulting from: (i) improper or inadequate maintenance, site preparation, or installation; (ii) repair performed by Customer or an unauthorized third party; (iii) Customer's or a Licensed User's breach of these Terms or terms of an SOW; (iv) Customer or third-party supplied hardware or software, interfacing, or supplies; (v) unauthorized modification; (vi) improper use or operation of the Software or any portion thereof or Customer's failure to comply with applicable environmental specifications; or (vii) abuse, negligence, or accident.
- g. THE ABOVE WARRANTIES AND REMEDIES ARE EXCLUSIVE AND NO OTHER WARRANTY OR REMEDY, 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.

6. CONFIDENTIAL INFORMATION

- a. Each party acknowledges and agrees: (i) it will use the other party's Confidential Information solely in accordance with these Terms; (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 Confidential Information, which in no event shall be less than a reasonable degree of care; (iii) Customer may disclose Keysight's Confidential Information only to Licensed Users; and (iv) Keysight may disclose Confidential Information to its Affiliates or subcontractors for purposes of performing its obligations under these Terms.
- b. Confidential Information will not include information that is: (i) publicly available at or before disclosure by the disclosing party; (ii) obtained by the receiving party from any source without any obligation of confidentiality; (iii) independently developed by the receiving party without the use of or reference to the disclosing party's Confidential Information; or (iv) to the extent required to be disclosed by order of a court or other governmental entity, provided that the disclosing party is given prompt notice so the disclosing party may seek a protective order or other equitable relief.
- c. 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 EULA.
- d. Keysight may utilize encryption technology related to Customer Confidential Information. 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. Customer is responsible for maintaining backup copies of Customer Confidential Information. Keysight will not be responsible if Customer Confidential Information is lost or damaged.
- e. Comments, suggestions, improvements, or other communications from Customer to Keysight regarding the Software or Services ("Feedback") are the sole property of Keysight. Keysight may use Feedback and practice the intellectual property relating thereto without compensation or attribution to Customer.

7. DATA PRIVACY

- a. Each party will comply with any 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.
- b. Customer acknowledges and agrees it may provide, and Keysight may receive, Customer personal data in connection with ordering, registration, activation, updating, validating entitlement to, downloading, and installation of the Software. Keysight will process such Customer personal data as a data controller 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.

8. 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 this Section, 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 a necessary license. If Keysight determines that none of these alternatives is reasonably available, Keysight will refund Customer's pro-rata purchase price upon prompt certification of the destruction of Software or return of Deliverables.
- c. Keysight has no obligation for any claim of infringement arising from: (i) Keysight's compliance with, or use of, Customer's designs, specifications, instructions, or technical information; (ii) Customer or a third-party modification of Software or Deliverables; (iii) Software or Deliverable use prohibited by or outside the scope of Documentation or these Terms; (iv) use of Software or Deliverables with products not supplied or approved by Keysight; (v) Customer's failure to Update, to make a change or modification requested by Keysight, or to cease using the Software or Deliverable if requested by Keysight; (vi) Customer's or a Licensed User's breach of these Terms; or (vii) any content or information stored or used by Customer or a third party in connection with the Software

9. LIMITATION OF LIABILITY AND REMEDIES

- a. In no event will either party, its subcontractors, or suppliers be liable for special, incidental, indirect, consequential damages, downtime costs, loss of data, restoration costs, lost profits, or lost revenue. Keysight, its subcontractors, and 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 operating 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 or payable by Customer under these Terms in the immediately preceding twelve (12) months, except that Keysight's obligation to make warranty refunds under Section 5(e) is limited to the amount paid for the license to the non-conforming Software or Services.
- c. The limitations set forth in Sections 9(a) and 9(b) above will not apply to infringement or misappropriation of Keysight's intellectual property rights, either party's breach of confidentiality under Section 6 (Confidential Information), claims under Section 8 (Intellectual Property Claims), damages for bodily injury or death, or damages resulting from willful misconduct or fraudulent misrepresentation. The remedies in these Terms are Customer's sole and exclusive remedies.

10. TERM AND TERMINATION

- a. These Terms commence on Keysight's acceptance of the Order. Unless terminated under this Section, these Terms shall continue to the end of the License Term.
- b. These Terms may be terminated immediately upon written notice:
 - i. 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 specifying the material breach; or
 - ii. by Keysight if Customer fails to pay any sums due under these Terms within the period specified in Section 4(d).
- c. These 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. Customer may terminate a Software license upon notice, but Customer shall not be entitled to a refund of Software license fees paid and will be obligated to pay amounts owed for the remainder of the License Term, which will become immediately due and payable.
- e. Customer may terminate an Order for Services for convenience upon thirty (30) days written notice to Keysight, provided Customer pays Keysight for all Services performed, Deliverables provided, and charges and expenses incurred by Keysight up to the effective date of termination. Customer will receive all work in progress for which Customer has paid. Customer may terminate Annual Services, as defined in a Quote, but Customer shall not be entitled to receive a refund of fees paid.
- f. Upon expiration or termination of these Terms, Customer is no longer licensed to use the Software, except Customer may use the Software solely to extract Customer Confidential Information within thirty (30) days from the date of expiration or termination and before the destruction of all copies of the Software. Customer will promptly provide Keysight with a written certification signed by an authorized representative certifying that all copies of the Software have been destroyed. Customer acknowledges and agrees that the Software includes digital rights management protection and that following expiration or termination of any License 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.

11. GENERAL



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- a. These Terms do not cover the purchase of Keysight hardware products.
- b. Keysight may provide the same or similar Software, Services, and Deliverables to other customers.
- c. 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.
- d. Customer may not assign or transfer these Terms or a license to Software without Keysight's prior written consent and payment of any applicable fees. Any attempted assignment or transfer without such consent will be void.
- e. Notwithstanding any other provision in these Terms, with respect to all activities, transactions, or other dealings engaged in or otherwise contemplated under these Terms, or that otherwise relate to Items, Services, Support, or Maintenance provided under these Terms:
 - i. Customer expressly agrees that it assumes full responsibility for obtaining any and all required authorizations under export controls and/or sanctions laws, including U.S. Sanctions and U.S. Export Control Laws (as defined in Section 11(e)(ii)), prior to engaging in any services, activity, transaction or other dealing, including, but not limited to, providing or allowing access to an Item directly or indirectly to any employee, contractor, student, agent, or any other person or entity, which requires authorization pursuant to export controls and/or sanctions laws, including U.S. Sanctions and U.S. Export Control Laws.
 - ii. Customer acknowledges and agrees that Items, Services, Support, Maintenance, activities, transactions, or other dealings involving Items may be subject to economic, financial and trade sanctions laws and regulations, orders and directives including, without limitation, (a) the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, and U.S. Department of Commerce, (collectively, "U.S. Sanctions") and (b) U.S. export control laws, regulations, orders and directives, including the U.S. International Traffic in Arms Regulations ("ITAR") and the U.S. Export Administration Regulations ("EAR"), (collectively, "U.S. Export Control Laws").
 - iii. Without limiting the foregoing, Customer confirms that it is not, and is not acting for, on behalf of or at the direction of any person that is, or any person owned or controlled by a person that is (a) a target of U.S. Sanctions including, but not limited to, persons identified on the Specially Designated Nationals and Blocked Persons List or Sectoral Sanctions Identifications List; (b) organized, located, or resident in a country or territory that is the target of comprehensive U.S. Sanctions or other broad U.S. Sanctions; and/or (c) identified on a list administered under U.S. Export Control Laws including, but not limited to, the Entity List, Unverified List, Military End User List, Debarred Parties List, or Denied Persons List (collectively, together with (a) and (b), "Restricted Parties"). Customer will not sell, export, reexport, transfer, re-transfer, supply or otherwise provide, any Items, directly or indirectly, to, or otherwise deal with a Restricted Party in violation of U.S. Sanctions and/or U.S. Export Control Laws.
 - iv. Customer will, upon Keysight's request, promptly furnish all information and documentation requested by Keysight in connection with its and Customer's compliance with export controls and/or sanctions laws, including with U.S. Sanctions and Export Control Laws. Keysight may, in its sole discretion, require Customer to provide an end user certificate and export license to ensure compliance under export control laws and sanctions laws, including U.S. Sanctions and Export Control Laws, by Keysight and Customer.
 - v. Customer will promptly notify Keysight if any representations, warranties or covenants provided under this Section 11(e) are no longer accurate.
 - vi. Customer acknowledges that Keysight may supply Items and Services from various locations around the world. Keysight may, in its sole discretion, suspend performance, refuse to supply Items and Services, or cancel all or part of an order under these Terms if Customer does not comply with any provisions under this Section 11(e); or if any activities, transactions or other dealings contemplated under these Terms or that otherwise involve or relate to Items, Services, would, or would be likely to, violate any export controls and/or sanctions laws including U.S. Sanctions or U.S. Export Control Laws.
- f. If Keysight requires access to Customer Confidential Information to perform Services and such Customer Confidential Information is restricted by any applicable export control law or regulation, Customer will notify Keysight in writing prior to providing Keysight access to Customer Confidential Information. 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.
- g. 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.
- h. Notices under or regarding these Terms will be in writing and will be deemed 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, verified by a written or automated receipt, or by electronic log.

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- i. Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.
- j. 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.
- k. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- l. Disputes arising in connection with these Terms will be governed by the laws of the jurisdiction of the Keysight entity against which the Order was placed.
- m. Software and Deliverables are intended for professional and industrial use only, and are not suitable for personal, domestic, or household use, and Customer represents and warrants that it is not acquiring Software licenses and Deliverables for such uses. Personal, domestic, or household use, or use outside of the specifications for the Software and Deliverables, will nullify the licenses granted to Customer in Sections 2(a) and 3(f); Sections 8(a) and (b); Sections 9(a) and 9(c); and void the warranty terms in Section 5. Software and 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 Software or Deliverables purchased by Customer are used for the applications specified in this Section. Customer will indemnify and hold Keysight harmless from all loss, damage, expense, or liability in connection with such use.
- n. These Terms, including the EULA, the Exhibits, and the Quote, 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. In the event of a conflict between the Quote and these Terms, the Quote shall take precedence. In the event of a conflict between these Terms and the EULA, these Terms shall take precedence. Customer's additional or different terms and conditions will not apply. Customer's Order will constitute Customer's acceptance of these Terms.
- o. Each party agrees to comply with applicable laws and regulations. Keysight may suspend performance if Customer violates applicable laws or regulations.
- p. Each party agrees not to publicize or disclose the existence of or any part of these Terms to any third party without the prior written consent of the other party, except as may be required by law. No press releases regarding these Terms will be made without the mutual written consent of the parties. Notwithstanding the foregoing, 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 reasonably working with a representative from Keysight's marketing team to develop a customer profile for use on Keysight's website. The profile may include a quote from a user of the Software or Services or project leader from Customer and Customer's logo. Customer also agrees to participate in other promotional activities, as reasonably agreed by parties, which could include press release mentions, verbal references, and case studies.

EXHIBIT A**SOFTWARE SUPPORT AND MAINTENANCE**

- a) Subject to payment by Customer of all applicable fees, Keysight will provide Support and Maintenance for the License Term during Service Hours. Keysight will provide such Support and Maintenance only for the most recent release of the Software and for earlier releases of the Software for six (6) months from the date of issue of the immediately subsequent release.
- b) Customer will report any Errors requiring Support and Maintenance: (i) via email to Keysight at eggplant.support@keysight.com ; (ii) using the "Help→report a bug" feature in the Software; or (iii) using the form provided on the Keysight online service portal at www.eggplantsoftware.com/support.
- c) Keysight will respond to an Error report within four (4) Service Hours. Keysight is only responsible for responding to Errors reported through the channels specified in Section (b). Keysight will have no responsibility or liability for any other Errors.
- d) Keysight will prioritize Errors based on severity level (as reasonably determined by Keysight in its sole discretion). Keysight will not be responsible for resolving 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 outside of the scope of the Documentation; (iv) any modifications to the Software made by parties other than Keysight or at Keysight's direction; (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.
- e) Keysight may, in its sole discretion, provide Support and Maintenance 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 labor rates.
- f) To the extent reasonably necessary for Keysight to provide Support and Maintenance, Customer shall, during normal business hours, grant Keysight suitable access to relevant Customer personnel and equipment upon which the Software is loaded or operating. This access shall, where necessary, include the ability to dial in or connect remotely to equipment on which the Software is loaded or operating. Keysight will inform Customer of the specifications of the equipment needed for the Software to perform, 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 Maintenance, and Customer shall bear any additional costs incurred in compliance with additional security requirements.
- g) In the event of Errors or malfunction of the Software or any system on which the Software is loaded, 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.
- h) 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.
- i) Customer shall maintain a current backup copy of Customer's programs and data relevant to the operation of the Software.
- j) Except as expressly authorized by Keysight, Customer shall replace the current version of the Software with Updates provided by Keysight, within a reasonable time after such Updates are made available.

EXHIBIT B**KEYSIGHT HOSTED SOFTWARE**

By accessing the Keysight Hosted Software, Customer agrees Customer has read, understands, and agrees to be bound by these Terms including this Exhibit B.

1. DEFINITIONS

- a. "Authorized Users" means Customer's employees or contractors whose job duties require access to the Keysight Hosted Software and to whom Customer has given User Credentials, provided such employees and contractors have agreed in writing to comply with restrictions at least as limiting as are provided in this Exhibit B. Authorized Users will be deemed agents of Customer.
- b. "Customer Data" means all electronic data, information, files, and software, to which Customer permits the Keysight Hosted Software to access or store.
- c. "Keysight Hosted Software" means a program(s) executing on computer(s) controlled by Keysight, its subcontractors, or suppliers, where Keysight authorizes Customer to access and use such program for Customer's internal business purposes.
- d. "Personal Data" means any information relating to an identified or identifiable natural person.
- e. "Scheduled Downtime" means periods of unavailability of the Keysight Hosted Software 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.
- f. "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 Keysight Hosted Software. User Credentials will be provisioned to a single administrator or multiple Authorized Users as may be indicated in a Quote.

2. KEYSIGHT HOSTED SOFTWARE

If Customer purchases access to Keysight Hosted Software, Keysight grants Authorized Users access to use Keysight Hosted Software for Customer's internal business purposes and in accordance with these Terms and this Exhibit. References to Software in these Terms will apply to Keysight Hosted Software as applicable.

3. CUSTOMER DATA

- a. Customer retains all rights in and to Customer Data that existed prior to upload to the Keysight Hosted Software. Customer is responsible for maintaining an external procedure for the reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Customer. Customer is responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Keysight Hosted Software, and will promptly notify Keysight of any such unauthorized access or use. Customer is responsible, at Customer's sole expense, for providing and maintaining necessary equipment and internet service to use the Keysight Hosted Software and to ensure appropriate connections between the Keysight Hosted Software 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 Keysight Hosted Software.
- b. Keysight will use commercially reasonable efforts to maintain security and protection of Customer Data. However, access to Keysight Hosted Software involves the 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 backup procedures, but Customer understands there is an inherent risk in electronic storage. Keysight's liability for loss or breach of Customer Data is set forth in Sections 9(a) and 9(b) of the Terms.
- c. Customer shall ensure the security of User Credentials and is responsible for violations of these Terms by third parties who have gained access to the Keysight Hosted Software through Customer, whether with Customer's permission or otherwise. Customer will ensure Authorized Users will not: (i) knowingly interfere, or attempt to interfere, with the Keysight Hosted Software in any way; or (ii) overwhelm the Keysight Hosted Software by making unreasonably large requests on Keysight resources, including without limitation by intentionally overloading the Keysight Hosted Software whether for service denial or otherwise.
- d. Keysight may suspend Customer access to the Keysight Hosted Software immediately upon notice to Customer if Customer fails to perform under these Terms or this Exhibit B and (1) if, after ten (10) days written notice the failure has not been cured, or (2) Keysight determines Customer's access to the Keysight Hosted Software: (i) poses a security risk to Keysight or any third party; (ii) adversely impacts the Keysight Hosted Software 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.

KEYSIGHT TERMS OF SALE FOR EGGPLANT SOFTWARE LICENSES AND SERVICES

- e. Upon expiration or termination of these Terms 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 License Term upon payment of the then-current administrative fee for such service. Keysight will provide Customer Data in a mutually agreeable format.
- f. Customer warrants that Customer has all rights necessary to upload all Customer Data to the Keysight Hosted Software. To the extent Customer provides Keysight Hosted Software access to third party content, Customer warrants it has all rights necessary to grant such permission and fully complies with any requirements imposed by the third party for granting the access to Keysight. Customer indemnifies and holds Keysight harmless from and against any third-party claims arising from breach of such warranties.

4. PERSONAL DATA

- a. When used appropriately, Keysight Hosted Software does not capture Personal Data other than User Credentials required for access. Customer warrants that Customer will not transmit Personal Data to Keysight. Accordingly, Keysight shall not be required to verify whether Personal Data has been processed by Keysight in connection with the Keysight Hosted Software.
- b. Keysight will notify Customer if it discovers that it has unintentionally obtained Personal Data as a result of a breach of Customer's warranty. Keysight may suspend Customer's access to the Keysight Hosted Software until Keysight has received Customer's confirmation that Customer has taken the necessary steps to ensure Keysight does not process Personal Data by providing Customer access to Keysight Hosted Software. If Customer fails to provide any instructions to Keysight within five (5) business days of Keysight providing notice of unintentional receipt of Personal Data, Keysight may delete such Personal Data. Customer will indemnify and hold harmless Keysight, its officers, directors, employees, and agents from and against any third-party claims arising out of Customer's transmission of Personal Data to Keysight or Keysight's subcontractors or suppliers.

5. HOSTING SERVICE LEVEL AVAILABILITY AND UPDATES

- a. Subject to these Terms, the Keysight Hosted Software shall be accessible to Customer 99.9% of the time in each calendar month (the "Service Level"). Should the availability of the Keysight Hosted Software fall below the Service Level, the following service credits shall be credited or payable to Customer by Keysight:

Service 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 Keysight Hosted Software, Customer shall notify Keysight within seven (7) business days.
- c. Upon Keysight's verification of the Service Level, service credits shall be calculated as a percentage of the pro-rated monthly fees paid as applied to open invoices against the relevant Order. If there are no open invoices, Keysight will issue a credit to Customer.
- d. The service credits above are Customer's sole remedy and Keysight's sole liability for the availability of the Keysight Hosted Software falling below the Service Level, and Keysight shall not in any circumstances be obligated to pay any other amounts or make any refund to Customer in respect of availability falling below the Service Level.
- e. 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; (iv) Customer's breach of these Terms; and/or (v) emergency maintenance.
- f. Customer acknowledges and agrees that Keysight shall be entitled to update or otherwise implement a critical security patch to the Keysight Hosted Software at any time during the License Term, and that such operations will be carried out as either emergency maintenance or Scheduled Downtime (as applicable).

EXHIBIT C**PERFORMANCE AS A SERVICE**

The following terms apply to Performance as a Service ("PaaS Services"):

- a) If Customer places an Order for PaaS Services for an unspecified date, Customer will provide Keysight with at least twenty-one (21) days advance written request of its desired testing date.
- b) Keysight may decline Customer's testing date request if Keysight is unable to provide PaaS Services on such date. In such case, Keysight and Customer will agree in writing on the date on which Keysight will provide PaaS Services.
- c) Customer acknowledges PaaS Services may cause tested websites to fail and other load-associated problems. Customer agrees all PaaS Services are carried out entirely at Customer's risk and Keysight shall have no liability for any costs, losses, damages, or expenses arising because of or in connection with the effects of the PaaS Services on Customer or any third party.
- d) Customer warrants 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 of the PaaS Services by Keysight. Keysight shall have no liability for any costs, losses, damages, or expenses incurred because of or in connection with Customer's failure to obtain such necessary consent.
- e) Any unused Test Windows will be forfeited twelve (12) months from the Order date. The PaaS Services will be deemed delivered and the Customer will be liable for payment of the fees. "Test Window" means the day, or part of the day, on which a performance test is conducted. The minimum "Test Window" is 4 hours in duration.
- f) Keysight will give notice to Customer when additional fees are due because: (i) the tested website has substantially changed between consecutive Test Windows or (ii) the originally agreed upon scope of the test changes.
- g) Each Order for PaaS Services applies to a single application under test.
- h) The provision of test data is the responsibility of the Customer.
- i) If Customer wishes to cancel or rearrange the Test Window, Customer must provide Keysight with at least 48 hours' notice before the agreed start time of the Test 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 PaaS Services, Customer shall pay a cancellation fee of 25% of the amounts payable or paid for the PaaS Services;
 - ii) if Customer provides at least 3 hours' notice but less than 12 hours' notice of cancellation or rescheduling of PaaS Services, Customer shall pay a cancellation fee of 50% of the amounts payable or paid for the PaaS Services; and
 - iii) if Customer provides less than 3 hours' notice of cancellation or rescheduling of the PaaS Services, Customer shall pay a cancellation fee of seventy-five percent (75%) of the amounts payable or paid for the PaaS Services,
 - iv) 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.
- j) Keysight shall not be required to reschedule or provide the PaaS Services until Customer has approved, in writing, Keysight's proposal in respect of the cancellation fees payable by Customer.

KEYSIGHT TERMS OF SALE FOR EGGPLANT SOFTWARE LICENSES**EXHIBIT D****EGGPLANT PROFESSIONAL SERVICES, EGGPLANT CONSULTANCY SERVICES, AND SUBSCRIPTION SERVICES FOR EGGPLANT SOFTWARE**

The following terms apply to Eggplant Professional Services ("Professional Services"), Eggplant Consultancy Services ("Consultancy Services"), and Subscription Services for Eggplant Software ("Subscription Services").

1. DEFINITIONS

- a. "Automation Architecture" means a detailed and specific outline for organizing and implementing the day-to-day aspects of the project. The Automation Architecture must include but is not limited to: a thorough analysis and documentation of the processes for managing the test environment and how the processes integrate with Customer's quality management system, test cases and associated Test Data, detailed definition of the directed Workflows and associated retirement plans, the methods for managing work, resources, tools, investments, devices, defects, priorities and potential future requirements.
- b. "Automation Framework" means the technical execution of the automation and forms the core library of automation assets including the models, scripts, API calls, suites, helper functions and SUT configurations that make up the automation harness. The Automation Framework also incorporates the directed test cases that use the library to execute the automations and implements the automation reporting and logging as required by the quality control process.
- c. "Automation Strategy" means a high-level strategic outline of the Customer's need for automation and its operational objectives as well as a description of the overall automation strategy, related phases and components. This includes the Customer's goals for automated testing, road maps of prioritized change for achieving testing outcomes and an overview of the environment. The Automation Strategy will inform decisions on how resources, skills and competencies should be configured to meet Customer's needs and provide enduring software quality.
- d. "Change Order" means a mutually agreed upon change or modification to the Deliverables, Consulting Services, or other material aspect of the project. All Change Orders must be in writing and set forth the details of the modification and any adjustments to the price, delivery schedule, payment schedule, Consulting Services, acceptance tests and any other applicable criteria.
- e. "CFE" or "Customer Furnished Equipment" means data, information, network or account access credentials, or equipment provided to Keysight by Customer for use in connection with the Deliverables, Professional Services, Consultancy Services or Subscription Services.
- f. "Customer Managed Project" means a process or test automation project where Customer manages the project and provides the Automation Framework as indicated in the Quote
- g. "Keysight Managed Project" means a process or test automation project where Keysight manages the project and provides the Automation Framework on behalf of Customer as indicated in the Quote.
- h. "Personal Data" means any information relating to an identified or identifiable natural person.
- i. "Senior Stakeholder" means the executive from each Party who is responsible for ensuring quality and managing the budget for the work performed under Exhibit D.
- j. "SME" means a subject matter expert.
- k. "SUT" or "System Under Test" means any device used for testing.
- l. "Test Data" means the complete, predefined set of inputs given to a test automation solution that will be used in the testing of a given application which allows the desired amount of test coverage to be reached.
- m. "Workflow" means a specified flow through the application under test which typically automates a common scenario through a set of known features without deviation.

2. CUSTOMER OBLIGATIONS AND ACKNOWLEDGMENTS

- a) Customer will comply in a timely manner with the general obligations specified below and shall ensure that CFE meets its published specification and is free from defects in materials and/or workmanship. Customer understands and acknowledges that Keysight's ability to deliver Services under Exhibit D depends on Customer's full and timely cooperation with Keysight, as well as the accuracy and completeness of any required CFE. Customer understands and acknowledges that Keysight will not begin performance or deliver any Services under Exhibit D until Customer confirms or provides the CFE outlined in this Section.
- b) Customer will confirm or provide the following CFE before the start of the project:
 - i) Customer owns, or will purchase, the Software development and executable licenses required to run the delivered solutions.
 - ii) An Automation Strategy document.

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- iii) An Automation Architecture document.
 - iv) Definition and scope of each Workflow: What platform areas will be automated, the specific flows with individual steps, the required data including bounds and validation checks, test entry criteria for each workflow, the happy paths, complimentary paths, and definitions for pass and fail.
 - v) A walk-through of the application to be automated and the Workflows by the SME.
 - vi) Test accounts for the end-user applications that comply with any third-party provider's Terms and Conditions.
 - vii) A copy of Customer's engineering standards for models, scripts, and coding.
 - viii) Documentation for any pre-existing Automation Framework, including handler descriptions and usage.
 - ix) Access to Customer's network for script creation.
 - x) Process documentation for Keysight to access Customer's environments, including any additional requirements in connection with Personal Data, background checks, training courses, and hardware.
 - xi) Specification of the automation environment in which the automation assets will be deployed.
 - xii) For Test Automation projects:
 - A QA Environment to run the tests in.
 - Customer will confirm that the application and SUTs provided by Customer as CFE are the same as those Customer will use for QA testing.
 - Sufficient SUTs to run the QA Environment.
 - xiii) If Customer provides equipment to Keysight for automation asset development, the equipment conforms to the current System Recommendations outlined in the Eggplant Functional Documentation available at <https://docs.eggplantsoftware.com/studio/epf-prerequisites/#system-recommendations>.
 - xiv) Method of Packaging Work: For Customer Managed Projects, Customer will provide documentation of the specific method of packaging work for the applicable engineer. Work packages must describe specific areas of application functionality with sufficient detail to enable the Keysight engineer to independently progress model and code building.
- c) Customer will confirm or provide the following CFE on an ongoing basis throughout the project:
- i) Timely feedback and answers to Keysight questions.
 - ii) Sufficient quantities of current and relevant Test Data to build the automation workflows.
 - iii) Test accounts, which must remain available and unchanged.
 - iv) The application or process being automated, which must remain available and unchanged.
 - v) Timely access to an SME during the model and script development
 - vi) Confirmation from the SME to proceed when using or updating Customer's existing code base.
 - vii) Remote continuous and stable access to:
 - the automation environment,
 - the devices used for automation,
 - the source control system, and
 - the requirements management system
- d) Customer is responsible for provisioning the automation environment, configuring, and connecting the environment and SUTs.
- e) Customer is responsible for the logistics and costs associated with both shipping and recovery of any physical CFE.
- f) Customer is required to remove all Personal Data from systems, files, or other areas that the Keysight service delivery team will or may have access to.
- g) Customer acknowledges that post-delivery services, including but not limited to installation, commissioning, and maintenance, are only included if stated on the Quote.
- h) Customer acknowledges that Keysight will use its global network of engineering resources to deliver Services under Exhibit D, which may mean that the provision of such services could be from outside of Customer's region.
- i) Services under Exhibit D will be performed during Service Hours. In extraordinary circumstances, the Keysight Project

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Representative may agree to a Customer request, charged at an hourly premium of 100%.

- j) The Keysight Project Representative must approve any training requested by Customer for Keysight personnel and any approved training will count against the contracted hours for the respective role.

3. DELIVERY AND ACCEPTANCE

- a) Keysight will deliver automation assets by a digital upload to a shared folder or through direct automation asset creation on Customer's automation environment. Delivery will include a video demonstration of the Workflow working against the platform that the Workflow was developed in.
- b) Customer will confirm Workflow delivery within ten (10) business days from the date Keysight notifies Customer that the Workflow has been delivered and is ready for deployment.
- c) Acknowledgement of any Deliverables other than Workflows is deemed to occur within three (3) business days of notification of delivery to Customer.
- d) If Customer's confirmation and acceptance of Deliverables is delayed for reasons attributable to Customer, acceptance will be deemed to occur on the twentieth (20th) business day after Keysight's notice that the Deliverable is ready for acceptance.

4. CHANGE ORDERS

- a) For requirements or project implementation changes that impact the documented configuration, documentation, project schedule, or pricing either party shall raise a Change Order.
 - i) Keysight will investigate the impact and provide a proposal to Customer.
 - ii) A Change Order will only be valid if approved in writing by both parties.

5. PROJECT REVIEW CADENCE

- a) The parties' Project Representatives will meet weekly to review the project and any other issues related to the work performed under Exhibit D.
- b) The Senior Stakeholders will meet at a cadence of no less than every six (6) weeks.
- c) If, at any time during the project, either party believes that continued work could negatively impact Customer's business objectives, that party may pause the project and immediately escalate the issue to the Senior Stakeholders. The Senior Stakeholders will meet as soon as possible but no later than five (5) business days from the date the project was paused to investigate and identify a reasonable course of action to mitigate the risks to Customer's business objectives.

6. DISPUTE RESOLUTION

- a) If the parties are unable to agree upon any matters related to the Services under Exhibit D, the disputed matter will be referred to the parties' Project Representatives. If the Project Representatives cannot reach a mutually acceptable agreement within a reasonable time, the matter will be referred to each party's Senior Stakeholder. If the Senior Stakeholders cannot reach a mutually acceptable solution within a reasonable time, either party will be entitled to seek all available remedies, including legal remedies. Notwithstanding the foregoing, either party may seek injunctive relief with respect to any disputed matter without following the dispute resolution procedure set forth above.

7. TERMS APPLYING TO EGGPLANT PROFESSIONAL SERVICES

The following terms apply to Time and Material projects undertaken within Professional Services:

- a) The Quote lists the estimated hours to be worked for each project role. Unless otherwise stated in the Quote, the hours to be worked is an estimate and does not constitute a firm fixed price commitment from Keysight to deliver the project in its entirety.
- b) Customer will confirm the hours worked and any additional expenses detailed within the invoice notification. Invoicing will require the Customer to confirm receipt and the contents of the invoice notification.
- c) Once the actual hours worked reach the estimated hours listed in the Quote, a Change Order will be raised in accordance with Section 4.