



## TERMS AND CONDITIONS

Note: Certain Products and Services, including Third-Party Goods, are subject to additional terms and conditions (“Additional Terms”), which may be found at <https://www.pacb.com/legal-and-trademarks/additional-product-specific-terms-and-conditions/>

### 1. DEFINITIONS

“**Agreement**” means these Terms along with any Quotation and the PO Terms for an order accepted by PacBio, and any other terms and conditions expressly agreed to by PacBio in a signed writing (specifically excluding email or verbal communications) expressly referencing these Terms. “**Buyer**” means the purchaser of Products or Services from PacBio or its authorized distributor. “**Consumables**” means PacBio-branded reagent kits, extraction kits, library preparation kits, and other consumables, including SMRT Cells. “**Documentation**” means the PacBio documentation accompanying a Product or Service, including user manuals, labeling, label licenses, end-user license agreements, package inserts, and similar documentation in effect as of the date the Product is shipped or Service provided (including as published on a PacBio documentation website). “**E-Commerce Site**” means PacBio’s official e-commerce website located at <https://customer.pacb.com>. “**Instrument**” means a PacBio-branded instrument (including any Sequel<sup>®</sup>, Onso<sup>™</sup>, or Revio<sup>™</sup> sequencing instrument). “**Law**” means all applicable laws, regulations, and governmental policies. “**OS Software**” means PacBio-branded Instrument operating system software and firmware, including Instrument control, data collection, and user interface software. “**Online Order**” means Buyer’s order for Products or Services submitted via the E-commerce Site. “**PacBio**” means Pacific Biosciences of California, Inc. “**PO Terms**” means Buyer’s statement on its Purchase Order (if accepted by PacBio) of the name, part number, and quantity of the Product(s) and Service(s) purchased, bill to and ship to address, and, if accurate, price(s) (and only such information on Buyer’s Purchase Order). “**PA Software**” means PacBio-branded primary analysis software, including signal processing, base calling, and quality assessment functions. “**Product**” means each product, including any Instrument, Software, Consumable, or Third-Party Good listed in the Quotation or, in the event a Quotation is not issued, listed in PacBio’s then-current price list applicable to Buyer’s jurisdiction or listed on the E-Commerce Site, and identified in Buyer’s accepted Purchase Order. “**Purchase Order**” means Buyer’s written order or Online Order for Products or Services. “**Quotation**” means the applicable written sales quotation issued by PacBio describing Products or Services made available for purchase by Buyer. “**Relocation**” means the movement of an Instrument from its original installation position. “**Service**” means each service listed in the Quotation or, in the event a Quotation is not issued, listed in PacBio’s then-current price list applicable to Buyer’s jurisdiction or listed on the E-Commerce Site, and identified in Buyer’s accepted Purchase Order. “**Service Parts**” means spare, replacement, or upgrade parts or subassemblies, including Instrument hardware upgrades, provided by PacBio as part of a warranty service, Service Contract, or Instrument hardware upgrade. “**Software**” means OS Software, PA Software, and other PacBio-branded software, in each case provided by PacBio to Buyer whether pre-installed on an Instrument or made available by PacBio for download or otherwise. “**Terms**” means these terms and conditions and any applicable Additional Terms. “**Third-Party Goods**” means third party products sold by PacBio for use with Instruments and Consumables, including uninterruptible power supplies and computer servers. “**Warranty Effective Date**” means (a) with respect to an Instrument (and OS Software and PA Software installed on such Instrument), the date an Instrument is delivered to Buyer, unless PacBio provides installation in which case the warranty period begins on the date of installation or 30 days after delivery, whichever occurs first, (b) with respect to Consumables, the date the Consumables are shipped to Buyer, and (c) with respect to Services, the date the Services are provided. “**Warranty Period**” means (a) with respect to Instruments, a period of twelve months (or such other period as stated in the applicable Quotation or Documentation) following the Warranty Effective Date, (b) with respect to Consumables, the shelf life expiration date, or “use by” date specified on the Documentation, or the date the number of uses stated in the Documentation is reached, (c) with respect to Services, thirty (30) days from the date the Services are provided, and (d) with respect to Service Parts, ninety (90) days from the date of installation by a PacBio service engineer.

### 2. TERMS AND ORDER ACCEPTANCE

2.1 **Terms and Conditions.** The Agreement constitutes the complete, exclusive, and entire agreement between PacBio and Buyer with respect to the purchase and use of Products and Services. PacBio’s offer to sell Products and Services is expressly limited to the terms of this Agreement. Buyer’s submission of a Purchase Order or other instrument regarding the purchase of Products or Services from PacBio, whether or not in response to a Quotation, will be deemed an acceptance of and agreement to the terms of this Agreement to the exclusion of any other terms or conditions, including as may be contained in or referenced by such Purchase Order or other instrument and any online terms and conditions required as part of a vendor registration process or otherwise, which are material alterations, and notice of objection to which is hereby given (even if PacBio submits an electronic acceptance of any such terms and conditions as part of a vendor registration process or otherwise), notwithstanding anything to the contrary contained within such Purchase Order or other instrument or elsewhere. Any acceptance by PacBio of any offer of Buyer as provided in any Purchase Order or other instrument is expressly conditioned upon Buyer’s assent to and acceptance of the terms of this Agreement to the exclusion of any terms or conditions in Buyer’s Purchase Order or other instrument. Buyer’s acceptance or use of Products or Services constitutes acceptance of these Terms. Notwithstanding the foregoing, if a Purchase Order from Buyer that is accepted by PacBio contains or incorporates by reference any different or additional terms or conditions, and only to the extent such different or additional terms or conditions are ultimately deemed part of the contract between Buyer and PacBio regarding such Purchase Order (e.g., by express written agreement of the parties or by application of legal doctrine), then such contract will consist of the following documents (notwithstanding any provision in such documents to the contrary): (1) these Terms; (2) the Quotation(s) (if any); (3) the PO Terms; and (4) such different or additional terms or conditions. Any conflict among these documents will be resolved by giving them priority in that order. Items (3) and (4) are collectively referred to as “**Buyer’s Terms.**” Third-Party Goods may be subject to additional terms and conditions.

2.2 **Order Acceptance.** No Purchase Order will be binding upon PacBio unless and until accepted by PacBio in writing or via the E-Commerce Site, and PacBio will have no liability or obligation to Buyer with respect to orders that are not accepted. No partial shipment of an order will constitute the acceptance of the entire order. Buyer may not change or cancel its Purchase Order once accepted by PacBio.

2.3 **Purchases from Distributors.** As between PacBio and Buyer, these Terms (to the exclusion of any other terms or conditions) will govern and apply to an end-user’s use of Products and Services purchased from PacBio’s authorized distributor (with the end-user being treated as the “Buyer” for these purposes), excluding those terms that relate specifically and solely to the actual purchase process; without limitation, Sections 3, 6, 7, 8 and 9 will apply, except to the extent set forth therein. By purchasing Products or Services from any such distributor, the end-user agrees to be bound by these Terms. No distributor is authorized to bind PacBio to, and PacBio will not be bound to, any terms or conditions (including any warranty) other than these Terms.

2.4 **Documentation.** Buyer agrees to receive and access relevant Documentation at [www.pacb.com](http://www.pacb.com). If Buyer does not have access to the internet or this website, Buyer agrees to inform PacBio, so that Documentation can be provided by other means. Buyer may request Documentation directly by contacting PacBio technical support at [technicalsupport@pacb.com](mailto:technicalsupport@pacb.com).

### 3. TERMS OF USE

3.1 **Use Rights.** Subject to these Terms, Buyer may use the Products and Services only in Buyer’s facility in accordance with the Documentation. Unless otherwise specified in the Documentation, Consumables are for SINGLE USE ONLY. Except as expressly stated in this Section 3.1, no right or license under any intellectual property rights of PacBio or its affiliates is or are granted, expressly, by implication, by estoppel, or otherwise to Buyer, and any such rights are expressly reserved to PacBio and its affiliates. Buyer is solely responsible for obtaining permission to use any third-party intellectual property rights that are necessary for Buyer’s use of a Product or Service outside the express scope of the Documentation, including Buyer’s particular methods of preparing samples and libraries and using data generated using Products or Services.

3.2 **Software.** All Software is licensed, not sold, and, subject to these Terms, Buyer is granted a non-exclusive, non-transferable, personal, non-sublicensable license to install and use the Software, solely in accordance with the Documentation. This license will automatically terminate upon Buyer’s failure to comply with these Terms. Software may be subject to additional terms and conditions, as contained in an end user license agreement or similar documentation. Buyer may not modify, create derivative works of, reverse engineer, decompile, disassemble, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare or otherwise transfer the Software, nor permit any other party to do any of the foregoing. Buyer may not remove or alter any of the intellectual property notices or markings, or add any other notices or markings, to the Software. Buyer may not defeat, avoid, by-pass, remove, deactivate, or otherwise circumvent any protection mechanisms in the Software including without limitation any such mechanism used to restrict or control the functionality of the Software. To the extent third-party code is included in Software and any term or condition of a third-party license applicable to such third-party code directly conflicts with the terms and conditions set forth herein, the applicable term(s) or condition(s) of that third-party license will be applicable only to that third-party code and only to the extent necessary to resolve the conflict.

3.3 **Regulatory Compliance.** Buyer must comply with Law. The Products and Services are labeled “**FOR RESEARCH USE ONLY.**” The Products and Services have not been approved, cleared, licensed, or otherwise approved by the U.S. Food and Drug Administration or any other regulatory entity in any jurisdiction for any specific intended use, whether clinical, diagnostic, or otherwise (collectively, “**Approvals**”). No claim, representation, or warranty is made or intended by PacBio that any Product or Service or its performance is suitable or has been validated for clinical or diagnostic use. Buyer is solely responsible for obtaining any required Approvals.

3.4 **No Transfer.** Buyer may not transfer (including but not limited to resell, loan, lease, or assign) any Product, or adapt, modify, or reverse engineer any Product. The Software license, and the limited warranties described in Section 6.1, are personal and non-transferrable and may not be assigned, sub-licensed, or otherwise transferred to any third party without the prior written consent of PacBio. Buyer represents and warrants to PacBio that it is not purchasing the Products for transfer to a third party, and covenants that it will not transfer the Products to any third party. If Buyer purports to transfer Products in contravention of this covenant, (a) the Software license will automatically terminate immediately, Buyer will have no further rights to use the Software, and PacBio may remotely disable the Software associated with any affected Products, (b) the limited warranties applicable to the affected Products or Services will automatically terminate immediately and have no further effect, including with respect to warranty claims arising before the purported transfer, (c) PacBio’s indemnification obligations under Section 8.1 will automatically terminate immediately and have no further effect, including with respect to Claims arising from events that occurred before the purported transfer, and (d) PacBio may terminate any Service Contracts related to the affected Products. This Section 3.4 will not apply to PacBio’s authorized distributors and financing partners.

### 4. PRICES, TAXES, AND PAYMENT



4.1 **Prices; Taxes.** The price for any Product or Service will be the price stated in the valid, unexpired Quotation, or, if no Quotation is issued, in PacBio's E-Commerce Site (for Online Orders) or then-current price list applicable to Buyer's jurisdiction. PacBio's Quotations are only valid for thirty (30) days from the quotation date unless otherwise stated in the Quotation. When multiple Products are quoted in a Quotation or discounts are shown in a Quotation based on quantity of Products to be purchased, Buyer must purchase all Products listed in the Quotation (at the prices and in the quantities listed in the Quotation) in order to receive the prices set forth in the Quotation, except for standing Quotations expressly extending pricing over a period of time without minimum quantity requirements. Unless otherwise expressly indicated in the Quotation or E-Commerce Site (for Online Orders), Buyer's purchase price does not include any federal, state, local, sales, VAT, GST or other taxes, duties, or other governmental assessments ("**Taxes**") that may be applicable to the sale of Products or Services, nor does the price include freight and insurance. Buyer is responsible for Taxes, freight, and insurance, which amounts will be added to the invoice. Unless otherwise expressly indicated in the Quotation or E-Commerce Site (for Online Orders), Products will be shipped "Freight Prepaid and Added" and such amounts will be charged back to Buyer on PacBio's invoice. All Taxes will be paid or reimbursed by Buyer (other than taxes on PacBio's income), or in lieu thereof, Buyer will provide PacBio with a tax exemption certificate acceptable to the applicable taxing authorities. Buyer will be solely responsible for any withholding taxes, and if withholding taxes apply, Buyer will gross up the amount payable to ensure post-withholding remittance to PacBio at the amounts quoted and invoiced by PacBio.

4.2 **Payment.** Unless otherwise specifically indicated in the Quotation or E-Commerce Site (for Online Orders), PacBio will invoice Buyer for a Product upon shipment of the Product, or upon delivery in the case of an Instrument, or upon PacBio's acceptance of Buyer's Purchase Order in the case of a Service. Unless otherwise expressly indicated in the Quotation or, in the event a Quotation is not issued, in PacBio's E-Commerce Site (for Online Orders) or then-current price list applicable to Buyer's jurisdiction, all invoices will be issued and payable in U.S. Dollars and are due and payable thirty (30) days from date of invoice, subject to credit approval. Amounts outstanding sixty (60) or more days from the date of invoice will be subject to a charge of one percent (1.0%) per month (or the maximum allowed by Law, if less). If Buyer fails to make any payment when due or if PacBio deems Buyer to be or to have become un-creditworthy, then, without prejudice to PacBio's rights, PacBio may, at its option, cancel or suspend future deliveries, or require prepayment, letter of credit, or other payment method(s) in PacBio's discretion. The amount of credit may be changed or credit withdrawn by PacBio at any time. PacBio may elect to retain title to Products until PacBio receives payment in full, and where title retention is not fully valid or enforceable, PacBio may elect to retain a security interest in Products sold to Buyer to secure Buyer's payment obligations to PacBio, and Buyer will execute any documents reasonable or necessary to create and perfect this interest.

## 5. DELIVERY TERMS

5.1 **Delivery.** Unless otherwise expressly indicated in the Quotation or E-Commerce Site (for Online Orders), all shipments will be made DAP (Incoterms 2020) to the delivery location specified in the accepted Purchase Order. Unless an earlier point is expressly indicated in the Quotation or E-Commerce Site (for Online Orders), title (except for Software, which is only licensed, never sold), and all risk of loss, passes to Buyer, and PacBio's liability as to delivery ceases, when the Product is made available for unloading at the delivery location. Unless specific shipping instructions are specified in the Quotation or E-Commerce Site (for Online Orders), PacBio will ship in accordance with its standard practices. Any provision in Buyer's Terms (if applicable) indicating that time is "of the essence" (or other terms of similar import) for delivery or other performance by PacBio will be void and of no effect. PacBio may make delivery in installments, and each installment will be deemed to be a separate sale. Buyer will promptly inspect the Products upon delivery. Buyer must notify PacBio of any damaged or missing Products within five (5) business days after delivery. Damaged Products will be held by Buyer and may be returned only upon PacBio's written authorization. PacBio will be entitled to repair or replace damaged or missing Products. These are Buyer's sole and exclusive remedies for damaged or missing Products.

5.2 **Installation.** If the Quotation or E-Commerce Site (for Online Orders) provides that PacBio will install an Instrument, or PacBio has otherwise agreed to install an Instrument, it is Buyer's responsibility (at Buyer's cost) to (a) prepare the installation site in accordance with PacBio's site preparation specifications and ensure it is free of unsafe conditions, and (b) unless otherwise agreed, to move the Instrument from Buyer's receiving location to the place of installation. PacBio may postpone delivery of an Instrument due to Buyer's failure to provide a suitable installation site. Buyer will have appropriate Buyer personnel present at any installation. Buyer may not ask PacBio personnel to work in biosafety level 3 or level 4 laboratories without PacBio's prior written consent. If Buyer fails to configure Buyer's computer network in accordance with PacBio's site preparation specifications by the installation date, PacBio may complete the installation without connecting the Instrument to Buyer's network.

## 6. WARRANTY

6.1 **Limited Warranty.** Subject to these Terms, PacBio warrants, only to Buyer, that (a) the Instruments (including OS Software, but excluding any other Software), as delivered and under normal use and service, will conform in all material respects to PacBio's published specifications in effect at the time of delivery and will be free from defects in material and workmanship, (b) the Consumables and Service Parts, as delivered and under normal use and service, will be free from defects in material and workmanship, and (c) the Services will be performed in a professional and workmanlike manner; in each case solely during the applicable Warranty Period, and unless the applicable Quotation, E-Commerce Site, or Documentation states that a different warranty or no warranty is provided. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty is limited to replacing or repairing, at PacBio's sole discretion, any nonconforming Product or Service. Instrument repairs will be performed on-site at Buyer's facility, except to the extent that PacBio approves removal and return of particular components to PacBio for repair or replacement. Any approved returns must be shipped to PacBio's designated facility in accordance with PacBio's return procedures, at PacBio's expense. The OS Software warranty is limited to errors that cause the Instrument to fail to conform to the foregoing warranty, and nonconformities will be addressed by PacBio commensurate with severity. With respect to PA Software, subject to these Terms, PacBio warrants, only to Buyer, that the PA Software, as provided by PacBio, when properly installed and used in connection with that Instrument, as set forth in the applicable Documentation, will substantially perform the functions and features described in such Documentation during the Warranty Period. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty is limited to using reasonable efforts, commensurate with the severity of the nonconformity, to correct any substantial nonconformity. PacBio does not warrant that any particular Software nonconformity will be corrected, or a workaround provided, within any particular time frame, provided that any OS Software warranty nonconformities preventing the Instrument from conforming to this warranty will be remedied by PacBio within a commercially reasonable timeframe. Software warranties are subject to the requirement that Buyer maintains a software release level within one major release of the most current software release made available by PacBio to Buyer at no additional charge. **NOTWITHSTANDING THE FOREGOING, CUSTOM CONSUMABLES MADE TO SPECIFICATIONS OF BUYER ARE SOLD "AS IS", WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT TO THE EXTENT SET FORTH IN ANY SEPARATE EXPRESS WRITTEN LIMITED WARRANTY INCLUDED IN THE DOCUMENTATION PROVIDED WITH THE CONSUMABLE OR IN THE QUOTATION OR ON THE E-COMMERCE SITE. EXCEPT AS SET FORTH ABOVE, EXPIRATION DATES, SHELF LIFE, "USE BY," GUARANTY OR OTHER END OF RECOMMENDED USE DATES ARE INCLUDED FOR INFORMATIONAL PURPOSES ONLY AND WILL NOT BE DEEMED AS A PERIOD OF WARRANTY. REPAIRS AND REPLACEMENTS MAY BE PERFORMED WITH RECONDITIONED OR REFURBISHED PRODUCTS, PARTS, OR SUBASSEMBLIES. SERVICE PARTS THAT ARE NOT INSTALLED BY A PACBIO SERVICE ENGINEER ARE SOLD "AS IS," WITHOUT ANY WARRANTY, STATUTORY, EXPRESS OR IMPLIED.** The installation of an Instrument hardware upgrade does not extend or restart any Instrument warranty, but the parts comprising the Instrument upgrade are covered by the Service Parts limited warranty to the extent applicable. Repair or replacement of a Product will not extend the original warranty period for that Product.

6.2 **Exceptions.** The foregoing warranties will not apply to, and will be void for, any Product or Service that: (a) was subject to improper or abnormal use, abuse, neglect, negligence, or accident, including failure to properly perform routine maintenance and maintain the Product or Service site in accordance with PacBio's site requirements; (b) has been repaired, modified, or disassembled by persons other than PacBio or its designee; (c) is damaged resulting from the Relocation of an Instrument without PacBio's approval; (d) is damaged due to the use of the Product or Service with any non-PacBio product or service (except as may be specifically recommended in the then-current Documentation for that Product or Service); or (e) has failed due to externally caused short circuits, incorrect voltages, failure or fluctuation of electrical power, static or other improper external inputs, or damage caused by earthquakes, floods, storms, fires, or other similar events. With regard to Software, the Warranty does not apply to any failure that is caused by the operation of the Software in an environment other than that intended or recommended by PacBio. These warranties are not transferable and any attempt to do so will be void. PacBio neither assumes, nor authorizes any other person to assume for it, any other obligations or liabilities in connection with the Products or Services. PacBio does not make any warranties with respect to Third-Party Goods, but will, to the extent permitted by its third-party suppliers at no additional cost to PacBio, extend any warranties provided by such suppliers to Buyer. The foregoing warranties do not apply if Buyer has purchased the Products or Services from an authorized distributor subject to a warranty from the distributor.

6.3 **Remote Assist.** PacBio offers an optional remote assist service feature, which uses software to allow a PacBio authorized agent to remotely communicate with an Instrument through user-controlled permission settings. The remote assist service feature may be used by PacBio for diagnostics, maintenance, and repair of the Instrument, and may allow for faster warranty response times if Buyer enables the remote assist service feature and abides by the configuration requirements specified by PacBio. Any faster response times will be available only if proper internet connectivity has been established by Buyer and the Software is configured to, and Buyer actually does, permit PacBio to connect to the Instrument for the (a) transmission and retrieval of Instrument performance data files and environmental data values, (b) utilization of event and alarm functionality, and (c) implementation of remote Software updates and file transfers.

**THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH IN SECTION 6 ABOVE ARE IN LIEU OF, AND PACBIO HEREBY DISCLAIMS, ALL OTHER REMEDIES AND WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT OR SERVICE (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID, OR INCOMPLETE RESULTS), IN EACH CASE HOWEVER ARISING, INCLUDING WITHOUT LIMITATION FROM A COURSE OF PERFORMANCE, DEALING, USAGE OF TRADE, OR OTHERWISE.**

7. **LIMITATION OF LIABILITY.** PACBIO'S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SALE, AND BUYER'S, USE OF PRODUCTS AND SERVICES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE) WILL IN ALL CASES BE LIMITED TO: (A) WITH RESPECT TO PRODUCTS AND SERVICES PURCHASED FROM PACBIO, THE AMOUNT PAID BY BUYER TO PACBIO FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE LIABILITY, OR (B) WITH RESPECT TO PRODUCTS AND SERVICES PURCHASED FROM AN AUTHORIZED DISTRIBUTOR, THE LESSER OF THE AMOUNT PAID BY BUYER TO THE AUTHORIZED DISTRIBUTOR OR PACBIO'S U.S. LIST PRICE FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE LIABILITY. IN NO EVENT WILL PACBIO BE LIABLE FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY,



WHETHER IN CONTRACT, TORT, WARRANTY, PURSUANT TO ANY STATUTE, OR ON ANY OTHER BASIS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE, OR BUYER'S USE, OF THE PRODUCTS OR SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT PACBIO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, OR DOWNTIME, OR FOR LOSS OF REVENUE OR PROFITS. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 8. INDEMNITY

8.1 Indemnification of Buyer. Subject to the remainder of this Section and Section 8.2 below, PacBio will defend Buyer against any third-party claim, proceeding, or action ("Claim") to the extent the Claim alleges that any Product or Service sold to Buyer hereunder other than Third-Party Goods, as delivered to Buyer by PacBio, when used in accordance with these Terms and the Documentation, directly infringes any valid and enforceable intellectual property right. PacBio will pay all damages awarded, and settlements approved in writing by an authorized representative of PacBio, in connection therewith, provided that (a) Buyer provides to PacBio written notice of the Claim within thirty (30) days of receipt by Buyer of such Claim, or such earlier time as required to avoid prejudice to PacBio or its ability to defend such Claim, (b) Buyer allows PacBio to control the defense and settlement of the Claim, and (c) Buyer provides to PacBio reasonable assistance in connection therewith, at no charge to PacBio. Buyer may employ counsel at its own expense to assist it with respect to any such Claim, provided that this will not obligate PacBio or its counsel to consult with or advise such Buyer counsel, nor affect PacBio's control of the defense and settlement of the Claim. However, PacBio will have no liability or obligation for Claims resulting from (a) modification of the Product or Service other than by PacBio or its authorized service provider, (b) combination of the Product or Service with any item or method not supplied or specifically recommended in writing by PacBio, or use of Products or Services outside the express scope of the Documentation, including Buyer's particular methods of preparing samples and libraries and analyzing and using data generated using the Product or Service, (c) use of the Product or Service other than in accordance with the Documentation and this Agreement, (d) use of a Product or Service for clinical, diagnostic, other non-research uses, or (e) compliance with Buyer's instructions or specifications to the extent such instructions or specifications materially differ from comparable Products or Services that PacBio makes generally available to its customers (collectively, "Excluded Causes").

8.2 Remedy. In the event there is a Claim, or PacBio believes a Claim is likely, alleging intellectual property infringement with respect to any Product or Service sold to Buyer hereunder, PacBio will be entitled, without obligation to do so, at its option and expense, to (a) modify the Product or Service so that it is no longer infringing, (b) obtain a license with respect to the applicable intellectual property rights, or (c) accept the return of such Product or Service and refund Buyer the price paid by Buyer to PacBio (or its authorized distributor) for the Product or Service, subject to reasonable deductions for damage and depreciation (as shown in Buyer's official financial records); provided that no refund will be provided for expired or used Consumables. PacBio will have no liability or obligation with respect to any alleged infringement occurring after the date PacBio makes any such remedy available to Buyer. Notwithstanding anything to the contrary, Section 8.1 and this Section 8.2 state PacBio's sole liability and obligation, and Buyer's exclusive remedy, arising out of any actual or alleged intellectual property infringement of any kind, or any actual or alleged breach of any representation or warranty (statutory, express or implied) regarding noninfringement, anywhere in the world.

8.3 Indemnification of PacBio. Buyer will defend PacBio and its affiliates against any Claim to the extent the Claim arises from or in connection with any Excluded Cause. Buyer will pay all damages awarded, and settlements approved by Buyer, in connection therewith, provided that (a) PacBio provides to Buyer written notice of the Claim within thirty (30) days of receipt by PacBio of such Claim, or such earlier time as required to avoid prejudice to Buyer or its ability to defend such Claim, (b) PacBio allows Buyer to control the defense and settlement of the Claim, and (c) PacBio provides to Buyer reasonable assistance in connection therewith, at no charge to Buyer. PacBio may employ counsel at its own expense to assist it with respect to any such Claim, provided that this will not obligate Buyer or its counsel to consult with or advise such PacBio counsel, nor affect Buyer's control of the defense and settlement of the Claim. If Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, this section will apply only to the maximum extent permitted by Law. This section will not apply if Buyer is an agency of the U.S. Government; in such case, Buyer's liability will be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*

## 9. MISCELLANEOUS

9.1 Remedies for Breach. In addition to any remedies specified elsewhere under these Terms and any remedies available to PacBio under law or in equity, in the event Buyer breaches these Terms, PacBio may: (a) cease performance under this Agreement or other agreements, including without limitation, cease further shipments of products, (b) terminate the rights granted to Buyer pursuant to Section 3, (c) terminate any Service Contracts for affected Product, (d) terminate any remaining warranty for the affected Product or Service, or (e) require Buyer to immediately pay any unpaid invoices.

9.2 PacBio Information; Feedback; Improvements. PacBio may maintain and use a database of orders and account information pertaining to Buyer for purposes of order processing, product support, maintaining records, assisting with Buyer's future orders, and compliance with Laws. Buyer may not disclose any financial terms of this transaction to any third party without the prior written consent of PacBio, except as (and only to the extent) required by Law. Buyer grants to PacBio a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use and commercialize in any manner suggestions or feedback provided by Buyer to PacBio (or its authorized distributor) related to the Products or Services. Buyer agrees to make available to PacBio, under commercially reasonable and non-discriminatory pricing and terms, a nonexclusive license to Improvement Patents. For this purpose, "Improvement Patents" means all patent rights (including similar rights like utility models) on inventions conceived or reduced to practice by or for Buyer that arise out of the use of Products or Services and which relate to (a) use, development, design, manufacturing, layout, or packaging of any Products or Services; (b) interfaces between a Product or Service and another device or service, such as optical/detection systems, and robotics for use in connection with any Products or Services; or (c) analysis techniques relating to the extraction, analysis, or storage of data from any Products or Services (such inventions, "Improvement Inventions"). Improvement Inventions do not include sequencing data resulting from using Products or Services (e.g., results of assays or sequencing using Products) or discoveries derived from such data (except to the extent covered by (a), (b) or (c) above). For purposes of this section, the term "Buyer" includes all persons that Buyer permits to use the Products, irrespective of being legal employees of Buyer, and Buyer agrees to have the necessary agreements in place with all such users and their employers to enable Buyer to comply with this section.

9.3 Governing Law and Venue. This Agreement and any disputes arising out of or relating to this Agreement (including its formation or termination) or PacBio's products or services ("Disputes") will be governed by and interpreted in accordance with the laws of the State of California, U.S.A. (provided, however, that if Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, the law of such state will govern), excluding in all cases choice of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. If Buyer is located within the U.S., any Disputes may be brought in the state courts located in Santa Clara County, California or the U.S. District Court for the Northern District of California, and each party consents to the personal and non-exclusive jurisdiction and venue of these courts. If Buyer is located outside the U.S., any Disputes will be resolved by final and binding arbitration under the rules and auspices of the International Centre for Dispute Resolution in Santa Clara County, California, in English language proceedings whereby either party can request a written opinion from the arbitrator(s) appointed in accordance with the rules, which will award legal fees (including reasonable attorneys' fees) to the party winning the proceedings, provided however, that either party may seek injunctive relief (including preliminary and permanent injunctive relief) before any court of competent jurisdiction. Any specification in Buyer's Terms (if applicable) of a different legal forum or venue for resolution of disputes between the parties will be deemed non-exclusive, notwithstanding any provision in Buyer's Terms to the contrary. These Terms will apply to the maximum extent permissible under Law. Nothing in this Agreement excludes, restricts, or modifies any right, remedy, guarantee, warranty, or other term or condition, to any extent not permissible under Law.

9.4 Purchases for the U.S. Government. If Buyer is placing an Order for the U.S. Government or in support of a contract with the U.S. Government, Buyer agrees that the Products purchased and licensed are "commercial items" as defined in the U.S. Federal Acquisition Regulations ("FAR"), and the Software is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. If Buyer is placing this Order in the name of the U.S. Government and the Order is less than or equal to the micro-purchase threshold, as defined in FAR 2.101, then Buyer agrees that only these Terms and any mandatory provisions required by FAR 13.202 or FAR 32.1110 will apply to the Order. If the Order is greater than the micro-purchase threshold, then Buyer agrees that the Order is subject to FAR Part 12, and only those mandatory provisions pursuant to FAR 12.301 and 12.302 and these Terms will apply. If Buyer is placing this Order in support of a contract with the U.S. Government, Buyer agrees that only those mandatory provisions listed in FAR 52.244-6 as well as these Terms will apply to the Order. All other terms and conditions are expressly rejected. In the event of a conflict between the FAR provisions referenced herein and these Terms, these Terms will take precedence to the maximum extent permitted by Law. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the commercial computer software and commercial computer software documentation are licensed to U.S. Government end users (a) only as commercial items and (b) with only those rights granted pursuant to the terms of this Agreement. Notwithstanding Section 4.2, if Buyer is an agency of the U.S. Government, payment will be made in accordance with the Prompt Payment Act, 31 U.S.C. 39 *et seq.*

9.5 General. The headings in this Agreement are for reference only and will not affect the meaning of this Agreement. This Agreement embodies the final and complete understanding of the parties with respect to the subject matter hereof, superseding all prior oral or written communications between them, and neither party will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. Each party acknowledges that it has not entered into this Agreement in reliance on any statement or representation not expressly set out herein. No oral explanation or oral information by either party hereto will alter the meaning of this Agreement. If any section, paragraph, provision or clause or any portion thereof in this Agreement is found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement will be valid and enforceable and the parties will negotiate, in good faith, a substitute, valid, and enforceable provision which most nearly effects the parties' intent in entering into this Agreement. This Agreement has been made and is made solely for the benefit of PacBio and Buyer and their respective permitted successors and assigns (and in the case of PacBio, its affiliates). Any actions or rights that may be performed or exercised by PacBio may be performed or exercised by PacBio itself or by any of its affiliates, or its or their subcontractors or agents. Nothing in this Agreement is intended to (a) confer any rights or remedies on any persons or entity other than the parties to this Agreement and their respective permitted successors and assigns (and in the case of PacBio, its affiliates); or (b) relieve or discharge the obligation or liability of any third party. All notices required or permitted hereunder will be in writing and will be mailed by first class mail (registered or certified if available; air mail if overseas), postage prepaid, or otherwise delivered by hand, commercial courier service, or messenger, to the address listed in the Quotation (or to Buyer's address listed in its Purchase Order) or at such other address furnished with a notice in the manner set forth in this section. Notices will be deemed to have been effective when delivered. All notices will be in English. Except for the payment of money, neither party will be liable to the other party for any failure or delay in the performance of any of its obligations under this Agreement for the period and to the extent such failure or delay is





caused by civil unrest, threat of or actual acts of terrorism or war, embargoes, governmental actions, acts of God, earthquakes, floods, storms, fires, supplier delay, accidents, explosions, epidemics, quarantine, or other contingencies beyond the reasonable control of the applicable party. The affected party will notify the other party as soon as practicable of any anticipated delay due to such event. PacBio will not be bound to, or liable for, any mistakes inadvertently included in a Quotation or the E-Commerce Site, including incorrect prices, discounts, or Documentation.

## TERMS AND CONDITIONS – Service Contract Addendum

PacBio may offer to provide maintenance and repair services for Instruments in excess of the standard warranty, including extended maintenance and repair services after the Warranty Period, pursuant to Service Contracts that may be purchased by Buyer from PacBio. These terms, together with the rest of the Agreement, will exclusively govern all Service Contracts.

### 1. DEFINITIONS

“**Covered Services**” means the services specified in the Quotation or E-Commerce Site (for Online Orders) and Service Contract Documentation. Covered Services exclude hardware upgrades for feature enhancements, and the decommissioning or recycling of Instruments. “**Non-Covered Equipment**” means any equipment or products other than the PacBio Instruments specified in the Quotation, E-Commerce Site (for Online Orders), and Documentation, including any equipment, software, and other products, and any parts of the foregoing, that are not provided by PacBio, as well as any Third-Party Goods. “**Service Contract**” means a separate written service contract pursuant to which PacBio will provide maintenance and repair services for Instruments. “**Service Term**” means the Service Contract term specified in the Quotation, E-Commerce Site (for Online Orders), or Documentation.

### 2. SERVICE CONTRACT TERMS AND CONDITIONS

2.1 **Service.** During the Service Term, PacBio or its designee will provide the Covered Services. Maintenance, repairs, and replacements may be accomplished under the Service Contract with reconditioned or refurbished Products, parts, or subassemblies. Any updates or upgrades to Software, when delivered, will become part of the Software and will be subject to the same end user license agreement(s), notices, terms, conditions and use restrictions unless otherwise expressly stated in writing by PacBio. Service Contracts are not transferable or assignable and any such attempt to transfer or assign Service Contracts will be void.

2.2 **Remote Assist.** Certain Service Contract levels and features require the use of PacBio’s remote assist service feature, which uses software to allow a PacBio authorized agent to remotely communicate with an Instrument through user-controlled permission settings. The remote assist service feature is used by PacBio for diagnostics, maintenance, and repair of the Instrument hardware and Software components, and may allow for faster response times if Buyer purchases a Service Contract that includes the remote assist service feature, enables the feature, and abides by the configuration requirements specified by PacBio. By purchasing a Service Contract that includes a remote assist service feature, Buyer agrees to enable the feature. Buyer furthermore acknowledges that any faster response times will be honored by PacBio only if proper internet connectivity has been established by Buyer and the Software is configured to, and Buyer actually does, permit PacBio throughout the Service Term to establish secure sessions and connect to the Instrument covered by such Service Contract for the (a) transmission and retrieval of Instrument performance data files and environmental data values, (b) utilization of event and alarm functionality, and (c) implementation of remote Software updates and file transfers. If Buyer has purchased a Service Contract that includes the remote assist service feature and has not enabled and properly configured such feature within one (1) month after the Instrument installation, or if Buyer disables the remote assist feature during the Service Term, then PacBio may charge, and Buyer will pay, the difference between the amount paid by Buyer for such Service Contract and PacBio’s then-current price for a comparable Service Contract that does not include the remote assist feature.

2.3 **Service Limitations.** PacBio will have no obligation to provide Covered Services for Non-Covered Equipment. Buyer agrees to follow the operation procedures published by PacBio, including procedures for routine maintenance. The Covered Services do not include, and PacBio will have no obligation to provide, any service or parts required for any Instrument that: (a) has issues caused by failure of Buyer to maintain a software release level within one major release of the most current OS Software release made available by PacBio to Buyer at no additional charge, or does not incorporate all of PacBio’s engineering improvements and other fixes that PacBio requests Buyer to implement; (b) was subject to improper or abnormal use, abuse, neglect, negligence, or accident, including failure to properly perform routine maintenance and maintain the Product site in accordance with PacBio’s site requirements; (c) has been repaired, altered, disassembled, reassembled or removed from Buyer’s facility by persons other than PacBio or its designee, other than repair or replacement of a Third-Party Good by an authorized service provider; (d) is damaged resulting from the Relocation of an Instrument without PacBio’s approval; (e) is damaged due to the use of the Instrument with any non-PacBio product (except as may be specifically recommended in the then-current Documentation for that Product); (f) has failed due to externally caused short circuits, incorrect voltages, failure or fluctuation of electrical power, lightning, static or other improper external inputs, or damage caused by earthquakes, floods, storms, fires, or other similar events; (g) that has been operated in conditions outside of PacBio’s environmental or electrical site specifications, as defined in the Documentation; or (h) that has been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination.

2.4 **Billable Services.** All services performed by PacBio or its designee on Non-Covered Equipment or which are otherwise not Covered Services will be billed to Buyer at PacBio’s then-current service call fees, including labor, parts, and travel charges.

2.5 **Access and Service Safety.** Buyer will provide PacBio and its designees reasonable and safe access to all Instruments for the provision of any services and for any audit of compliance with PacBio’s installation and operational guidelines. If environmental or operational contamination creates a hazard for PacBio personnel, PacBio may instead elect to supervise Buyer’s performance of service procedures. Buyer is responsible for proper disposal of all contaminated material and of contaminated parts and subassemblies that, in PacBio’s discretion, cannot be safely returned to PacBio. Any services that PacBio or its designee may provide in connection with the activities contemplated by this paragraph are not Covered Services.

2.6 **Relocation.** Instruments may be moved with the assistance of PacBio at PacBio’s service call fees, including all labor, parts, and travel charges. Relocation of Instruments may result in modification of response times.

2.7 **Recertification.** If Buyer allows a lapse between any warranty or prior Service Contract and a subsequent Service Contract, PacBio may charge Buyer to re-certify the Instrument before the subsequent Service Contract begins.

2.8 **Replaced Parts.** All replaced parts removed from the Instrument in connection with any services provided by PacBio or its designee will become the property of PacBio upon their replacement.

2.9 **Limited Service Warranty.** PacBio warrants that it will render the Covered Services in a professional and workmanlike manner during the Service Term. As PacBio’s sole responsibility and Buyer’s exclusive remedy in the event of any material failure to meet such standard, PacBio will make a commercially reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing in accordance with PacBio’s standard procedures within thirty (30) days after the date the relevant services were performed.

2.10 **Term and Termination.** The Service Term is specified in the Quotation or E-Commerce Site (for Online Orders); provided that if a Service Contract is purchased before the expiration of the Warranty Period or a prior Service Contract, and the Service Term is not specified in the applicable Quotation, the term of the Service Contract will be one year from the expiration of the Warranty Period or the prior Service Contract. Service Contracts will not be automatically renewed. If Buyer wishes to obtain Covered Services for an Instrument beyond the Service Term or for additional Instruments, Buyer must submit a new order. PacBio may terminate a Service Contract immediately by giving written notice of termination to Buyer upon the occurrence of any of the following events: (a) Buyer defaults in the performance of any material requirement or obligation of the Service Contract, this Agreement, or any other agreement between PacBio and Buyer; (b) Buyer fails to make any payment to PacBio within 30 days of its due date; (c) Buyer ceases doing business; (d) Buyer becomes the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay its debts when due, a receiver is appointed for a substantial part of Buyer’s assets, or an action is taken toward the liquidation or winding up of Buyer’s business; or (e) Buyer suffers a material adverse change in its financial condition or operations. No termination of a Service Contract will release Buyer from any obligation to pay PacBio any amount that has accrued or become payable at or prior to the date of termination. In no event (including early termination) will PacBio be obligated to return any payments received by PacBio under a Service Contract.