

1. DEFINITIONS AND RELATED MATTERS

- 1.1 "Buyer" means the purchaser.
- 1.2 "PacBio" means Pacific Biosciences of California, Inc. or its subsidiary identified on the applicable Quotation(s).
- 1.3 "Product" means each item, including any PacBio Instrument, Licensed Software and/or PacBio Consumable, listed in the applicable written sales quotation issued by PacBio ("Quotation") or, in the event a Quotation is not issued, listed in PacBio's then-current price list applicable to Buyer's jurisdiction, and identified in Buyer's purchase order.
- 1.4 "PacBio Instrument" means a PacBio-branded instrument (including any PacBio® RS/RS II or Sequel™ sequencing instrument).
- 1.5 "PacBio Consumables" means PacBio SMRT® Cells and/or associated PacBio-branded reagent kits, extraction kits, library preparation kits, and other consumables.
- 1.6 "Licensed Software" means the (i) PacBio Instrument operating system software and firmware, including PacBio Instrument control, data collection and the PacBio Instrument's touch screen user interface ("O/S Software"), (ii) PacBio primary analysis software, including signal processing, base calling and quality assessment functions ("Primary Analysis Software"), and (iii) the software included with the RS Insight or Sequel Insight (as applicable) service feature, in each case provided by PacBio to Buyer pre-installed on, and/or on DVD or other media delivered with, a PacBio Instrument, and/or made available by PacBio for download, in object code or executable form only.
- 1.7 "Documentation" means the user documentation accompanying, or provided by PacBio regarding or for use in connection with, a Product or related service.
- 1.8 "Quotation" means the applicable written sales quotation issued by PacBio.
- 1.9 "Terms" means the PacBio Terms and Conditions of Sale applicable to the sale by PacBio and purchase by Buyer of the Product(s) and/or related services. Please refer to the applicable Quotation(s) (if any) or to <http://www.pacb.com/legal-and-trademarks/terms-and-conditions-of-sale/>.
- 1.10 "Buyer's Terms" means any terms and conditions (other than the Terms) contained in, or incorporated by reference into, Buyer's order.

2. LIMITED WARRANTIES

2.1 Limited Warranty and Remedy for PacBio Instruments and O/S Software. PacBio warrants, only to Buyer, that as of the date the PacBio 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 the date the PacBio Instrument was delivered, whichever occurs first, (the "Warranty Effective Date"), each PacBio Instrument (including its O/S Software as provided by PacBio, provided that Buyer maintains a software release level within one major release of the most current O/S Software release made available by PacBio to Buyer at no additional charge, but excluding any other software and also excluding any external uninterruptable power supply (UPS)) purchased by Buyer from PacBio hereunder, 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 under normal use and service, unless the applicable Quotation or Documentation states that a different warranty or no warranty is provided by PacBio. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty is limited to replacing, repairing or giving credit for, at PacBio's option, any PacBio Instrument for which written notice of the nonconformity is provided to PacBio within a period of twelve months (or such other period as stated in the applicable Quotation or Documentation) following the Warranty Effective Date (the "Warranty Period"). PacBio Instrument repairs will be effected 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, and except for remote diagnostics, maintenance and repair (see description of PacBio's RS/Sequel Insight service feature in the Terms) or delivery of updated or corrected O/S Software for replacement purposes. Any such approved Buyer returns shall be shipped to PacBio's designated facility in accordance with PacBio's return procedures, at PacBio's expense. O/S Software warranty nonconformities are limited to errors that cause the covered PacBio Instrument hardware to fail to conform to this warranty, and will be addressed by PacBio commensurate with the severity of the nonconformity; PacBio does not warrant that any particular O/S Software warranty nonconformity will be corrected, or a workaround provided, within any particular time frame, provided that any O/S Software warranty nonconformities preventing the covered PacBio Instrument hardware from conforming to this warranty shall be remedied by PacBio within a commercially reasonable timeframe (taking into account the nature of the Products). Without limiting the foregoing warranty, repairs and replacements may be effected prior to acceptance or during the Warranty Period with reconditioned or refurbished Products, parts or subassemblies. This limited warranty is subject to certain exceptions listed below.

2.2 Limited Warranty and Remedy for Primary Analysis Software. PacBio warrants, only to Buyer, that on the Warranty Effective Date of a particular PacBio Instrument purchased by Buyer from PacBio hereunder, the Primary Analysis Software, as provided by PacBio, when properly installed and used in connection with that PacBio Instrument, as set forth in the applicable Documentation, will function substantially in accordance with the functions and features described in such Documentation, provided that Buyer maintains a software release level within one major release of the most current release of the Primary Analysis Software made available by PacBio to Buyer at no additional charge. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty are limited to using reasonable efforts, commensurate with the severity of the nonconformity, to correct, or, at PacBio's option, giving credit for, any substantial nonconformity of the Primary Analysis Software for which written notice is provided to PacBio within the Warranty Period. PacBio does not warrant that use of Primary Analysis Software will be uninterrupted or error free, or that any particular Primary Analysis Software warranty nonconformity will be corrected, or a workaround provided, within any particular time frame. This limited warranty is subject to certain exceptions listed below.

2.3 Limited Warranty and Remedy for Third Party Computing Systems. PacBio warrants, only to Buyer, that as of the date of delivery, each third party computing system (including its operating system software as provided by PacBio, provided that Buyer maintains a software release level within one major release of the most current operating system software release made available by PacBio or the original equipment manufacturer or licensor at no additional charge to Buyer, but excluding any other software and also excluding any external uninterruptable power supply (UPS)) purchased by Buyer from PacBio hereunder, 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, unless the applicable Quotation or Documentation states that a different warranty or no warranty is provided by PacBio. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty is limited to replacing, repairing or giving credit for, at PacBio's option, any third party computing system for which written notice of the nonconformity is provided to PacBio within a period of twelve months (or such other period as stated in the applicable Quotation or Documentation) following the date of delivery. Third party computing system repairs will be effected 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, and except for remote diagnostics, maintenance and repair or delivery of updated or corrected operating system software. Any such approved Buyer returns shall be shipped to PacBio's designated facility in accordance with PacBio's return procedures, at PacBio's expense. Operating system software warranty nonconformities are limited to errors that cause the covered third party computing hardware to fail to conform to this warranty, and will be addressed by PacBio or its designee commensurate with the severity of the nonconformity; PacBio does not warrant that any particular operating system software warranty nonconformity will be corrected, or a workaround provided, within any particular time frame, provided that any operating system software warranty nonconformities preventing the covered third party computing hardware from conforming to this warranty shall be remedied by PacBio or its designee within a commercially reasonable timeframe (taking into account the nature of the Products). Without limiting the foregoing warranty, repairs and replacements may be effected with reconditioned or refurbished Products, parts or subassemblies. This limited warranty is subject to certain exceptions listed below.

2.4 Limited Warranty and Remedy for Consumables. PacBio warrants, only to Buyer, that each PacBio Consumable purchased by Buyer from PacBio hereunder will be free from defects in material and workmanship upon delivery to Buyer. All PacBio Consumable warranty remedies are subject to the condition that warranty claims must be received by PacBio in writing no later than thirty (30) days after the earlier of any shelf life date, expiration date, "use by" date, "guarantee date" or other end of recommended use date, or the date the number of uses stated on the PacBio Consumable's label or in the accompanying Documentation is reached. For Circulomics-branded PacBio Consumables, the shelf life will be one year from the date of shipment, unless a different date is indicated on the packaging, labeling, or Documentation. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty are replacing, or, at PacBio's option, giving credit for, any PacBio Consumable not meeting the above warranty for which written notice is provided to PacBio within the applicable period. If the defect(s) in material and workmanship diminished but did not prevent performance of the PacBio Consumable, any amount refunded may be apportioned according to PacBio's reasonable allocation of the value of the diminished performance. The decision of whether to replace the PacBio Consumable or give credit will be made by PacBio in its sole discretion. Notwithstanding the foregoing, custom PacBio 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 PacBio Consumable or in the Quotation. 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 shall not be deemed as a period of warranty. This limited warranty is subject to certain exceptions listed below.

2.5 Limited Warranty and Remedy for Service Parts. PacBio warrants, only to Buyer, that spare, replacement or upgrade parts (collectively, "Service Parts"), including PacBio Instrument hardware upgrades, that are purchased by Buyer from PacBio hereunder and installed by a PacBio service engineer subsequent to PacBio Instrument installation will be free of defects in materials and workmanship on the date of delivery, provided that PacBio receives Buyer's written warranty claim during a period of the earlier of ninety (90) days from the date of installation or one hundred twenty (120) days from the date of delivery. Buyer's exclusive remedy, and PacBio's sole liability and obligation, under this warranty are replacing, repairing or giving credit for, at PacBio's option, any Service Parts not meeting the above warranty for which written notice is provided to PacBio within the applicable period. 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 a PacBio Instrument hardware upgrade does not extend or restart any PacBio Instrument warranty, but the parts comprising the PacBio Instrument upgrade are covered by the foregoing Service Parts limited warranty to the extent applicable. This limited warranty is subject to certain exceptions listed below.

2.6 Refurbished Parts and Prior Testing. PacBio Instruments and/or Service Parts may incorporate reconditioned or refurbished Products, parts or subassemblies and may have been used in testing prior to sale.

2.7 **Exceptions.** These warranties shall not apply to, and shall be void for, any Product that (i) was subject to improper or abnormal use, abuse, neglect, negligence, accident, including without limitation failure to properly perform routine maintenance and maintain the Product site in accordance with PacBio's site requirements or the use of the Product with any non-PacBio product (except as may be specifically recommended, with respect to standard laboratory reagents, tools and equipment ancillary to use of the Product, in the then-current Documentation for that Product); (ii) 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; (iii) is moved from its original installation location without PacBio's approval, with respect to any damage or performance issues resulting from such move; or (iv) has failed due to externally caused short circuits, incorrect voltages, failure or fluctuation of electrical power, lightning, static or other improper external inputs, or due to 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 restrictions, or other such contingencies beyond the reasonable control of the applicable party. For clarity, and without limitation, use of a PacBio Instrument with consumables other than the PacBio Consumables specified for use with that PacBio Instrument, will void the warranty for that PacBio Instrument. Any Buyer attempt to repair or otherwise alter any Product, except as may be specifically pre-authorized by PacBio in writing in each case, and except for cleaning and replenishment of disposable components (tips), sample drawers and reagent reservoirs, and emptying of waste receptacles, per the applicable Documentation, shall void the warranty for that Product. Without limiting the foregoing, with regard to Licensed Software, these warranties shall not apply to any failure to conform that is caused by the use or operation of the Licensed Software in an environment other than that intended or recommended by PacBio, or modifications to the Licensed Software not made or authorized by PacBio. PacBio makes no standalone warranty with regard to Licensed Software. These warranties are not transferable or assignable, including without limitation, in any re-sale of a PacBio Instrument or third party computing system, and any such attempt to transfer or assign these warranties shall be void for any unit to which they apply. PacBio neither assumes, nor authorizes any other person to assume for it, any other obligations or liabilities in connection with the sale of Products. Repair or replacement of a Product shall not extend the original warranty period for that Product.

3. WARRANTY DISCLAIMERS

3.1 **Disclaimer; No Other Warranties.** THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH IN SECTION 2 ABOVE (IN ADDITION TO ANY EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THE PACBIO TERMS AND CONDITIONS OF SALE) 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 OR USAGE OF TRADE, OR OTHERWISE. IN NO EVENT SHALL PACBIO BE LIABLE FOR COSTS OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES FOR BREACH OF WARRANTY. ANY PRODUCT OR SERVICE PROVIDED WITHOUT A WRITTEN WARRANTY FROM PACBIO IS PROVIDED "AS IS" WITHOUT (AND PACBIO HEREBY DISCLAIMS) ANY WARRANTY, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE. Without limiting the generality of PacBio's general rejection of conflicting terms presented by Buyer, and for clarification purposes only, Buyer agrees that any different or additional warranty terms stated in Buyer's Terms (if applicable) shall be void and of no effect.

3.2 **Third Party Disclaimers.** Notwithstanding any provision to the contrary herein, and unless otherwise expressly indicated in the Quotation or Documentation, none of PacBio's suppliers or licensors of any Product or other item provided by PacBio, or any portion thereof (under this Agreement or otherwise) (each, a "Supplier") provides ANY WARRANTY WHATSOEVER, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE TO BUYER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE DISCLAIMED. EXCEPT AS OTHERWISE EXPRESSLY INDICATED IN THE QUOTATION OR DOCUMENTATION, IN NO EVENT SHALL ANY SUPPLIER BE LIABLE TO BUYER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, DIRECT, INDIRECT OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR SALE OF THE PRODUCTS.