

**Attention Purchasing Department:** to facilitate prompt processing of your purchase order by PacBio, please be sure that your order form does not contain or incorporate by reference any terms or conditions different from, or in addition to, the Quotation(s) (if any) and these Terms. If your order form includes, or makes reference to, any different or additional terms or conditions, please include the following statement prominently on your order form:

*"Any conflict between the parties' respective sales/purchase terms and conditions shall be resolved by giving them priority in the following order: (1) the sales quotation(s) (if any) issued by Pacific Biosciences; (2) the following terms of this order: name and identity of the product(s) and/or services purchased, quantity, bill to and ship to address, and, if accurate, price; (3) Pacific Biosciences' Terms and Conditions of Sale; and (4) any other terms and conditions contained in, or incorporated by reference into, this order."*

**Attention Contracting Officer (U.S. Government agencies only):** If PacBio is responding to a solicitation or is awarded a contract, such response or contract is subject to the following terms and conditions, which constitute "Addenda to this solicitation or contract, including any license agreements for computer software" for purposes of FAR 52.212-4 (Contract Terms and Conditions—Commercial Items), and, accordingly, are incorporated by reference into item # 4 of paragraph (s) (Order of Precedence) thereof.

## 1. DEFINITIONS AND RELATED MATTERS

- 1.1 "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.
- 1.2 "PacBio Instrument" means a PacBio-branded instrument (including any PacBio® RS/RS II or Sequel™ sequencing instrument).
- 1.3 "PacBio Consumables" means PacBio SMRT® Cells and/or associated PacBio-branded reagent kits, and labware intended by PacBio for use with PacBio Instruments.
- 1.4 "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 (see Section 7.3 below), 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.
- 1.5 "Documentation" means the user documentation accompanying, or provided by PacBio regarding or for use in connection with, a Product or related service.

## 2. TERMS, CONDITIONS AND ORDERS

2.1 **Terms and Conditions.** These terms and conditions of sale ("Terms") along with any Quotation(s) issued by Pacific Biosciences of California, Inc. or its subsidiary identified on the Quotation(s) ("PacBio") and any applicable licenses, notices, terms, conditions or use restrictions referred to in Section 3.1 below, together with any addenda to any of the foregoing provided by PacBio, any other terms and conditions expressly agreed to in writing by an authorized PacBio representative expressly referencing these Terms, and Buyer's statement on its purchase order (if accepted by PacBio) of the name and identity of the Product(s) and/or related services purchased, quantity, bill to and ship to address, and, if accurate, price (and only such information on Buyer's purchase order), shall govern the sale and license of any Product(s) (except for Licensed Software, which is only licensed, never sold) by PacBio to the purchaser ("Buyer"), and shall constitute the complete, exclusive and entire agreement ("Agreement") between PacBio and Buyer with respect to purchase and/or license of the Product(s) and any related services from PacBio. PacBio's offer to sell products and provide any related services is expressly limited to the terms of this Agreement. In the event of any conflict between the terms of the Quotation and these Terms, the terms of the Quotation shall take precedence. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product(s) or related services from PacBio, whether or not in response to a PacBio quotation, shall be deemed an acceptance of and agreement to the terms of this Agreement to the exclusion of any other terms or conditions contained in and/or referenced by such purchase order or other instrument (except the name and identity of the Product(s) purchased, quantity, bill to and ship to address, and, if accurate, price), which are hereby deemed to be material alterations, and notice of objection to which is hereby given, 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 Buyer 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 that are in any way inconsistent with the terms of this Agreement.

2.2 **Acceptance of Orders.** No purchase order shall be binding upon PacBio unless and until accepted by PacBio in writing, and PacBio shall have no liability or obligation to Buyer with respect to orders that are not accepted. No partial shipment of an order shall constitute the acceptance of the entire order, absent the written acceptance of such entire order. For PacBio Instrument orders, PacBio may require Buyer to identify in its purchase order the individual responsible for ensuring that Buyer provides a prepared and available installation site in accordance with PacBio's site preparation specifications. Any provision in Buyer's Terms (if applicable) permitting Buyer at its convenience to unilaterally change or cancel its purchase order (in whole or part) once accepted by PacBio shall be void and of no effect.

2.3 **Contract Documents & Order of Precedence.** Notwithstanding Section 2.1 above, if a purchase order from Buyer that is accepted by PacBio contains or incorporates by reference any different or additional terms or conditions, and 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 shall consist of the following documents (notwithstanding any provision in such documents to the contrary): (1) the Quotation(s) (if any) issued by PacBio; (2) the following terms of Buyer's order: name and identity of the Product(s) and/or related services purchased, quantity, bill to and ship to address, and, if accurate, price; (3) these Terms; and (4) any other terms and conditions contained in, or incorporated by reference into, Buyer's order. Any conflict among these documents shall be resolved by giving them priority in the order listed above. Items (2) and (4) are collectively referred to herein as "Buyer's Terms."

## 3. LIMITED LICENSE; REGULATORY COMPLIANCE

3.1 **Limited License.** Buyer acknowledges and agrees that the sale by PacBio, and the purchase and/or use by Buyer, of each Product is subject to all applicable limited licenses, end user license agreements, notices, terms, conditions and/or use restrictions listed (by full text, URL or hyperlink) (i) on any Product packaging, label or insert, (ii) in the Licensed Software or any Documentation, or (iii) on PacBio's website at <http://www.pacb.com/legal-and-trademarks/product-license-and-use-restrictions/>.

3.2 **Regulatory Compliance.** Buyer acknowledges that the Products do not have United States Food and Drug Administration ("FDA") or equivalent non-U.S. regulatory agency approval ("Approval"). Accordingly, Buyer acknowledges that the Products are labeled and intended **FOR RESEARCH USE ONLY** and **NOT FOR USE IN DIAGNOSTIC PROCEDURES**. The Products should be used by qualified professionals in strict accordance with applicable instructions, warnings and other information in user manuals and other Documentation. Unless otherwise expressly stated by PacBio in writing, no claim or representation is made or intended by PacBio (i) as to any diagnostic or other clinical use of a Product; (ii) that any Product has any Approval for use in any diagnostic or other clinical procedure, or for any other use requiring compliance with any law, regulation or governmental policy concerning medical devices, laboratory tests or the like (collectively, "Regulatory Laws"); (iii) that any Product will satisfy the requirements of the FDA or any other regulatory agency; or (iv) that any Product or its performance is suitable or has been validated for clinical or diagnostic use, for safety and effectiveness, for any specific use or application, or for importation into Buyer's jurisdiction. Buyer agrees that if it elects to use a Product for a purpose that would subject Buyer, its customers or any Product to the application of Regulatory Laws or any other law, regulation or governmental policy, Buyer shall be solely responsible for obtaining any required Approvals and otherwise ensuring that the importation of the Products into Buyer's jurisdiction and Buyer's use of Products complies with all such laws, regulations and policies. The burden of proof for safe use and handling of Products sold to Buyer is entirely the responsibility of Buyer. For clarity, this Section 3.2 shall not be construed as granting, by implication, estoppel, reliance or otherwise, any right, license or authorization to Buyer.

## 4. PRICES, TAXES AND PAYMENT

4.1 **Prices.** The price for any Product or related service shall be the applicable price stated in PacBio's written Quotation to Buyer, or, if no Quotation is issued, in PacBio's then-current price list applicable to Buyer's jurisdiction, provided that PacBio's Quotations are only valid for thirty (30) days from the quotation date unless otherwise stated in the Quotation.

4.2 **Taxes; Shipping Charges.** Unless otherwise expressly indicated in the Quotation, Buyer's purchase price does not include any U.S. or non-U.S. federal, state, local, sales, VAT, GST or other taxes, duties, or other governmental assessments ("Taxes") that may be applicable to the Products, any related services or the sale thereof, nor does the price include freight and insurance; Buyer will be responsible for any such charges specified on PacBio's invoice(s). Unless otherwise expressly indicated in the Quotation, Products will be shipped "Freight Prepaid and Added" (i.e., charged back to Buyer on PacBio's invoice) and any provision to the contrary in Buyer's Terms (if applicable) shall be void and of no effect. All Taxes shall be paid or reimbursed by Buyer (other than taxes on PacBio's net income), or in lieu thereof, Buyer shall provide PacBio with a tax exemption certificate acceptable to the applicable taxing authorities. Taxes and other charges payable by Buyer may be billed as separate items on PacBio's invoice. Buyer shall be solely responsible for any non-United States withholding taxes (e.g., if Buyer is located or incorporated outside the United States) and if withholding taxes apply, Buyer shall gross up the amount payable to ensure post-withholding remittance to PacBio at the amounts quoted and invoiced by PacBio.

4.3 **Payment.** Unless otherwise specifically indicated in the Quotation, PacBio shall invoice Buyer for a Product and any related services ordered by Buyer upon shipment of the Product, or after acceptance or deemed acceptance by Buyer pursuant to Section 5.2 below in the case of a PacBio Instrument, or upon PacBio's acceptance of Buyer's purchase order in the case of a Service Contract, and such invoice shall cover Buyer's purchase price for the Product and/or related services and any freight, insurance, Taxes or other applicable costs initially paid or payable by PacBio to be ultimately borne by Buyer, and Buyer shall pay all such amounts. Unless otherwise expressly indicated in the Quotation or, in the event a Quotation is not issued, in PacBio's then-current price list applicable to Buyer's jurisdiction, all invoices shall be issued and payable in U.S. Dollars, and are due and payable thirty (30) days from date of invoice, subject to credit approval. Each delivery shall be considered a separate and independent transaction and payment therefor made accordingly. Amounts outstanding sixty (60) or more days from the date of invoice shall be subject to a service charge of one

percent (1.0%) per month (or the maximum allowed by applicable law, if less). (Notwithstanding the foregoing, 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.*) Buyer shall pay all of PacBio's costs and expenses (including reasonable attorneys' fees) to enforce and preserve PacBio's rights under this section. 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 and/or suspend future deliveries, and/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 necessary to create and perfect this interest.

## 5. DELIVERY AND ACCEPTANCE OF PRODUCTS

5.1 Delivery. Unless otherwise expressly indicated in the Quotation, all deliveries to destinations within the United States are F.O.B. shipping point, and all deliveries to destinations outside the U.S. are FCA Origin (ICC Incoterms 2010) PacBio's shipping dock. Without limiting the generality of PacBio's rejection of Buyer's conflicting terms, any provision to the contrary in Buyer's Terms (if applicable) shall be void and of no effect. PacBio's title (except for Licensed Software, which is only licensed, never sold), and all risk of loss, passes to Buyer, and PacBio's liability as to delivery ceases, upon delivery of the Products at the F.O.B./FCA point. Unless specific shipping instructions have been agreed between PacBio and Buyer, 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 shall be void and of no effect. Delivery of Products shall be in accordance with PacBio's then applicable manufacturing schedule and based upon a priority of 'first order accepted, first order shipped' basis. Notwithstanding the foregoing, PacBio, in its sole discretion, may reprioritize scheduling of any delivery or deliveries of any orders accepted by PacBio. PacBio may also, in its sole discretion, postpone delivery of a PacBio Instrument due to Buyer's failure to provide a prepared and available installation site in accordance with PacBio's site preparation specifications or other factors within Buyer's reasonable control. For multiple unit and/or multiple Product orders PacBio may make delivery in installments, and each installment shall be deemed to be a separate sale. PacBio may issue a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Buyer must notify PacBio of any damaged or missing Products within fifteen (15) days after receipt. Products rejected by Buyer will be held by Buyer and may be returned only upon PacBio's written authorization. PacBio shall be entitled to repair or replace damaged, missing, and/or rejected Products. These are Buyer's sole and exclusive remedies for rejected Products.

5.2 PacBio Instrument Inspection and Installation. Without limiting the preceding section, Buyer shall promptly uncrate and visually inspect any PacBio Instrument upon receipt and notify PacBio in writing of any damage to the PacBio Instrument or missing parts that Buyer notes. Buyer shall ensure that a PacBio representative is present and is permitted to supervise the uncrating and inspection of the PacBio Instrument. If Buyer fails to comply with this section, Buyer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging and any related warranty rights. If PacBio has agreed to install the PacBio Instrument, it is Buyer's responsibility, at Buyer's cost, to have the installation site prepared and available for installation (including proper configuration of Buyer's computer network to which the PacBio Instrument will be attached) in accordance with PacBio's site preparation specifications and free of hazardous or unsafe conditions and, unless otherwise agreed, to move the PacBio Instrument from Buyer's delivery dock or receiving location to the place of installation. Buyer shall have appropriate Buyer personnel present at any such installation. Buyer shall not assign PacBio personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to PacBio and PacBio's prior written consent. Without limiting the foregoing obligations of Buyer, if PacBio has agreed to install the PacBio Instrument and Buyer fails to properly configure Buyer's computer network to which the PacBio Instrument will be attached in accordance with PacBio's site preparation specifications by the scheduled installation date, then PacBio may, at its option, elect to complete the installation procedure without connecting the PacBio Instrument to Buyer's computer network. Buyer shall be deemed to have irrevocably accepted any PacBio Instrument upon the earlier of (i) payment, without reservation, of any amounts with respect to the PacBio Instrument; (ii) ten (10) days after Buyer's receipt of PacBio's report evidencing successful installation of the PacBio Instrument, if PacBio has agreed to install the PacBio Instrument and provides such report to Buyer; (iii) Buyer's use of the PacBio Instrument; or (iv) within thirty (30) days after delivery of the PacBio Instrument if PacBio has agreed to install the PacBio Instrument and is unable to perform installation due to Buyer's failure to provide a prepared and available installation site (including proper configuration of Buyer's computer network to which the PacBio Instrument will be attached) in accordance with PacBio's site preparation specifications or other factors within Buyer's reasonable control.

6. **LIMITED WARRANTY.** Buyer acknowledges and agrees that, by issuing a purchase order or otherwise ordering the Product(s) and/or related services, Buyer agrees (to the exclusion of any contrary terms or conditions in Buyer's Terms, if applicable) that PacBio makes only such warranty with respect to each such Product or service as is expressly identified as a "warranty" and listed at <http://www.pacb.com/legal-and-trademarks/product-warranty-information/>.

## 7. PACBIO INSTRUMENT SUPPORT; LIMITED SERVICE WARRANTY

7.1 Service and Maintenance. During the Warranty Period for a PacBio RS/RS II or Sequel sequencing instrument purchased by Buyer from PacBio hereunder, PacBio will provide its standard level of service and maintenance for such PacBio Instrument (equivalent to PacBio's "Standard" level Service Contract) at no additional charge to Buyer. After the Warranty Period, PacBio may offer to provide extended service and maintenance for such PacBio Instrument pursuant to separate written service contracts that may be purchased by Buyer from PacBio. Extended service and maintenance for any third party computing system must be obtained by Buyer directly from the original manufacturer.

7.2 Service Contracts. If Buyer has purchased a separate written service contract from PacBio for a PacBio Instrument (a "Service Contract"), the Quotation and the applicable, then-current Documentation for such Service Contract describe its level and features, including (as applicable) minimum response times and the number of preventative maintenance visits per year. During the Service Contract term, PacBio or its designee will provide the services described in the Service Contract (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 the Licensed Software, when delivered, shall become part of the Licensed Software and shall be subject to the same end user license agreement(s), notices, terms, conditions and use restrictions unless otherwise expressly stated in writing by PacBio. Covered Services exclude hardware upgrades for feature enhancements. Service Contracts may not be transferred or assigned without PacBio's prior written consent.

7.3 Remote Support. Certain Service Contract levels and/or features require the use of PacBio's RS or Sequel Insight (as applicable) service feature, which includes remote communication software that allows a PacBio authorized agent to remotely communicate with the PacBio RS/RSII or Sequel/Sequel II sequencing instrument, purchased by Buyer, through user-controlled, customizable permission settings. The RS/Sequel Insight service feature is used by PacBio for diagnostics, maintenance and repair of the PacBio RS/RSII or Sequel/Sequel II instrument hardware and software components, and may allow for faster response times if Buyer purchases a Service Contract that includes the RS/Sequel Insight service feature and abides by the configuration requirements specified by PacBio. By purchasing a Service Contract that includes the RS/Sequel Insight service feature, Buyer agrees to enable PacBio to provide the Covered Services as specified in the Service Contract. 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 included with the RS/Sequel Insight service feature is configured to, and Buyer actually does, permit PacBio throughout the term of the Service Contract (with at least the frequency, if any, specified by PacBio for each such activity) to establish secure sessions and connect to the PacBio Instrument covered by such Service Contract for the (i) transmission and retrieval of instrument performance data files and environmental data values, (ii) utilization of event and alarm functionality, and (iii) implementation of remote software updates and software file transfers. If Buyer has purchased a Service Contract that includes the RS/Sequel Insight service feature and has not properly configured such feature (in accordance with the foregoing) within twelve (12) months after the PacBio Instrument installation, or if Buyer disables the RS/Sequel Insight feature during the Service Contract period, then PacBio reserves the right to charge Buyer (in which case, Buyer shall pay to PacBio) 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 RS/Sequel Insight service feature.

7.4 Service Limitations. Buyer agrees to follow the operation procedures published by PacBio, including procedures for routine maintenance. PacBio shall have no obligation to provide any service or parts required as a result of (i) failure of Buyer to maintain 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, (ii) improper or abnormal use, abuse, neglect, negligence, accident, including without limitation failure to properly perform routine maintenance and maintain the PacBio Instrument site in accordance with PacBio's site requirements or the use of the PacBio Instrument 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); (iii) repairs, alterations, disassembly, reassembly or removal 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; or (iv) externally caused short circuits, incorrect voltages, failure or fluctuation of electrical power, lightning, static or other improper external inputs, or Force Majeure. Buyer shall reimburse PacBio at PacBio's then-current service call fees, including all labor, parts and travel charges, for all work of PacBio or its designee incurred in investigating or remedying any damage or malfunction that PacBio reasonably determines to not be part of the Covered Services.

7.5 Non-Covered Equipment. Any and all instruments, software and other products, and any parts or subassemblies of the foregoing, that are not provided by PacBio or its designee, as well as any external uninterruptible power supply (UPS), shall be deemed "Non-Covered Equipment." PacBio shall have no obligation to provide Covered Services for Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, PacBio shall have no obligation to provide Covered Services in connection with any PacBio Instrument, part or subassembly: (i) that has been substantially altered (other than by PacBio or its designee), including any alteration or removal of any serial numbers or other identifying markings; (ii) that does not incorporate all of PacBio's engineering improvements and other fixes that PacBio requests Buyer to implement; (iii) that incorporates Non-Covered Equipment or has Non-Covered Equipment attached; (iv) that has been operated in conditions outside of PacBio's environmental or electrical site specifications, as defined in the applicable, then-current Documentation; (v) that has been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination; or (vi) that has been repaired or maintained by anyone other than PacBio or its designee, except such routine maintenance as set forth in the applicable, then-current Documentation. PacBio Instruments that are no longer offered for sale by PacBio ("Obsoleted Items") will be maintained and repaired on a reasonable efforts basis by PacBio while covered by a Service Contract. If PacBio determines in its discretion that support, service or maintenance of such Obsoleted Items is no longer reasonable, PacBio shall notify Buyer of such determination and such Obsoleted Item shall be deemed Non-Covered Equipment.

7.6 Billable Services. All services performed by PacBio or its designee on Buyer's Non-Covered Equipment or which are not Covered Services shall be billable to Buyer at PacBio's then-current service call fees, including all labor, parts and travel charges.

7.7 **Access and Service Safety.** Buyer will provide PacBio and its designees reasonable and safe access to all PacBio 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 shall be deemed to not be Covered Services, and Buyer shall reimburse PacBio at PacBio's then-current service call fees, including all labor, parts and travel charges, for all such work of PacBio or its designee.

7.8 **PacBio Instrument Relocation.** If any PacBio Instrument is moved from its installation position, PacBio may, at its discretion, determine that such PacBio Instrument has been relocated (a "Relocation"). Relocation of PacBio Instruments may result in service charges as follows: (i) Approved Relocation. Relocation of PacBio Instruments by PacBio or its designees is permitted. PacBio Instruments may be moved with the assistance of PacBio at PacBio's service call fees, including all labor, parts and travel charges. With prior written approval of PacBio, Buyer may move specified PacBio Instruments without incurring any charges. Buyer will contact PacBio prior to moving any PacBio Instrument. (b) Unapproved Relocation. Any service contract or warranty covering a PacBio Instrument shall be rendered void and unenforceable by Relocation of such PacBio Instrument without the prior written approval of PacBio. At the discretion of PacBio, upon completion of a maintenance inspection and service at PacBio's then-current service call fees, including all labor, parts and travel charges, the subject service contract or warranty may be reinstated. (c) New Site Location. Relocation of PacBio Instruments may result in additional service charges and modification of response times, as determined by PacBio.

7.9 **Ownership.** All replaced parts removed from the PacBio Instrument in connection with any services provided by PacBio or its designee shall become the property of PacBio upon their replacement. All intellectual property rights arising from any modifications made or provided by PacBio or its designee, whether alone or with any contribution from Buyer or its employees, agents, contractors or collaborators, to the PacBio Instrument shall be owned exclusively by PacBio. To the extent Buyer or its employees, agents, contractors or collaborators may acquire any right or interest therein by operation of law, Buyer hereby irrevocably assigns all such rights and interests exclusively to PacBio. Buyer shall maintain and enforce agreements and policies with its employees, agents, contractors and collaborators sufficient to give effect to the provisions of this section.

7.10 **Limited Service Warranty.** PacBio warrants that it will render the Covered Services in a professional and workmanlike manner. As PacBio's sole responsibility and Buyer's exclusive remedy in the event of any material failure to meet such standard, PacBio shall 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 delivery or the date of performance of the pertinent services at issue.

7.11 **Term and Termination.** The term of a Service Contract shall commence on the date PacBio receives an authorized purchase order from Buyer, and continue as specified in the applicable Quotation describing the Service Contract or, if no such term is specified, the term shall be one year. Service Contracts shall not be automatically renewed. If Buyer wishes to obtain Covered Services for a PacBio Instrument beyond the term of the Service Contract or for additional PacBio 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: (i) Buyer defaults in the performance of any material requirement or obligation created by the Service Contract or any other agreement between PacBio and Buyer; (ii) Buyer fails to make any payment to PacBio within (30) days of its due date; (iii) Buyer ceases doing business; (iv) 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 (v) Buyer suffers a materially adverse change in its financial condition or operations. No termination of a Service Contract shall 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) shall PacBio be obligated to return any payments received by PacBio under a Service Contract.

## 8. WARRANTY DISCLAIMERS

8.1 **Disclaimer: No Other Warranties.** THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH AT <http://www.pacb.com/legal-and-trademarks/product-warranty-information/> OR IN SECTION 7.10 ABOVE, AS APPLICABLE, 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, NON-INFRINGEMENT 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.

8.2 **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, NON-INFRINGEMENT 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.

9. **LIMITATION OF LIABILITY.** PACBIO'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR SALE OF THE PRODUCTS OR PROVISION OF SERVICES SHALL BE LIMITED TO THE AMOUNT PAID BY THE BUYER FOR THE PRODUCTS AND/OR SERVICES GIVING RISE TO THE LIABILITY, AND IN NO EVENT SHALL PACBIO'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR SALE OF THE PRODUCTS AND SERVICES EXCEED THE TOTAL AMOUNTS RECEIVED BY PACBIO FROM BUYER UNDER THIS AGREEMENT. IN NO EVENT SHALL 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 AND/OR SALE 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 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. INDEMNITY AND INSURANCE

10.1 **Indemnification of Buyer.** Subject to Sections 10.2 and 10.3 below, PacBio agrees to defend Buyer against any third party claim, proceeding or action ("Claim") to the extent the Claim alleges that any Product sold to Buyer hereunder, as delivered to Buyer by PacBio, directly infringes any patent, copyright, or other 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 (i) 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, (ii) Buyer allows PacBio to control the defense and settlement of the Claim, and (iii) 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 shall 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.

10.2 **Exceptions.** PacBio shall have no liability or obligation pursuant to this Section 10 with respect to Claims resulting from (i) modification of the Product other than by PacBio or its authorized service provider; (ii) combination of the Product with any item or method not supplied or specifically recommended in writing by PacBio, (iii) use of the Product other than in accordance with the Documentation and this Agreement (including without limitation use for diagnostic or other non-research uses), or (iv) compliance with Buyer's instructions, specifications or design to the extent such instructions, specifications or design materially differ from comparable Products that PacBio makes generally available to its customers (collectively, (i)-(iv), "Excluded Causes").

10.3 **Remedy.** In the event there is a Claim, or PacBio believes a Claim is likely, alleging intellectual property infringement with respect to any Product sold to Buyer hereunder, PacBio shall be entitled, without obligation to do so, at its option and expense, to (i) modify the Product so that it is no longer infringing, (ii) obtain a license with respect to the applicable intellectual property rights, or (iii) accept the return of each such Product purchased by Buyer hereunder (except for contaminated Products that, in PacBio's discretion, cannot be safely returned to PacBio) and in Buyer's possession and control, and provide to Buyer a refund of the price paid by Buyer to PacBio therefor, subject to reasonable deductions for damage and amortized on a straight line basis over five (5) years from original delivery to Buyer. 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.

10.4 **Exclusive Obligation.** Notwithstanding any other provision, the foregoing Sections 10.1-10.3 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. To the extent Buyer's Terms (if applicable) include any terms different from, or in addition to, those set forth above regarding indemnification by PacBio for intellectual property infringement claims, then such additional or different indemnity terms shall be void and of no effect. To the extent Buyer's Terms (if applicable) include any terms regarding any other type of indemnification by PacBio, then such other indemnity terms shall be void and of no effect.

10.5 **Indemnification of PacBio.** Buyer agrees to defend PacBio against any Claim (i) to the extent the Claim alleges infringement of any patent, copyright, or other intellectual property right as a result of any Excluded Cause, or (ii) that arises in connection with Buyer's use of Products (a) for any clinical purpose or application, (b) in violation of any applicable law or regulation, or (c) in the provision of services under any 'fee for service' agreement or other arrangement. Buyer will pay all damages awarded, and settlements approved by Buyer, in connection therewith, provided that (i) 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, (ii) PacBio allows Buyer to control the defense and settlement of the Claim, and (iii) 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 shall 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 shall apply to the maximum extent permitted by applicable law. This section shall not apply if Buyer is an agency of the U.S. Government; in such case, Buyer's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*

10.6 **Insurance.** To the extent Buyer's Terms (if applicable) require PacBio to maintain insurance coverage beyond the following levels, then such additional or different insurance terms shall be void and of no effect: (i) \$1,000,000/\$2,000,000 per occurrence/aggregate commercial general liability; (ii) \$1,000,000 per accident combined single limit automobile liability; (iii) \$4,000,000 per occurrence/aggregate excess/umbrella liability; and (iv) statutory workers' compensation and \$1,000,000 per accident of employers' liability insurance. If requested in writing by Buyer, PacBio shall provide Buyer with a certificate of insurance evidencing the coverage required above, naming the Buyer as an additional insured only under PacBio's commercial general liability insurance policy, and providing for thirty (30) days' prior written notice to Buyer only in the event of cancellation and non-renewal of any such policy.

11. **BUYER IMPROVEMENT PATENTS.** Buyer agrees to make available to PacBio, under commercially reasonable and non-discriminatory pricing and terms, a nonexclusive license to Product Improvement Patents. For this purpose, "Product 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 and which relate to (a) use, development, design, manufacturing, layout or packaging of any Products, and/or the use of Products with PacBio Consumables or other chips and/or reagents; (b) interfaces between any Products and other devices, such as optical/detection systems, and robotics for use in connection with any Products; or (c) automated analysis techniques (e.g., computers, software) relating to the extraction of data from any Products and storing such data, for example, in a computer file or other storage media (such inventions, "Product Improvement Inventions"). Product Improvement Inventions shall not include data resulting from using Products (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" shall include all persons that Buyer permits to use the Products, irrespective of being legal employees of Buyer, and Buyer shall have the necessary agreements in effect with all such users and their employers to enable Buyer to comply with this section.

## 12. MISCELLANEOUS

12.1 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall 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, messenger or telecopy, addressed to the addresses 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 herein. Such notices shall be deemed to have been effective when delivered or, if delivery is not accomplished by reason of some fault or refusal of the addressee, when tendered (which tender, in the case of mail, shall be deemed to have occurred upon posting, and in the case of telecopy (fax), shall be deemed to have occurred upon transmission). All notices shall be in English.

12.2 **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 goods, software or related services ("Disputes") shall 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 shall 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 shall 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 shall 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 shall be deemed non-exclusive, notwithstanding any provision in Buyer's Terms to the contrary. This section shall not apply if Buyer is an agency of the U.S. Government.

12.3 **Purchases for the U.S. Government.** If Buyer is placing an Order for the United States Government or in support of a contract with the U.S. Government, Buyer agrees that the Products purchased are "commercial items" as defined in the U.S. Federal Acquisition Regulations ("FAR"). If Buyer is placing this Order in the name of the U.S. Government and the Order is less than or equal to \$3,000, then Buyer agrees that only these Terms shall apply to the Order. If the Order is greater than \$3,000, then Buyer agrees that the Order is subject to FAR Part 12, and pursuant to FAR 12.301 and 12.302, only those mandatory provisions of FAR 52.212-1, 52.212-3, 52.212-4 and 52.212-5, and these Terms, shall apply. If Buyer is placing this Order in support of a contract with the U.S. Government, Buyer agrees that only those mandatory clauses listed in FAR 52.244-6 as well as these Terms shall 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 shall take precedence to the maximum extent permitted by applicable law.

12.4 **U.S. Government End Users.** The Licensed Software and Documentation provided by PacBio pursuant to this Agreement are "commercial items," as the term is defined at 48 C.F.R. §2.101, consisting of "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. 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 United States Government end users (i) only as commercial items and (ii) with only those rights granted pursuant to the terms of this Agreement.

12.5 **Inspections; Access to Records.** To the extent Buyer's Terms (if applicable) permit the inspection by or on behalf of Buyer of the Product(s) or PacBio's work and activities pursuant to Buyer's purchase order, or the examination or audit of PacBio's books and records, any such inspection, examination or audit shall be conducted at Buyer's sole expense by an independent auditor from a reputable public accounting firm duly authorized by Buyer, under reasonable obligations of confidentiality, and only during PacBio's normal business hours.

12.6 **Export Controls.** Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

12.7 **Severability.** If any section, paragraph, provision or clause or any portion thereof in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

12.8 **Force Majeure.** Except for the payment of money, neither party shall 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 restrictions, or other such contingencies beyond the reasonable control of the applicable party ("Force Majeure"). The party affected shall notify the other party as soon as practicable of any anticipated delay due to Force Majeure.

12.9 **No Third Party Beneficiaries.** This Agreement has been made and is made solely for the benefit of PacBio and Buyer and their respective permitted subsidiaries, successors and assigns. Except as set forth in Section 8.2 (with respect to Suppliers), nothing in this Agreement is intended to (i) confer any rights or remedies under or by reason of this Agreement on any persons or entity other than the parties to this Agreement and their respective permitted successors and assigns; or (ii) relieve or discharge the obligation or liability of any third persons or entities to any party to this Agreement.

12.10 **General.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The English language shall govern the meaning and interpretation of this Agreement. This Agreement (including without limitation all exhibits hereto and all attachments thereto, which are incorporated herein by this reference as though fully set forth in the body of 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 of the parties shall 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 shall alter the meaning or interpretation of this Agreement.