PACIFIC BIOSCIENCES®

SOFTWARE END USER LICENSE AGREEMENT

These license terms are part of the agreement ("Agreement") between Pacific Biosciences of California, Inc. or its subsidiary ("PacBio"), and you (the "Licensee"). They apply to the software that accompanies these license terms, which includes the media on which you received it, if any. BY USING THE SOFTWARE, YOU ACCEPT THESE TERMS. PacBio does not accept, and PacBio expressly rejects hereby any conflicting or additional terms presented by Licensee, and such terms shall have no effect, whether or not PacBio communicates the rejection again specifically after receipt of Licensee's terms. The Agreement only consists of these terms and any other terms that PacBio issues or expressly accepts in a duly signed writing.

1 CERTAIN 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 Licensee's jurisdiction, and rightfully obtained by Licensee from PacBio or its authorized distributor.
- 1.2 "PacBio Instrument" means a PacBio-branded instrument (including any PacBio® RS/RS II or SequeI™ 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, in each case provided by PacBio to Licensee 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.
- 1.6 "Other Software" means (i) any PacBio software or firmware, other than the Licensed Software, that PacBio makes available for use with PacBio Instruments or otherwise (e.g., alignment/assembly and consensus calling functions), and (ii) any third party software or firmware. "Other Software" may include open source software.
- 1.7 "Other License Terms" means, with respect to any Other Software, all of the 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, (iii) in the Other Software or any applicable documentation, or (iv) on PacBio's website at http://www.pacb.com/legal-and-trademarks/product-license-and-use-restrictions/ (ii) in the Other Software or any applicable documentation, or (iv) on PacBio's website at http://www.pacb.com/legal-and-trademarks/product-license-and-use-restrictions/ (including, without limitation, any such limited licenses, end user license agreements, notices, terms, conditions and/or use restrictions listed at http://www.pacb.com/legal-and-trademarks/other-software-notices-terms-conditions-and-use-restrictions/).

2. LICENSE AND USE RESTRICTIONS

- 2.1 <u>Limited License</u>. Subject to the terms and conditions of this Agreement and, with respect to Other Software, to the applicable Other License Terms, PacBio grants to Licensee a non-exclusive, non-transferable, non-sublicensable license to use the Licensed Software and Documentation only in connection with other Products and only in accordance with the applicable, then-current Documentation. PacBio hereby reserves all rights to the Licensed Software and Documentation, except for the rights expressly granted herein. No other right, license or authorization is granted, by implication, estoppel, reliance or otherwise, or under any theory of exhaustion of intellectual property rights. For example, and without limiting the preceding sentence, no right or license is granted or implied, and Licensee is not authorized, to use any Product in combination with any product or method not provided, licensed or specifically recommend in writing by PacBio for such use.

 Notwithstanding any provision to the contrary herein, Licensee is not licenseed or authorized to use any PacBio Sequel sequencing instrument or associated PacBio Consumables (or any other Product(s) in connection therewith) for (a) medical management (including, without limitation, diagnosis or treatment of a human disease or condition) of a human being, (b) quality control or testing of human blood or tissue for transfusion or blood banking, human bone marrow transplantation or banking, or human tissue typing for transplantation, or (c) clinical studies for obtaining or maintaining any Approval (as defined below) for any such Product or any service provided to a third party involving the use of any such Product where such service is intended for the purposes described under subsections (a) or (b) above, or for other clinical research, in each case linked to the medical management of a human being.
- 2.2 <u>Title</u>. Licensee acknowledges that PacBio retains title to the Licensed Software and Documentation and each copy thereof provided to or made by Licensee, which copies are licensed to Licensee for use in accordance with this Agreement. PacBio only licenses Software and Documentation. PacBio never sells Software or Documentation or copies thereof.
- 2.3 <u>Copies.</u> Licensee may make a single machine-readable copy of the Licensed Software for backup or archival purposes. Licensee may make a reasonable number of copies of the Documentation in support of its use of the Licensed Software pursuant to this Agreement. Licensee shall not make any other copies of the Licensed Software or Documentation. Licensee shall maintain accurate and up-to-date records of the number and location of all copies of the Licensed Software and Documentation and, upon request, inform PacBio in writing of such location. All copies of the Licensed Software and Documentation will be subject to the terms and conditions of this Agreement. On each copy Licensee shall reproduce, and shall not modify, obscure, or efface, any and all titles, trademark symbols, copyright symbols, notices and legends, and other proprietary markings on or in the Licensed Software and Documentation.
- 2.4 No Source Code. Licensee is granted no rights with respect to the Licensed Software source code. Licensee is granted no rights to, and Licensee agrees that it will not, and will not authorize or permit any third party to, decompile, disassemble, or reverse engineer, or attempt to derive the source code for the Licensed Software, in whole or in part.
- 2.5 Other Restrictions. Licensee shall not, and shall not authorize or permit any third party to: (a) sell, lease, license, sublicense, or otherwise transfer the Licensed Software or Documentation; (b) provide, disclose, or make the Licensed Software or Documentation available to any third party, or permit access to or use of the Licensed Software or Documentation by any person other than Licensee's employees, agents, or contractors who are, by agreement, bound by the terms of this Agreement to the same extent as Licensee; (c) merge or combine the Licensed Software with other software, or modify the Licensed Software, or create any derivative software or any other software based upon, or any derivative work of, the Licensed Software or Documentation; or (d) modify or efface any titles, trademark symbols, copyright symbols, notices or legends, or any other proprietary markings on or in the Licensed Software or Documentation. All license restrictions specified in this Agreement shall apply to the maximum extent permissible under applicable law. If Licensee believes that it has additional rights or the right to act contrary to the express license restrictions specified in this Agreement under mandatory laws (including, without limitation, national laws implementing Directive 91/250/EEC and similar laws), Licensee agrees that it shall provide PacBio with at least 30 days prior written notice and any reasonably requested information before exercising such rights, to allow PacBio to offer alternatives at PacBio's sole discretion, for example interface information to achieve interoperability with independently created computer programs.
- 2.6 Regulatory Compliance. Licensee acknowledges that the Licensed Software does not have United States Food and Drug Administration ("FDA") or equivalent non-U.S. regulatory agency approval ("Approval"). Accordingly, Licensee acknowledges that the Licensed Software is intended FOR RESEARCH USE ONLY and NOT FOR USE IN DIAGNOSTIC PROCEDURES. The Licensed Software 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 the Licensed Software; (ii) that any Licensed Software 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 Licensed Software will satisfy the requirements of the FDA or any other regulatory agency; or (iv) that any Licensed Software 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 Licensee's jurisdiction. Licensee agrees that if it elects to use the Licensed Software for a purpose that would subject Licensee, its customers or any Product to the application of Regulatory Laws or any other law, regulation or governmental policy, Licensee shall be solely responsible for obtaining any required Approvals and otherwise ensuring that the importation of the Products into Licensee's jurisdiction and Licensee's use of Products complies with all such laws, regulations and policies. The burden of proof for safe use and handling of the Licensee Software is entirely the responsibility of Licensee. For clarity, this Section 2.6 shall not be construed as granting, by implication, estoppel, reliance or otherwis
- 2.7 <u>U.S. Government End Users</u>. 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 as are granted pursuant to the terms of this Agreement.
- 2.8 Other Software and Other License Terms. The Licensed Software may contain, be accompanied by and/or be intended by PacBio to interact with, Other Software, which is provided under separate Other License Terms. Such Other Software and/or the applicable Other License Terms may be listed or identified in the Licensed Software or Documentation or contained in a file or directory provided with the delivery of the Licensed Software. Licensee's use of such Other Software in conjunction with the Licensed Software in a manner consistent with the terms of this Agreement is permitted. However, the Licensee may have broader rights with respect to the Other Software under the applicable Other License Terms and nothing in this Agreement is intended to impose further restrictions on the Licensee's use of such Other Software per se.

3. NO STANDALONE WARRANTY; LIABILITY LIMITATIONS AND DISCLAIMERS

3.1 No Standalone Warranty for Licensed Software. PacBio's warranty for PacBio Instruments (including their use in connection with the most current version of Licensed Software, or, with PacBio approval, a previous version of the Licensed Software) can be found at on PacBio's website at http://www.pacb.com/legal-and-trademarks/product-warranty-information/, or can be obtained by contacting PacBio. PacBio makes no standalone warranty with regard to Licensed Software. CONSEQUENTLY, THE LICENSED SOFTWARE (AND ANY OTHER SOFTWARE) IS PROVIDED BY

PACBIO "AS-IS" WITHOUT (AND PACBIO HEREBY DISCLAIMS) ANY WARRANTY, STATUTORY, EXPRESS OR IMPLIED. PacBio may, at Licensee's request, furnish technical assistance, advice and information with respect to the Licensed Software (beyond the scope of PacBio's applicable product warranty or service contract for the PacBio Instrument(s) used by Licensee in connection with the Licensed Software). It is expressly agreed that there is no obligation to provide such assistance, advice or information, which are provided "AS IS," without additional charge, and at Licensee's sole risk

- 3.2 <u>Disclaimer; No Other Warranties</u>. ANY WARRANTY PROVIDED IN CONNECTION WITH THE PACBIO INSTRUMENT(S) USED BY LICENSEE IN CONNECTION WITH THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE (AND ANY REMEDY THEREIN PROVIDED) ARE IN LIEU OF, AND PACBIO HEREBY DISCLAIMS, ALL 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 THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE (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.
- 3.3 <u>Limitation of Liability.</u> EXCEPT AS OTHERWISE EXPRESSLY AGREED BY PACBIO IN WRITING, PACBIO'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE SHALL BE LIMITED TO THE AMOUNT PAID (IF ANY) BY THE LICENSEE FOR THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE GIVING RISE TO THE LIABILITY, OR ONE HUNDRED UNITED STATES DOLLARS (US\$100.00), WHICHEVER IS GREATER, AND IN NO EVENT SHALL PACBIO'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE EXCEED THE TOTAL AMOUNTS RECEIVED BY PACBIO UNDER THE APPLICABLE AGREEMENT(S) WITH PACBIO GOVERNING LICENSEE'S PURCHASE OF THE PACBIO INSTRUMENT(S) WITH WHICH THE LICENSED SOFTWARE IS USED BY LICENSEE. 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, THE LICENSED SOFTWARE, OTHER SOFTWARE 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.
- 3.4 <u>Third Party Disclaimers.</u> Notwithstanding any provision to the contrary herein, and unless otherwise expressly indicated in the Quotation, Documentation or any Other License Terms, 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 LICENSEE, 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 LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, DIRECT, INDIRECT OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED SOFTWARE AND/OR OTHER SOFTWARE.
- 3.5 <u>Indemnification of PacBio</u>. Licensee agrees to defend PacBio against any third party claim, proceeding or action ("Claim") that arises in connection with Licensee's use of the Licensed Software (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. Licensee will pay all damages awarded, and settlements approved by Licensee, in connection therewith, provided that (i) PacBio provides to Licensee 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 Licensee or its ability to defend such Claim, (ii) PacBio allows Licensee to control the defense and settlement of the Claim, and (iii) PacBio provides to Licensee reasonable assistance in connection therewith, at no charge to Licensee. PacBio may employ counsel at its own expense to assist it with respect to any such Claim, provided that this shall not obligate Licensee or its counsel to consult with or advise such PacBio counsel, nor affect Licensee's control of the defense and settlement of the Claim. If Licensee is a U.S. state, ity, 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 Licensee is an agency of the U.S. Government; in such case, Licensee's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, et seq.

4. MISCELLANEOUS

- 4.1 <u>Notices.</u> 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 Licensee'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.
- 4.2 <u>Governing Law and Venue</u>. This Agreement and any disputes arising out of or relating do 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 Licensee 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 Licensee 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 Licensee 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. This section shall not apply if Licensee is an agency of the U.S. Government.
- 4.3 Export Controls. Licensee agrees that it will not export or transfer the Licensed Software or Documentation 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.
- 4.4 <u>Severability</u>. 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.
- 4.5 <u>Force Majeure</u>. 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.
- 4.6 No Third Party Beneficiaries. This Agreement has been made and is made solely for the benefit of PacBio and Licensee and their respective permitted subsidiaries, successors and assigns. Except as set forth in Section 3.4 (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.
- 4.7 <u>General.</u> 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 (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.