

## TERMS & CONDITIONS – ILLUMINA SUBSCRIPTION PRODUCTS

### Section 1 DEFINITIONS & INTERPRETATION

#### 1.1 Definitions. In these Terms & Conditions:

“**Access Date**” means the date on which Illumina first provides Customer with access to the Cloud Software;

“**Additional Services**” are defined in Section 4.7;

“**Affiliate(s)**” means an entity controlling, controlled by, or under common control with a Party;

“**Aggregated Data**” is defined in Section 5.7;

“**Business Hours**” is defined in Section 4.1;

“**Claims**” means any and all losses, liabilities, suits, actions, causes of actions, judicial or administrative proceedings, claims, demands, damages, penalties, settlements, fines, costs and expenses of whatsoever kind or character (including but not limited to all costs and fees for investigation and defense);

“**Cloud Software**” means the Software installed on servers by, or on behalf of, Illumina to which Illumina provides Customer access;

“**Confidential Information**” is defined in Section 9;

“**Contact Point**” is defined in Section 4.2;

“**Customer Data**” is defined in Section 5.6;

“**Customer Indemnitee(s)**” is defined in Section 8.1;

“**Default**” is defined in Section 11.1(a);

“**Designate**” means any person or entity whose services [Illumina] engages or makes use of to perform the whole or any part of the services (e.g. training, Maintenance & Support for the Software) under these Terms & Conditions;

“**Disclosing Party**” is defined in Section 9;

“**Documentation**” means Illumina’s then current, generally available user manuals and similar technical documentation for the Software;

“**Excluded Claim(s)**” is defined in Section 8.2;

“**Excluded Use(s)**” means any and all use(s) of the Software that (a) is not in accordance with the Software’s Documentation or Specifications, (b) is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Software, (c) is a modification, alteration, or creation of derivative works of the Software; (d) gains access to or determines the methods of operation of the Software; (e) use of Illumina’s Intellectual Property and Confidential Information to develop a product that is similar to the Software; (f) is a sublicense, resale, sublease, or other use of the Software for the benefit of any third party or to operate a service bureau for the benefit of a third party; (g) is a use of the Software on any processor or equipment not provided by Illumina; and/or (h) involves removal of any proprietary notice from any Software, Documentation, or Specifications;

“**Error**” means a failure of the Software to conform in any material respect to the then-current Software Specifications. Error does not include a failure arising from Customer’s misuse, improper use, or alteration of the Software, Customer’s damage to the Software, or Customer’s combining or merging the Software with any hardware or software not supplied by Illumina or identified by Illumina in writing as compatible;

“**Feedback**” is defined in Section 5.7;

“**Illumina**” means Illumina, Inc. or its Affiliate as provided in Section 1.3;

“**Illumina Infringement Claim**” is defined in Section 8.1;

“**Important Problem**” is defined in Section 4.1;

“**Improvements**” is defined in Section 5.5;

“**Intellectual Property**” means any and all of the following proprietary rights of a party: all rights in patent, copyrights (including rights in computer software), trade secrets, know-how, trademarks, service marks and trade dress rights and other industrial or intellectual property rights under the laws of any

jurisdiction, whether registered or not, and including without limitation all applications or rights to apply therefor and registrations thereto, and those that may provide a right in works, hardware, software, source code, object code, formulae, algorithms, techniques, or methodologies.

“**License**” is defined in Section 5.1

“**Maintenance & Support**” is defined in Section 4.3;

“**Major Release**” means a version of the Software that includes significant function and feature enhancements. A Major Release incorporates all prior Releases. A Major Release is identified by an increase in the major number of the version accompanied by the minor number being reset to zero (for example 8.8 to 9.0);

“**Minor Release**” means a version of the Software that includes updates, modifications, or corrections to the Software. Minor Release incorporates all prior Releases. Minor Releases are identified by an increase in the second set of digits of the version (for example 8.1.0 to 8.2.0);

“**Non-Production**” means Customer’s use of the Software for validation, workflow development and training purposes only and not for any commercial purpose;

“**Notice**” is defined in Section 12.5;

“**Party**” means Customer or Illumina, as the context requires, and “**Parties**” means both Customer and Illumina;

“**Patch(es)**” means a modification or addition to the Software by Illumina that corrects an Error. Patches are identified by an increase in the third set of digits of the version (for example 8.1.1 to 8.1.2);

“**Payment Terms**” means the payment terms set out in the Quote;

“**Production**” means the day-to-day use of the Software by Customer in a clinical, research or production environment, as applicable;

“**Purchase Order**” is defined in Section 5.8;

“**Quote**” means the Illumina-issued quotation listing Clarity LIMS as a quoted item;

“**Receiving Party**” is defined in Section 9;

“**Releases**” means Major Releases, Minor Releases and Patches;

“**Specifications**” means Illumina’s then-current written technical specifications for the Software and/or Additional Services;

“**Software**” means:

- (a) the Illumina proprietary software programs listed in the Quote;
- (b) all Releases;
- (c) the licensed third-party software incorporated in Illumina’s proprietary software;
- (d) the Documentation; and
- (e) any modifications to, extracts from, derivative works of, or collective works including, any of the items described in (a), (b), (c) and (d);

“**Stopper**” is defined in Section 4.1;

“**Subscription Fees**” means the fees set out in the Quote for the Subscription Services;

“**Subscription Services**” means:

- (a) the grant of the License; and
- (b) the provision of Maintenance & Support;

“**Term**” means the period starting on the Access Date and ending after the number of months specified in the applicable Quote;

“**Terms & Conditions**” means these terms & conditions and any written amendment to them; and

“**Updates**” means updates, version upgrades, and patches to the Software; and

“**Warranty Period**” means the sixty calendar-day period starting on the first day of the Term.

**1.2 Costs, Expenses and Risk.** Except as expressly stated, each Party is solely responsible for all costs, expenses and risks incurred by it and by any of its personnel, employees and agents in connection with the performance of its obligations.

**1.3 Affiliates and Designate.** The Software may be provided by an Illumina Affiliate. If an Illumina Affiliate provides Customer with the Software, all references to “Illumina” in these terms and conditions shall be deemed to refer to such Illumina Affiliate with respect to such Software and Customer shall honor invoices issued by the Illumina Affiliate. Customer agrees Illumina may delegate or subcontract any or all of its rights and obligations under these Terms & Conditions to a Designate,

**1.4 Reasonable Efforts.** Neither Party shall be liable to make more than a reasonable commercial

effort to perform its obligations.

**1.5 Headings.** Headings have been inserted in these provisions for convenience of reference only and shall not affect their construction.

## **SECTION 2 CUSTOMER ACTIVITIES.**

Customer shall ensure that the necessary Customer infrastructure, as set out in the “Technical Requirements” section of the Software Specifications, is in place so that Illumina can perform its obligations. Customer agrees neither it nor its representatives and agents shall use the Software or Customer’s access to the Software for any unauthorized activity or malicious illegal, or harmful purpose (including, without limitation, a denial of service attack, unlicensed software installation, unauthorized access attempts, and/or port scanning).

## **SECTION 3 INSTALLATION, TRAINING & INTEGRATION.**

Illumina shall provide Customer with access to the Cloud Software in a cloud environment. Illumina shall perform the integration, if any, and the training as specified in the Quote. In order to be entitled to the training specified in the Quote, Customer must promptly request and schedule for remote training to occur within ninety days of the Access Date; Customer’s failure to complete the remote training within ninety days of the Access Date shall cause Customer to forfeit its right to receive such training and any exception shall only be granted in Illumina’s sole and absolute discretion.

## **SECTION 4 MAINTENANCE & SUPPORT**

### **4.1 Maintenance & Support Definitions.**

“**Business Hours**” means:

- (a) if the Customer is located in Canada, the USA, Mexico, Central or South America: 8:00 am to 5:00 pm Pacific, Monday to Friday, excluding holidays (such as Illumina corporate holidays and shut down periods);
- (b) If the Customer is located in Australia, New Zealand, Japan, South Korea, India, Singapore, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand or Vietnam; 9:00 am to 5:30 pm time zone of the State of Victoria (Australia), Monday to Friday, excluding holidays; or
- (c) if the Customer is located anywhere else: 8:00 am to 5:00 pm GMT, Monday to Friday, excluding holidays.

“**Important Problem**” means an Error which materially affects Production but for which a work-around exists such that the Production can substantially continue; and

“**Stopper**” means a severe Error in the Software that causes the Software to fail or to substantially cease Production and for which no workaround exists and work cannot continue.

“**Maintenance Window**” means a timeframe where Illumina will update Customer’s instances to the latest patch version for security and maintenance purposes. The Maintenance Window for each region is as follows:

- (a) For customers located in Asia or the Middle East: Fridays at 4:00-6:00 PM PST or PDT (as applicable); and
- (b) For customers located in North America or Europe: Sundays at 4:00-6:00 PM PST or PDT (as applicable).

4.2 **Contact Point.** During the Term, Illumina shall maintain, and keep Customer advised of, a contact point (the “**Contact Point**”) for Error reporting. Customer must promptly notify the Contact Point of all Errors it wishes Illumina to address.

4.3 **Maintenance & Support.** During the Term, Illumina shall provide maintenance and support for the Software (the “**Maintenance & Support**”) as follows:

- (a) *Releases.*
  - (i) Illumina shall provide Customer with all Releases that Illumina makes available to its Customers and does not separately price or market.
  - (ii) Illumina shall install all Releases in Customer's Production environment.
- (b) *Error Corrections.*
  - (i) **Severity 1: Stopper.**
    - (1) During Business Hours, Illumina shall acknowledge a Stopper within two (2) hours of it being reported to the Contact Point.
    - (2) Outside of Business Hours, Illumina shall acknowledge a Stopper that is reported to the Contact Point within two (2) hours of the commencement of the next working day.
    - (3) Illumina shall commence resolution of the Stopper within one (1) hour of its acknowledgement of the Stopper and shall continue until the Stopper is resolved or Illumina provides a work-around. Where reasonably necessary and commercially reasonable, Illumina may elect to work outside of Business Hours to resolve the Stopper.
  - (ii) **Severity 2: Important Problem.** Illumina shall, during Business Hours:
    - (1) acknowledge an Important Problem within two (2) hours of the Important Problem being reported to the Contact Point;
    - (2) commence resolution of the Important Problem within four (4) hours of such acknowledgement; and
    - (3) shall use commercially reasonable efforts until the Important Problem is resolved.
  - (iii) **Severity 3: Low.** All problems that are not Stoppers or Important Problems, including without limitation Errors in the Non-Production environment, minor Errors that do not materially affect Production, and Documentation correction requests, are “Low”. Illumina shall log Low problems and use commercially reasonable efforts to correct Low problems during Business Hours, but does not guarantee response or resolution time.
- (c) *Updates.* Illumina may provide Updates, from time-to-time, at Illumina’s discretion. Customer shall permit Updates related to maintenance and/or security as Illumina deems reasonably necessary, but under no circumstances less frequently than monthly. These updates will be performed during the Maintenance Window. Updates may take up to one hour including Amazon Machine Image backup. Illumina shall not initiate application backup during patching, but will check for successful backup in the prior four hours before proceeding. Additional time may be required to execute any applicable backup plan in case any issues are found during the update process.

4.4 **Standard of Maintenance & Support.** In providing the Maintenance & Support, Illumina shall:

- (a) use reasonable commercial efforts to minimize disruption to Customer’s activities;
- (b) be deemed to have commenced resolution of an Error when it logs in the reported Error; and commits personnel and resources to correct, or work around, the Error;
- (c) use commercially reasonable efforts to respond to and correct verifiable and reproducible Errors when reported to Illumina;

- (d) not be liable to provide Maintenance & Support for Errors that Customer does not report to the Contact Point; and
- (e) once it has provided Customer with a Patch, include the Patch in the next Minor Update.

4.5 **Limitations on Maintenance & Support.** Illumina:

- (a) shall support and maintain only the current Major Release and the immediately previous Major Release;
- (b) may change the API from time to time, but shall continue to support the previous version of any API changed, discontinued or deprecated for twelve (12) months after the change, discontinuation, or deprecation;
- (c) may, with prior written notice to Customer, cease Maintenance & Support, and may vary or charge additional fees for Maintenance & Support, for Releases older than the current Major Release and immediately previous Major Release; and
- (d) shall not be liable to provide Maintenance & Support beyond the Term and/or for any software other than the Software.

4.6 **Backups.** Illumina shall endeavor to perform an automatic backup of projects, sample meta data, configuration, custom scripts and uploaded content every four hours, to retain: (a) all backups from the previous twenty-four hour period, (b) a single backup per day for a calendar month, and (c) a single backup for each calendar month for up-to a year.

4.7 **Additional Services.** During the Term, in addition to the Subscription Services, Illumina shall, if the authorized representative of the Parties agree in writing and further subject to the payment of applicable fees, provide additional services such as, without limitation to, installation, training and consulting (collectively the “**Additional Services**”).

## **SECTION 5 USE RIGHTS.**

5.1 **License.** Subject to these Terms & Conditions, including payment of all applicable fees, during the Term Illumina grants Customer a non-exclusive, non-transferable, non-sublicensable limited license for Customer to access and use the Software in a Non-Production environment, or in a Production environment up to the number of named users set forth in the Quote, in accordance with the applicable Documentation and Specifications (the “**License**”). Customer shall not use the Software for any Excluded Use. Certain elements of the Software may contain software, content, data, and other intellectual property furnished by third parties and may be subject to certain third-party terms and conditions. Except for the express licenses granted in these terms and conditions, Illumina and its licensors reserve all other right, title, and interest in and to the Software and, if applicable, Additional Services, including all enhancements or modifications made thereto. No other rights or licenses are conferred upon Customer under these Terms & Conditions. Customer expressly acknowledges and agrees it is not licensed to use: (a) the Software on any additional processor or equipment; (b) the Software for the business of any other entity other than Customer, and any such additional use shall require an additional license from Illumina; and (c) the source code version of the Software.

5.2 **Notices.** Customer shall not obliterate, alter or remove any proprietary or Intellectual Property notices from the Software and shall reproduce, on any copies of the Software that Customer is authorized to make, all notices as they appear on the Software being copied.

5.3 **License Restrictions.** Customer shall not copy, adapt, transcribe, merge, reverse engineer, reverse assemble, reverse compile, sublicense, distribute, market, rent, lease, transfer or otherwise dispose of, or use as part of a service bureau, any part of the Software.

5.4 **Intellectual Property in the Software.** Customer acknowledges that except for the limited License granted under Section 5.1: it acquires no right, title or interest in or to the Intellectual Property in the Software; and all proprietary and Intellectual Property rights, title and interest including copyright in and to the original and all copies of the Software shall be and remain that of Illumina and third-party licensors.

5.5 **Ownership of Improvements.**

- (a) *Creation of Improvements.* Immediately upon creation, Customer expressly and irrevocably assigns to Illumina all right, title and interest in and to all Intellectual Property and in and to all improvements to the Software that Customer conceives (collectively the “**Improvements**”). For greater certainty, Improvements do not include scripts developed by, or on behalf of, Customer using the Software’s APIs.
- (b) *Disclosure of Improvements.* Customer shall promptly disclose to Illumina all Improvements during the Term.
- (c) *Assistance in Recordation.* Customer shall, at Illumina’s expense, provide reasonable commercial assistance, including the execution of documents, as is necessary for Illumina to evidence its sole Intellectual Property in and to all of the Improvements.

5.6 **Ownership of Scripts and Customer Data.** Illumina acknowledges that it acquires no right, title or interest in and to any intellectual property in or to any of the scripts developed by, or on behalf of, Customer using the Software’s APIs. Customer may provide Illumina with certain data and other information in connection with the performance of these terms and conditions, including uploading data in connection with its use of the Software (the “**Customer Data**”). Customer grants Illumina a non-exclusive, world-wide, royalty-free license to use the Customer Data for purposes of performing its obligations under these terms and conditions. Customer will be responsible for obtaining all rights, permissions, and authorizations, to provide the Customer Data to Illumina for use as contemplated under these terms and conditions, and Illumina’s privacy policy located at <https://www.illumina.com/company/legal/privacy.html>. Except as set forth in this Section, nothing contained in these terms and conditions will be construed as granting Illumina any right, title, or interest in the Customer Data. Customer Data shall be deemed Customer Confidential Information. Customer understands and agrees that (a) the Software is not designed for use with personally identifiable information, protected health information, or any other personal information subject to protection under any applicable law; and (b) it is solely responsible for ensuring the Customer Data does not contain any such data and shall not upload any such data into or using the Software.

5.7 **Feedback; Aggregated Data.** Customer may voluntarily provide Illumina with suggestions, comments or other feedback (collectively, “**Feedback**”) with respect to the Software. Illumina may use Feedback for any purpose without obligation of any kind. To the extent a license is required under any Customer intellectual property rights to make use of the Feedback, Customer grants Illumina an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Illumina’s business, products, and services, including the development and enhancement of the products and services. Additionally, Customer grants Illumina a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use data derived from use of the Products and Services (the “**Aggregated Data**”) for purposes of improving the products and services of Illumina and its Affiliates; provided the Aggregated Data is combined with similar data from other Customers and not identifiable to Customer or any individual. Customer agrees that Illumina may include Customer’s name on Illumina customer lists that it makes available to third parties from time to time.

5.8 **No Software Installation; No Malicious Activity.** Customer shall not engage in any activity in its utilization of the Software that interferes with, disrupts, damages, or accesses in any unauthorized manner the servers, networks, content thereof, or other properties or services of Illumina, its affiliates, or any third party.

## **SECTION 6 FEES & PAYMENT**

6.1 **Invoices.** Illumina shall issue an invoice for each amount due in accordance with the fees set forth in the Quote. All invoices are payable as of the date of invoice and payments by Customer on such invoices are due within thirty days after the date of the invoice. Without limiting any remedies available to Illumina, any amounts not paid when due will accrue interest at the maximum rate allowed by law. Customer shall pay for all costs incurred by Illumina in connection with collection of late payments.

6.2 **Purchase Orders; Payments.** During the Term, Customer shall order licenses to the Software and any Additional Services using written purchase orders submitted under and in accordance with these Terms & Conditions and the Quote (each, a “**Purchase Order**”). Each Purchase Order shall state the Quote number and shall reference these Terms & Conditions. Acceptance of a Purchase Order shall be deemed to have occurred when Illumina (or an Illumina Affiliate) provides Customer with a sales order confirmation. All Purchase Orders accepted by Illumina are non-cancelable by Customer and Customer shall pay Illumina:

- (a) the Subscription Fees;
- (b) the installation, integration and training fees set out in the Quote;
- (c) the fee agreed by the Parties for Additional Services, if any;
- (d) the travel expenses agreed by the Parties; and
- (e) all taxes (including sales, use, property, excise, value added and gross receipts but not including taxes based on Illumina’s income), import duties and fees and charges of any kind levied or imposed by any federal, provincial, state or local governmental entity in connection with the foregoing items;

Customer shall promptly notify Illumina in writing of any amounts in dispute. Furthermore, Customer shall make all payments (which are not disputed in good faith) in accordance with the Payment Terms. Where payment is made by wire or other electronic funds transfer, Customer shall be solely responsible for any bank or other fees charged and will reimburse Illumina for any such fees.

6.3 **Audit.** During the Term, Customer shall, every twelve (12) months, permit Illumina and its representatives and agents to conduct an annual audit of Customer’s relevant records and computer systems in order to verify Customer’s compliance with the Terms & Conditions. Such audits shall be conducted during Customer’s normal working hours with reasonable advance notice at Customer’s place of business and where the Software licensed to Customer is, or was, located. Illumina shall pay for the cost of the audit unless Illumina reasonably determines from the audit that Customer has materially breached the Terms & Conditions, in which case Customer shall pay the cost of the audit and all additional amounts owed to Illumina as determined by the audit. For greater certainty, a material breach of the Terms & Conditions for purposes of this Section 6.3 includes, but is not limited to: (a) Customer’s use of more than the authorized number of operating copies of the Software; or (b) Customer exceeding (by ten percent or more) the authorized maximum number of named users for the Software.

## **SECTION 7 REPRESENTATIONS & WARRANTIES.**

7.1 **Software Warranty.** Illumina warrants that the Software shall perform in all material respects in accordance with the Software Specifications.



7.2 **Warranty Period Remedy.** Illumina warrants that during the Warranty Period, it shall promptly remedy any failure to meet the warranties set out in Section 7.1, and if it is unable to do so within ninety (90) days of the end of the Warranty Period, Customer may return to Illumina, or certify the destruction of, all copies of the Software, following which Illumina shall promptly refund to Customer a pro-rated portion of the Subscription Fees, which pro-ration would be based on the amount of time between when Illumina was unable to remedy the failure through the end of the Warranty Period.

7.3 **Post Warranty Period Remedy.** Illumina warrants that, after the Warranty Period, if the Software fails to meet the warranties set out in Section 7.1, Illumina shall remedy such failure in accordance with Section 4.

7.4 **WARRANTY EXCLUSIONS.** THE WARRANTIES SET OUT IN SECTIONS 7.1 – 7.3 ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE FOREGOING, ILLUMINA DOES NOT WARRANT THAT SOFTWARE SHALL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF SOFTWARE SHALL BE FREE FROM INTERRUPTION OR ERRORS.

7.5 **WARRANTY RESTRICTIONS.** ILLUMINA SHALL HAVE NO OBLIGATION TO REPAIR OR REPLACE SOFTWARE DAMAGED BY ACCIDENT OR OTHER EXTERNAL CAUSE, OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN ILLUMINA.

7.6 **ADDITIONAL REPRESENTATIONS & WARRANTIES.** Each Party represents, warrants, and covenants that it has the right and authority to enter into these Terms & Conditions without violating the terms of any other agreement.

## **SECTION 8 INDEMNIFICATION.**

8.1 **Infringement Indemnification by Illumina.** Subject to these Terms & Conditions, including without limitation the “Exclusions to Illumina’s Indemnification Obligation” provided as Section 8.2 hereinbelow, “Indemnification by Customer” provided as Section 8.3 hereinbelow, and “Conditions to Indemnification Obligations” provided as Section 8.4 below, Illumina shall: (a) defend, indemnify, and hold harmless Customer and Customer’s officers, directors, representatives and employees (each, a “Customer Indemnitee” and collectively “Customer Indemnitees”), against any Claims brought by a third-party alleging Customer’s use of the Software in accordance with these Terms & Conditions constituted infringement of the valid and enforceable Intellectual Property rights of such third-party (an “**Illumina Infringement Claim**”) and (b) Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys’ fees) awarded against such Customer Indemnitee in connection with such Illumina Infringement Claim. The foregoing obligation to indemnify, defend, and hold harmless shall not being applicable for any Claims brought a third-party who is or becomes or was an Affiliate of Customer. If the Software or any part thereof becomes, or in Illumina’s opinion may become, the subject of an Illumina Infringement Claim or other action against Illumina (including its Affiliates) or Customer and/or any other Customer Indemnitee, Illumina has the right, at its option, to (i) procure for Customer the right to continue using such Software, (ii) modify or replace such Software, as applicable, with substantially equivalent non-infringing substitutes, or (iii) cease providing the Software that is or may become the subject of an infringement claim or action and terminate the rights, license, and any other permissions given hereunder with respect thereto, no longer be obligated to provide the Software

hereunder, and refund to Customer the prorated portion of any prepaid, unused fees for such Software. This Section 8.1 states the entire liability of Illumina for any allegation of Customer infringement of third-party Intellectual Property rights, as well as Illumina's entire obligation under these Terms & Conditions to indemnify, defend, and hold harmless any Customer Indemnitee.

**8.2 Exclusions to Illumina Indemnification Obligations.** Illumina shall have no obligation to defend, indemnify, or hold harmless any Customer Indemnitee or pay any Claims, final judgments, or costs whatsoever with respect to any Illumina Infringement Claim to the extent such Illumina Infringement Claim is or arises from any one or more of the following (each, an "**Excluded Claim**" and collectively, "**Excluded Claims**"):

- (a) the use of the Software in any unauthorized manner or for any purpose outside the scope of the rights, license(s), or permissions conferred by Illumina upon Customer with respect to the Software in accordance with these Terms & Conditions;
- (b) the use of the Software in any manner or for any purpose not in accordance with or as described in the Documentation;
- (c) the use of the Software in combination with any other hardware, software, materials, assay-specific protocols, or products and services not supplied by Illumina;
- (d) Illumina's compliance with specifications or instructions for Software furnished to Illumina by Customer or by a third party on behalf of Customer,
- (e) use of the Software in any manner or for any purpose that requires rights to third party Intellectual Property rights to avoid infringing such rights;
- (f) Customer's negligence, fraud, or willful misconduct; or
- (g) Customer's breach of any term of these Terms & Conditions.

**8.3 Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Illumina, its Affiliates, their licensors, and collaborators and development partners that contributed to the development of the Products, and their respective officers, directors, representatives, employees, successors and assigns against any and all Claims including without limitation, those Claims relating to or arising out of personal injury or death or relating to or arising out of infringement of a third-party's Intellectual Property rights, to the extent a Claim results from, relates to, or arises out: (a) any action described in any Excluded Use or any Excluded Claim including, without limitation, any use or breach described therein; (b) Illumina's licensed use of the Customer Data; (c) Customer's failure to obtain and maintain approvals from any relevant authority governing its use of the Software; and/or (d) actions (or inactions) taken by individuals who receive (directly or indirectly) results from Customer's use of the Software.

**8.4 Conditions of Indemnification.** The Parties' indemnification obligations under this Section 8 are subject to the Party seeking indemnification (a) notifying the indemnifying Party promptly in writing of the claim, (b) giving the indemnifying Party exclusive control and authority over the defense of such claim, (c) not admitting infringement of any Intellectual Property right, or any liability with respect to an Subscriber Claim, without prior written consent of the indemnifying Party, (d) not entering into any settlement or compromise of any such action without the indemnifying Party's prior written consent, and (e) providing all reasonable assistance to the indemnifying Party that the indemnifying Party requests (provided that indemnifying Party reimburses the indemnified Party for its reasonable out-of-pocket expenses incurred in providing such assistance).

## **SECTION 9 CONFIDENTIALITY.**

Subject to the terms of any confidentiality agreement between Illumina and Customer and except to the extent required by securities or other applicable law, each Party (the “**Receiving Party**”) shall consider all information furnished by the other Party (the “**Disclosing Party**”) that is not publicly available (“**Confidential Information**”), including (without limitation) any commercial information, transaction terms, financial terms (such as pricing), instructions, drawings, specifications, and/or other documentation provided by the Disclosing Party to the Receiving Party, to be confidential and the Receiving Party shall not disclose any such Confidential Information to any other person or entity unless the Receiving Party first obtains the Disclosing Party’s written consent. The restrictions on the disclosure of Confidential Information shall not apply to the extent Receiving Party is able to evidence that the information: (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of any act or omission by the Receiving Party or any of its representatives; (ii) at the time of disclosure is, or thereafter becomes, available to the Receiving Party on a non-confidential basis from a third-party source Receiving Party reasonably believes was not prohibited from disclosing such Confidential Information; (iii) was known by, or was in the possession of, the Receiving Party prior to disclosure by the Disclosing Party; or (iv) was or is independently developed by the Receiving Party without reference to, or use of, in whole or in part, any of the Disclosing Party’s Confidential Information. Notwithstanding anything to the contrary herein, Receiving Party may disclose the Confidential Information to the extent required (as evidenced by the advice of Receiving Party’s counsel) by court order, operation of law, or government regulation; provided, however, to the extent reasonably practical Receiving Party shall promptly notify Disclosing Party of the requirement to disclose the Confidential Information so that Disclosing Party may have an opportunity to limit the release and disclosure of the Confidential Information by means of a protective order or otherwise.

## **SECTION 10 LIMITATIONS OF LIABILITY.**

NEITHER PARTY NOR ITS AFFILIATES NOR THEIR RESPECTIVE VENDORS AND LICENSORS WILL HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR ANY TYPE OF INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THESE TERMS & CONDITIONS AND/OR THE QUOTE, INCLUDING USE OF, OR INABILITY TO USE, THE SOFTWARE, THE SUBSCRIPTION SERVICES, AND/OR ADDITIONAL SERVICES. EXCEPT WITH REGARDS TO ILLUMINA’S OBLIGATIONS UNDER SECTION 8, THE TOTAL LIABILITY OF ILLUMINA AND AFFILIATES AND THEIR RESPECTIVE VENDORS AND LICENSORS TO SUBSCRIBER OR ANY THIRD PARTY ARISING OUT OF THESE TERMS & CONDITIONS, USE OF THE SOFTWARE, THE SUBSCRIPTION SERVICES, AND/OR ADDITIONAL SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE) WILL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

## **SECTION 11 TERMINATION.**

11.1 **Termination Definitions.** In this Section 11:

“**Default**” means any of the following:

- (a) a Party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the Party and is not dismissed within thirty (30) days following commencement;
- (b) a Party is in Material Breach and does not remedy the Material Breach within thirty (30) days of receipt of a notice from the other Party specifying the Material Breach; and

“**Material Breach**” means a material breach of this Agreement, which would include, without limitation:

- (a) Customer failing to pay any amount not in dispute when due;
- (b) A Party breaching, or having breached, Section 9; or
- (c) Illumina failing to provide Maintenance & Support.

11.2 **Term.** Unless otherwise terminated pursuant to these Terms & Conditions, these Terms & Conditions shall remain in effect throughout the Term. In the event Customer submits a Purchase Order for the Software or any Additional Services following any termination or expiration of these Terms & Conditions, these Terms & Conditions shall be automatically reinstated and shall govern any such Purchase Order that is accepted by Illumina.

11.3 **Termination for Default.** If there is a Default, then the Party not in Default may immediately terminate these Terms & Conditions and the agreement between the Parties for the Subscription Services on written notice to the Party in Default, in which case: (a) the Party not in Default may claim any remedies which it may have at law or in equity; and (b) the Party in Default shall pay all reasonable attorney’s fees and disbursements incurred by the Party not in Default as a result of the termination. To the extent there is a Default, if the defaulting Party cures such Default before the other Party exercises its termination rights pursuant to this Section 11.3, then, absent a subsequent Default, the non-defaulting Party shall not be entitled to terminate pursuant to this Section 11.3.

11.4 **Effect of Termination.** In the event of termination pursuant to Section 11.3 above, Customer shall be liable to pay Illumina only for the Subscription Services and Additional Services provided and the installation, integration and training completed as of the date of termination.

11.5 **Non-exclusive Remedy.** The right of either Party to terminate is not an exclusive remedy, and each Party shall be entitled, alternatively or cumulatively, to damages for breach of the agreement between the Parties for the Subscription Services, to an order requiring performance of the obligations of the other Party, or to any other remedy available under the laws of any applicable jurisdiction.

11.5 **Termination or Expiration.** On the earlier of termination pursuant to Section 11.3 above or expiration of the Term, all definitions, purchase commitments under open Purchase Orders, payment obligations and those provisions of these Terms & Conditions that expressly or by their nature contemplate performance or observance after termination or expiration of the Term shall survive such termination or expiration. For purposes of clarity, termination, or expiration of the Term, alone shall not relieve the Parties of any liability or obligation that accrued hereunder prior to the effective date of such termination or expiration.

11.6 **Return of Software.** Upon termination of these Terms & Conditions and the agreement between the Parties for the Subscription Services or expiration of the Term, Customer and its employees, officers, agents, and representatives shall immediately cease using and/or accessing the Software in any manner whatsoever, to and shall certify in writing to Illumina that Customer has done so.

**SECTION 12 MISCELLANEOUS.**

12.1 **Complete Agreement.** The entire agreement between Illumina and Customer for the provision of the Software, the installation, integration and training, and the Subscription Services comprises the following documents, in descending order of precedence: (a) any fully executed written amendment to these Terms & Conditions; (b) these Terms & Conditions; and (c) the Quote. The foregoing documents supersede and merge all prior representations, proposals, understanding and all other agreements, oral or written, express or implied, between the Parties relating to the subject matter hereof. Neither the Terms & Conditions nor the Quote may be modified or altered except by written instrument duly executed by both parties. The parties acknowledge that the Terms & Conditions are intended to supersede and replace any pre-printed terms which may be included on any other commercial documentation exchanged between them including, without limitation, purchase orders, order acknowledgements and invoices.

12.2 **Assistance in Recordation.** Customer shall, at Illumina's expense, provide reasonable commercial assistance, including the execution of documents, as is necessary for Illumina to evidence its sole Intellectual Property in and to the Documentation and the Software, excluding any licensed third-party software incorporated in Illumina's proprietary software.

12.3 **Force Majeure.** Neither Party shall be in breach of these terms and conditions nor liable for any failure to perform, impairment in performance, or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, pandemic, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, or shortage of energy, raw materials or equipment (each a "**Force Majeure Event**"). In the event of any Force Majeure Event, the delivery date for performance shall be deferred for a period equal to the time lost by reason of the delay. Notwithstanding anything in these terms and conditions to the contrary, Customer's payment obligations are not affected by this provision except to the extent the Force Majeure Event affects financial institutions and, as a result, the financial institutions cannot complete the transaction necessary for Customer to satisfy its payment obligations.

12.4 **Relationship.** The Parties are independent contractors under these Terms & Conditions and nothing contained in these Terms & Conditions between the Parties shall make or be construed to make Illumina and Customer partners or agents of each other or to create any other relationship by which the acts of any party may bind the others or result in any liability to the other.

12.5 **Notices.** Any notice, request, payment or communication (collectively, any "**Notice**") by either Illumina or Customer to the other shall be made in writing and delivered personally or by confirmed receipt email, registered mail, first-class postage fees prepaid, return receipt requested, to the addresses first set out above, or at such other address as either party may designate from time to time. Any Notice shall be deemed to have been received at the time it is personally delivered, or at the time it is received by or email, or on the 5th business day following the date on which it is dispatched by registered mail.

12.6 **Arbitration.** In Illumina's sole discretion, any dispute, claim or controversy arising out of or relating to these Terms & Conditions and Quote shall be resolved by confidential binding arbitration conducted in the English language, under generally accepted arbitration rules and procedures in a venue to be determined by Illumina. Neither party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless required by law; the decision of the arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of these Terms & Conditions and the Quote; and

judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

**12.7 Governing Law; Jurisdiction.** These terms and conditions, their interpretation, and the performance of the parties shall be governed by the laws of (i) the State of California, U.S.A., if Customer is located in the United States or (ii) the laws of the country where Illumina is located, if Customer is not located in the United States. Illumina and Customer agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions. In Illumina's sole discretion, any dispute, claim or controversy arising out of or relating to these terms and conditions, shall be determined by confidential binding arbitration conducted in the English language, under generally accepted arbitration rules and procedures in a venue to be determined by Illumina. In all cases of arbitration each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrator's fees of arbitration; neither party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless required by law; the decision of the arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of these terms and conditions; judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

**12.8 Severability; Non-Waiver.** If any provision of the agreement between the Parties shall be held to be invalid, illegal or otherwise unenforceable, it shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of these Terms & Conditions will continue in full force and effect. The failure or delay of either Party to exercise any right or remedy (or part thereof) provided herein or to require any performance of any term of these Terms & Conditions shall not be construed as a waiver of such term.

**12.9 Government End-Users.** The Software is commercial computer software. If Customer is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, and transfer of the Software shall be governed by the Terms & Conditions in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. Illumina asserts that it has developed the Software solely at private expense. All other use is prohibited.

**12.10 Export Compliance.** The Software, any related technology, or information provided to Customer may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder (or the export regulations and laws of another country). Notwithstanding anything to the contrary in these Terms & Conditions, Customer agrees not to use the Software in, or export or re-export the Software, any related technology or information provided to Purchaser into, any country or to any person or entity, or in any manner, in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

**12.11 Assignment.** Customer shall neither assign nor transfer these Terms & Conditions, or any rights or obligations herein, without the prior written consent of Illumina. Illumina may, upon written notice to Customer, assign: (a) its right to payment from Customer to a third party and (b) these Terms & Conditions and any associated Quote to a purchaser of all, or substantially all, of Illumina's assets.

(End of Terms & Conditions)