

**Terms and Conditions of Sale--EUA Products (US only)**

**1. Definitions.**

“**Collection Territory**” means the country or countries from which samples and specimens may be collected for testing by Purchaser. The Collection Territory is the United States. “**Documentation**” means Seller’s user manual, package insert, and similar technical documentation, for the EUA Product in effect on the date that the EUA Product ships from Seller or the Program is made available, as applicable. Documentation may be provided with the EUA Products at time of shipment or provided electronically from Seller. “**Emergency Use Authorization**” means, solely with respect to the Workflow, an authorization obtained by Seller, and provided under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act). “**Excluded Uses**” means any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) is a use of a Product as or as a component of, an in vitro diagnostic device (provided, however, performance of the Workflow as permitted under the applicable Emergency Use Authorization shall not be deemed to be use of the relevant EUA Products as, or as a component of, an in vitro diagnostic device for the purposes of these terms and conditions); (c) requires grants of rights or a license to Illumina Intellectual Property Rights (other than the Workflow IP), (c) is a re-use of a previously used Product except to the extent the Workflow expressly states otherwise, (d) is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Product, (e) is the separation, extraction, or isolation of components of Products or other unauthorized analysis of Products, (f) gains access to or determines the methods of operation of the Product, (g) is the use of Products with third party components or hardware (unless the Workflow expressly states otherwise), (h) is the transfer to a third-party of, or sub-licensing of, the Program, Software, or third-party software (including to an Affiliate of Purchaser), (i) is the use of the Products outside of the Facility, (j) is not covered by the PREP Act, 42 U.S.C. §§ 247d-6d, and the Secretary of the Department of Health and Human Services’ COVID-19 PREP Act Declaration, 85 FR 15198 (March 17, 2020), in the event the Secretary of the Department of Health and Human Services (Secretary) (HHS) issues any PREP Act Declaration with respect to the EUA Products, or (k) is a use of the Product (or information generated from the use of the Product) that is either prohibited by applicable law or regulation, or contrary to ethical guidelines promulgated by established national and international ethical bodies. “**EUA Product(s)**” means the Illumina® COVIDSeq™ Test (3072 Samples) bearing the Illumina catalogue number 20043127, including the Program. “**Facility**” and “**Facilities**” means one or more facilities located in the United States and owned by, leased by, or otherwise under the contractual control of Purchaser. “**Hardware**” means Seller branded NovaSeq instruments, accessories, or peripherals purchased from Seller separately from these terms and conditions. “**Illumina Intellectual Property Rights**” means any and all Intellectual Property Rights owned or controlled (including under license) by Illumina or its wholly-owned affiliates as of the date the Product ships. “**Intellectual Property Rights**” means all rights in patent, copyrights (including rights in computer software), trade secrets, know-how, trademark, service mark and trade dress rights and other industrial or intellectual property rights under the laws of any jurisdiction, whether registered or not and including all applications or rights to apply therefor and registrations thereto. “**Purchaser**” means the person or entity acquiring the Product with the intent to use such Product. “**Seller**” means the entity selling the Product, or providing a license to the Program. The Seller is identified on the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller’s website. “**Permitted Use**” means performance of the Workflow by Purchaser for (i) testing of human samples and specimens, in accordance with the applicable Emergency Use Authorization, collected from the Collection Territory only, for SARS-CoV-2, in Purchaser’s own laboratory Facility, regulated under the Clinical Laboratory Improvement Amendments (i.e., CLIA), or (ii) internal research directly related to SARS-CoV-2 (which includes performance of research services provided to third parties), wherein both (i) and (ii) do not include any Excluded Use. “**Products**” means Sequencing Consumables, EUA Products, and Server. “**Program**” means the Illumina® COVIDSeq™ Test software, provided on a Server, bearing the Illumina catalogue number 20040619, including any Seller-provided upgrades or modifications. “**Regulatory Approvals**” means any and all regulatory approvals, licenses, and/or certifications necessary for Purchaser to use the Products as intended by Purchaser for Permitted Use. “**Specifications**” means Seller’s written technical specifications for Product in effect on the date that the Product ships from Seller. “**Sequencing Consumables**” means Seller-branded reagents and consumable items identified in the Workflow, excluding the EUA Product. “**Server**” means the DRAGEN server v3 bearing the Illumina catalogue number 20040619. “**Software**” means Seller branded software made available on the Hardware (e.g., Hardware operating software and related installers). “**Workflow**” means the workflow as specifically described in any version-controlled written protocols, standard operating procedures, instructions, instructions for use, and/or similar documents Seller provides to Purchaser with respect to performance of the EUA Product.

**2. Rights to Products upon Purchase.**

Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, personal, right under Illumina Intellectual Property Rights to use (i) EUA Products with Sequencing Consumables, Hardware, and Software, only for the Permitted Use, only in Purchaser’s Facility, only on specimens collected from the Collection Territory, and , (ii) Sequencing Consumable with EUA Products, Hardware, and Software only for the Permitted Use, only in Purchaser’s Facility, only on specimens collected from the Collection Territory. Additionally, subject to these terms and conditions, and including the terms and conditions attached as Exhibit A (“**Program Terms**”), Purchaser’s payment for the Program confers upon Purchaser the non-exclusive, non-transferable, non-sublicensable right, under Workflow IP, to use the Program solely for a Permitted Use to analyze data generated by the EUA Product, Sequencing Consumables, Hardware, and Software in Purchaser’s Facility in the Territory. The Program is licensed (not sold) to Purchaser. With respect to the Program, references to (i) “purchase” or “sale” of the Program (and similar grammatical variations) are understood to mean that the Program is licensed and not sold, and (ii) “shipment” of the Program (and similar grammatical variations) is understood to mean an instance of Purchaser’s use of the Program

**Purchaser is solely responsible for determining whether Purchaser has all intellectual property rights that are necessary for Purchaser’s intended uses of the Product.**

**3. Product Restrictions.**

The conditions and restrictions found in these terms and conditions are bargained for conditions of sale and therefore control the sale of and use of the EUA Products by Purchaser.

- a. **Unauthorized Uses of Products.** EUA Products and Sequencing Consumables have only been validated for use together in accordance with the Workflow, and with Hardware and Software. Accordingly, and subject to applicable laws and regulations, Purchaser agrees to use (i) EUA Products only with Sequencing Consumables, Hardware, and Software together in accordance with the Workflow, and not to, nor authorize any third party to, use the EUA Products as described in any Excluded Uses; (ii) Sequencing Consumables only with EUA Products, Hardware, and Software, together in accordance with the Workflow (iii) each unit of EUA Product (excluding the Program) and Sequencing Consumable only one time. Further, Purchaser agrees not to, nor authorize any third party to (i) disassemble, reverse engineer, reverse compile, or reverse assemble the Products, (ii) separate, extract, or isolate components of the Product or engage in other unauthorized analysis of the Products, and (iii) gain access to or determine the methods of operation of the Products.

**4. Emergency Use Authorization.**

The Workflow and Products are provided for use under an Emergency Use Authorization only. Purchaser acknowledges that other than with respect to the Emergency Use Authorization applicable solely to the Workflow, no Products have been subjected to any conformity assessment or other regulatory review or certified, approved or cleared by any regulatory entity or conformity assessment body, whether foreign or domestic (including without limitation the United States Food and Drug Administration), or otherwise reviewed, cleared or approved under any law for any purpose, whether research, whether commercial, diagnostic or otherwise. Seller intends that its products be used only in a lawful and ethical manner. Purchaser agrees to comply with all applicable laws, regulations, and ethical guidelines promulgated by established national and international ethical bodies when using, maintaining, and disposing of the Products and the information generated from the use of the Products. Purchaser, and not Seller, is responsible for obtaining any and all Regulatory Approvals; provided however, Purchaser shall not be responsible for obtaining Emergency Use Authorization(s). Purchaser agrees to immediately disclose to Seller copies of all communications that it receives from or provides to a government body, agency, or other regulatory or accrediting body pertaining to the Products or Purchaser's use of the Products.

**5. Limited Liability.**

**TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE PRODUCTS, USE OF THE PRODUCTS, SELLER'S PERFORMANCE OF ANY OF THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE).**

**TO THE EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE FOR, AND PURCHASER SHALL ASSUME ALL RISKS AND LIABILITIES FOR, ANY CLAIMS OR LOSSES ARISING FROM ANY MISDIAGNOSIS OR PROGNOSIS, MISSED DIAGNOSIS OR PROGNOSIS, PERSONAL INJURY OR DEATH, OR OTHER MEDICAL TREATMENTS OR DECISIONS ASSOCIATED WITH THE USE OF THE PRODUCTS UNDER THESE TERMS AND CONDITIONS.**

**TO THE EXTENT PERMITTED BY LAW, SELLER'S TOTAL AND CUMULATIVE LIABILITY TO PURCHASER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE PRODUCT (INCLUDING USE THEREOF) AND SELLER'S PERFORMANCE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO SELLER FOR THE PARTICULAR PRODUCT CONTAINED IN THE PARTICULAR ORDER THAT DIRECTLY CAUSED THE LIABILITY.**

**6. Limitations on Warranties.**

**TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO CLAIM, REPRESENTATION, OR WARRANTY OF ANY KIND AS TO THE UTILITY OF THE PRODUCT FOR PURCHASER'S INTENDED USES.**

**7. Product Warranty.**

All warranties are personal to the Purchaser and may not be transferred or assigned to a third-party, including an affiliate of Purchaser. All warranties are facility specific and do not transfer if the Product is moved to another facility of Purchaser, unless Seller conducts such move. The warranties described in these terms and conditions exclude any stand-alone third party goods that may be acquired or used with the Products.

- a. **Warranty for Product.** Seller warrants that the Products, excluding the Program, will conform to its Specifications until the later of (i) 3 months from the date of shipment from Seller, or (ii) any expiration date or the end of the shelf-life pre-printed on such Products by Seller, but in either event, no later than 12 months from the date of shipment.
- b. **Warranty for Program.** The warranty for the Program is set forth in the Program Terms.

- c. **Exclusions from Warranty Coverage.** The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation, Specifications, (ii) use that is an Excluded Use or otherwise not in accordance with these terms and conditions, including without limitation the Permitted Use, (iii) improper handling, installation, maintenance, or repair (other than if performed by Seller's personnel), (iv) unauthorized alterations, (v) Force Majeure events, or (vi) use with a third party's good (unless the Product's Documentation or Specifications expressly state such third party's good is for use with the Product).
  - d. **Procedure for Warranty Coverage.** In order to be eligible for repair or replacement under this warranty Purchaser must (i) promptly contact Seller's support department to report the non-conformance, (ii) cooperate with Seller in confirming or diagnosing the non-conformance, and (iii) return the Product, transportation charges prepaid to Seller following Seller's instructions or, if agreed by Seller and Purchaser, grant Seller's authorized repair personnel access to the Product in order to confirm the non-conformance and make repairs.
  - e. **Sole Remedy under Warranty.** Seller will, at its option, repair or replace non-conforming Product that is covered by this warranty, provided that Seller can reasonably identify and confirm such nonconformance. The warranty period for repaired or replaced Products is 90 days from the date of shipment, or the remaining period on the original warranty, whichever is later. The preceding states Purchaser's sole remedy and Seller's sole obligations under the warranty provided.
- 8. Indemnification.**
- a. **Indemnification by Seller.** Subject to these terms and conditions, including without limitation, the Exclusions to Seller's Indemnification Obligations (Section 8(a) below), the Conditions to Indemnification Obligations (Section 8(c) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that the Product, when used for a Permitted Use strictly in accordance with these terms and conditions, Documentation, and each step of the Workflow, infringes the valid and enforceable intellectual property rights of a third party, and (ii) pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against Purchaser in connection with such claim. If the Product or any part thereof, becomes, or in Seller's opinion may become, the subject of an infringement claim, Seller shall have the right, at its option, to (A) procure for Purchaser the right to continue using the Product, (B) modify or replace the Product with a substantially equivalent non-infringing substitute, or (C) require the return of the Product and terminate the rights, license, and any other permissions provided to Purchaser with respect to the Product and refund to Purchaser the depreciated value (as shown in Purchaser's official records) of the returned Product at the time of such return; provided that, no refund will be given for used-up or expired Products. This Section states the entire liability of Seller for any infringement of third party intellectual property rights, as well as Seller's entire obligation under these terms and conditions to indemnify, defend and hold harmless Purchaser and its officers, directors, representatives, and employees.
  - b. **Exclusions to Seller Indemnification Obligations.** For the avoidance of doubt, Seller has no obligation to defend, indemnify or hold harmless Purchaser for any claim to the extent such claim or action arises from: (i) use of the Product for any Excluded Use, (ii) use of the Product in any manner not in accordance with its Specifications, its Documentation, or the rights expressly granted to Purchaser and restrictions imposed on Purchaser under these terms and conditions, including without limitation, any use of the Product for any purpose other than the Permitted Use, (iii) use of the Product in combination with any third party products, materials, or services (unless the Product's Documentation or Specifications expressly state that such third party's good is for use with the Product), (iv) use of the Product to perform any assay or other process not supplied by Seller, (v) Seller's compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, (vi) Purchaser's breach of any of these terms and conditions, or (vii) use of stand-alone third party goods that may be acquired or used with the Products (each of (i) – (vii), is referred to as an "**Excluded Claim**"). Notwithstanding anything in these terms and conditions to the contrary, in the event the Secretary of the Department of Health and Human Services (Secretary) (HHS) issues any PREP Act Declaration with respect to the EUA Products, Seller shall have no obligation to indemnify, defend or hold harmless Purchaser or its officers, directors, representatives and employees for any claim or action that is subject to the PREP Act, 42 U.S.C. §§ 247d-6d.
  - c. **Indemnification by Purchaser.** Purchaser shall defend, indemnify and hold harmless Seller, its affiliates, their non-affiliate collaborators and development partners that contributed to the development of the Product, and their respective officers, directors, representatives and employees against any claims, liabilities, damages, fines, penalties, causes of action, and losses of any and every kind (including reasonable attorneys' fees), including without limitation, infringement of a third party's intellectual property rights, resulting from, relating to, or arising out of any Excluded Claim, personal injury or death claims, and Purchaser's marketing, sale, and/or provision of services using the Products, including without limitation, actions (or inactions) taken by individuals who receive (directly or indirectly) results from Purchaser's use of Products, or harm from misdiagnosis, missed diagnoses and actions or inactions taken as a result of information provided (directly or indirectly) by Purchaser to patients, physicians, or other entities.
  - d. **Conditions to Indemnification Obligations.** The parties' indemnification obligations are conditioned upon the party seeking indemnification (i) promptly notifying the other party in writing of such claim or action, (ii) giving the other party exclusive control and authority over the defense and settlement of such claim or action, (iii) not admitting infringement of any intellectual property right without prior written consent of the other party, (iv) not entering into any settlement or compromise of any such claim or action without the other party's prior written consent, (v) not making any admission as to liability or fault that would adversely affect the indemnified party, and (vi) providing reasonable assistance to the other party in the defense of the claim or action; provided that, the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

9. **Payment Terms.** Seller will invoice upon shipment. Subject to Seller's credit review of Purchaser (following which Seller shall inform Purchaser of applicable payment terms), all payments are due within 30 days of the date of the invoice except that payments in Japan are due within 60 days of the date of the invoice. All amounts due shall be paid in the currency found on the invoice. If payment is made by wire or other electronic funds transfer, Purchaser is solely responsible for any bank or other fees charged, and will reimburse Seller for any such fees. If any payment is not made by the due date Seller may exercise all rights and remedies available by law. Purchaser shall pay for all costs (including reasonable attorneys' fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser has no right of set-off against other purchase orders or other transactions with Seller. Seller will determine payment terms on a per-order basis and may modify credit terms in its discretion. Any amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum amount allowed by law, if lower.
10. **Shipping Terms; Title and Risk of Loss.**  
 Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all shipments are made DAP (Incoterms 2010) at the address designated by Purchaser at the time of ordering and Purchaser is responsible for freight and insurance which will be added to the invoice and paid by Purchaser, except that all shipments to member countries of the E.U. are made DDP (Incoterms 2010) at the address designated by Purchaser at the time of ordering. In all cases, title (except for the Program and third-party software) and risk of loss transfers to Purchaser when Product is made available at such address.
11. **Taxes.**  
 Purchaser agrees that any applicable sales, use, excise, VAT (value added tax), GST (goods and services tax), withholding and other taxes will be calculated based on both the tax rates in effect on the date of shipment and the ship to address for the Product. Any amounts for tax listed on a quotation, if any, are for reference purposes only and are not binding on Seller. All prices and other amounts payable to Seller are exclusive of and are payable without deduction for any taxes, customs duties, tariffs or charges hereafter claimed or imposed by any governmental authority upon the sale of Product, all of which will be paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Purchaser. For Purchasers in New Zealand, Seller and Purchaser agree that subsection 8(4) Goods and Services Tax Act 1985, as may be amended, does not apply to the Products.
12. **General.**
- a. **Applicability of Terms and Conditions.** These terms and conditions exclusively govern the ordering, purchase, supply, and use of Product, and override any conflicting, amending and/or additional terms contained in any purchase orders, invoices, or similar documents all of which are hereby rejected and are null and void. Seller's failure to object to any such terms shall not constitute a waiver by Seller, nor constitute acceptance by Seller of such terms and conditions. Third party products may be subject to additional terms and conditions.
  - b. **Legal Compliance.** Nothing in these terms and conditions is intended, or should be interpreted, to prevent either party from complying with, or to require a party to violate, applicable laws. In the event that either party is notified by a regulatory agency or government body, including without limitation the FDA or any foreign equivalent, or has a reasonable basis to believe, that a party's performance under these terms and conditions is illegal or violates any law, then such party shall promptly inform the other party, and Seller has the right to cease supplying the affected Product immediately.
  - c. **Order Changes/Cancellations.** Orders for Products or the Program may not be changed or cancelled once placed.
  - d. **Governing Law.** 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 Purchaser is the United States; (ii) the laws of the country where the Seller entity is located, if Purchaser is not located in the United States. Seller and Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions, including any terms in the Documentation.
  - e. **Arbitration.** In Seller'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 Seller. 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.
  - f. **Representations and Warranties.** Purchaser is not an authorized dealer, representative, reseller, or distributor of any of Seller's, or its affiliates', products or services. Purchaser represents and warrants that it (i) is not purchasing the Product on behalf of a third party, (ii) is not purchasing the Product in order to resell or distribute the Product to a third party, (iii) is not purchasing the Product in order to export the Product from the country in which Seller shipped the Product pursuant to the ship-to address designated by Purchaser at the time of ordering ("**Ship-to Country**"), and (iv) will not export the Product out of the Ship-To Country.
  - g. **Remedies for Breach.** In addition to any remedies specified elsewhere under these terms and conditions, and any remedies available to Seller under law or in equity, in the event Purchaser breaches these terms and conditions, Seller may do any, all, or any combination of the following: (i) cease performance, including without limitation, cease further shipments of Product, (ii) terminate the rights granted to Purchaser pursuant to Section 2 (Rights to Product Upon Purchase), (iii) terminate any service contracts then in effect for affected Product, (iv) terminate any remaining product warranty for the affected Product, and (v) require Purchaser to immediately pay any unpaid invoice.
  - h. **Service Contracts.** If a Seller extended service contract for Hardware is being provided then Seller's standard terms and conditions for such service contract shall exclusively govern such extended service contract.

- i. **Future Products.** Any future products and/or services (“**Unreleased Products**”) are subject to new part numbers, pricing, and specifications and the acquisition of Product hereunder is not in reliance on the availability of any Unreleased Products.
- j. **Seller Affiliates.** Any actions or rights that may be performed or exercised by Seller hereunder may be performed or exercised by Seller itself or by any of its affiliates. By way of non-limiting example, Seller’s affiliates may carry out shipment, servicing, invoicing and receipt of payment.
- k. **Force Majeure.** Seller is not responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, disease outbreak, pandemic (including, without limitation, the COVID-19 pandemic), fire, flood, tornado, earthquake, hurricane, lightning, government actions or controls in connection with a national or other public emergency, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Seller’s suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Purchaser’s fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.
- l. **Notices.** Any notice required or permitted shall be in writing and shall be deemed received when (i) delivered personally; (ii) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) 1 day after deposit with a commercial express courier that provides written verification of receipt.
- m. **Seller Information.** Seller may maintain and use a database of orders and account information pertaining to Purchaser for purposes of order processing, maintaining records, assisting with future orders of Purchaser, and compliance with applicable laws and regulations. Purchaser may not disclose any financial terms of this transaction to any third party without the prior written consent of the Seller, except as (and only to the extent) required by securities or other applicable law. Purchaser grants to Seller a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use and commercialize in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.
- n. **Export Compliance.** The Products, any related technology, or information provided to Purchaser 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 and conditions, Purchaser agrees not to use the Products in, or export or re-export the Products, 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.
- o. **Healthcare Law Compliance.** Purchaser acknowledges and agrees that as a healthcare company, Seller, and Seller’s affiliates, may be required by applicable law and regulation (“**Healthcare Laws**”) to disclose the existence of these terms and conditions, the terms of these terms and conditions including financial terms, and the subject matter (e.g., the U.S. Sunshine Act, and state and foreign equivalents). Seller agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.
- p. **Publicity.** Purchaser agrees that it shall not issue any press release or make any public statement regarding acquisition of the Products, without prior written approval from Seller, which approval shall not be unreasonably withheld or delayed.
- q. **Miscellaneous.** Except as expressly stated in these terms and conditions, no right or license under any of Seller, or Seller’s affiliates, intellectual property rights is or are granted expressly, by implication, or by estoppel. All references to days mean calendar days unless specifically stated otherwise. Seller may cease performance (including cancellation of any order outstanding) immediately without liability to Purchaser if Purchaser becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors. These terms and conditions represent the entire agreement between the parties regarding the subject matter hereof and supersede all prior discussions, communications, agreements, and understandings of any kind between the parties. No amendment to these terms or waiver of any right, condition, or breach will be effective unless made in a writing signed by both parties. If any provision is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remaining terms will continue in full force and effect. The failure of either party to exercise any right granted herein or to require any performance of any term or the waiver by either party of any breach shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term. Nothing herein shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. There are no third party beneficiaries to these terms and conditions.

**EXHIBIT A****Program End User License Agreement****DRAGEN TERMS OF SERVICE**

THE TERM "ILLUMINA SEQUENCING INSTRUMENT" MEANS AN ILLUMINA INSTRUMENT THAT PERFORMS NUCLEIC ACID SEQUENCING. THE TERM "YOU" AND "YOUR" REFERS TO PURCHASER. "SERVICE" MEANS ALL DRAGEN-LABELLED COMPUTER PROGRAMS, SOFTWARE, FIRMWARE, AND ASSOCIATED MEDIA, PRINTED MATERIALS AND ONLINE AND ELECTRONIC DOCUMENTATION, INCLUDING ANY UPDATES OR UPGRADES THEREOF. ANY TERMS NOT DEFINED HEREIN SHALL HAVE THE MEANING SET FORTH IN THE TERMS AND CONDITIONS.

1. **GRANT OF LICENSE.** Subject to the terms and conditions in this Program End User License Agreement ("**Agreement**") and Your payment of all applicable fees, Illumina grants You a personal, revocable, non-exclusive, non-transferable, non-sublicensable, limited license to (i) access and use the Service as provided herein solely to upload, analyze, and create reports regarding sequencing data generated from Your Illumina Sequencing Instrument, or in the event the Service software is provided to You as a downloaded executable copy, to use such Service software in executable object code form only, solely at Your facility, to install and use the Service software on a single DRAGEN Bio-IT server accessible only by You (and not on any public network or server), where the DRAGEN Bio-IT server is owned, leased, or otherwise substantially controlled by You; and (ii) use the reports and analysis generated through the Service ("**Results**") solely for Permitted Use. For the avoidance of doubt, You have no rights to download or modify the Service or any information, component or data therein. You understand that Illumina may update the Service at any time but in doing so, incurs no obligation to furnish such updates to You pursuant to these terms. Notwithstanding anything to the contrary herein, all rights not specifically granted in the licenses set forth above shall be reserved and remain always with Illumina. You may not use the Service for any purpose except in accordance with analyzing data obtained from the COVIDSeq assay, using the COVIDSeq analysis package purchased or otherwise obtained by You, and not with any other hardware, software, or other packages or subscriptions for performing secondary analysis.

2. **USE OF DATA/ FEEDBACK.** You hereby grant to Illumina and its affiliates a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use the Data to (i) provide analysis and reporting to You through the Service; (ii) collect and retain non-personally identifiable data for purposes of Illumina's and third-party researchers' COVID-19 and other infectious disease research and other scientific research in accordance with applicable laws; and (iii) collect and retain non-personally identifiable statistical data for use by Illumina for its commercial purposes. "**Data**" includes all information, files, or data uploaded to, provided to, stored on, created within, created as a result of use of the Service, including without limitation, any genomic information generated by sequencing instruments and further analysis or processing conducted on such information. Notwithstanding anything in this Agreement to the contrary, You agree that Illumina may use the Data in connection with the Service, including without limitation, providing services through the Service as well as in the ways described in the Illumina Privacy Policy, available at <https://www.illumina.com/company/legal/privacy.html>. You hereby additionally grant to Illumina and its affiliates a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use in any manner suggestions, ideas, or comments provided by You related to the Service, or any part or use thereof.

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5. **EMERGENCY USE AUTHORIZATION USE ONLY.** The Service is authorized for use under an Emergency Use Authorization from the Food and Drug Administration for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of COVID-19. You acknowledge that (i) the Service has not been approved, cleared, or licensed by the United States Food and Drug Administration or any other regulatory entity whether foreign or domestic for any specific intended use except for the applicable emergency use authorization, whether research, commercial, diagnostic, or otherwise, and (ii) you must ensure you have any regulatory approvals that are necessary for your intended uses of the Service. Illumina intends that its products be used only in a lawful and ethical manner. You agree to comply with all applicable laws, regulations, and ethical guidelines promulgated by established national and international ethical bodies when using and maintaining the Service and the information generated from the use of the Service.

6. **DEIDENTIFIED INFORMATION ONLY; NOT FOR PATIENT CARE.** When uploading, transmitting, or modifying Data that contains information of a person, including without limitation, Data consisting of genomic information (whether whole genome sequences or portions), You agree that You will not, in connection with or through the Service, provide any personally identifying information or personal information or personal data as defined by applicable law (e.g. HIPAA, EU Data Protection Directive (officially known as Directive 96/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data), Personal Data Protection Act 2012 (No. 26 of 2012)). For example, You will not provide the name, date of birth, date of treatment, address, social security, government issued identification number, or any other information that could directly or indirectly identify the individual from whom any genomic or other information was derived. You acknowledge and agree that the Service is not intended by Illumina, and has not been designed by Illumina, to be used for patient care purposes, including without limitation, use in diagnosing or treating patients. You assume the sole risk and liability for using the Service for any purpose other than Your Research Use. You represent and warrant that (i) you have all rights, authorizations, and consents necessary and sufficient to provide the Data and grant the rights and licenses to Illumina to use and sub-license the Data for the purposes described in these terms and conditions, and (ii) your provision of Data through the Services for such purposes complies with all applicable laws, rules, and regulations, industry standards, and any informed consent documentation presented to individuals. To the maximum extent permitted by law, You agree to defend,

indemnify and hold harmless Illumina, its affiliates, and their respective directors, officers, employees, and agents from and against any and all claims, actions, suits or proceedings brought by a third party, and pay all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to Your use of the Service for any purpose other than the conduct of research.

7. **LIMITATIONS.** You agree that You will use the Service solely with genomic data that is generated using an Illumina Sequencing Instrument.

8. **ACCESS TO SERVICE.** You are solely responsible for obtaining, installing and maintaining Your own internal equipment and communications services necessary to access and use the Service. You shall be solely responsible for any telephone charges, Internet access fees, and other such similar fees and expenses incurred by You through the access to and use of the Service. Illumina makes no guarantee that the Service will be available to You at any given time, and reserves the right to add to, modify, reduce the scope of features, and/or discontinue the Service at any time.

9. **FEES AND PAYMENT; MONITORING**

a. Any fees payable by You to Illumina for access to the Service will be payable within 30 days of invoice or receipt of a quotation from Illumina. If You do not pay all applicable fees within 30 days of invoice, your access to the Service may be suspended in Illumina's sole discretion. If You do not pay all applicable fees within 90 days of invoice, Your access to the Service may be terminated in Illumina's sole discretion. The total number of interpretations performed by the Service is determined by the level of access purchased or otherwise obtained by You. Additional services and functionality accessed by You through the Service, including without limitation additional storage and computation functionality, may be subject to additional fees, which fees shall be payable to Illumina in accordance with payment terms set forth by Illumina.

10. **DATA INTEGRITY/LOSS.** You are responsible for the integrity and availability, including preventing the loss of Data, including without limitation, investigating and implementing industry appropriate policies and procedures regarding the provision of access to Data, monitoring access and use of Data, conducting routine backups and archiving of Data, and ensuring the adequacy of anti-virus software. Accordingly, You agree that Illumina is not responsible for any inability to access, loss or corruption of Data as a result of Your use of the Service or the Illumina Sequencing Instrument, and Illumina has no liability to You in connection with such inability to access, loss, or corruption of Data. While Illumina uses industry standard security, no system can perfectly guard against risks of intentional or inadvertent disclosure of information. When using the Service, information will be transmitted over a medium that is beyond the control of Illumina. You expressly assume the sole risk of any unauthorized disclosure or intentional intrusion, or of any delay, failure, loss, interruption or corruption of Data or other information transmitted in connection with the use of the Service.

11. **UNAUTHORIZED USE.** You will take all reasonable precautions and security measures to prevent unauthorized use of the Service or Results, including the use of any encryption keys or encrypted storage, retrieval and transmission as may be available for use with the Service. Accordingly, You agree that Illumina is not responsible for any unauthorized use of the Service or Results and Illumina has no liability to You in connection with any such unauthorized use of the Service or Results. You shall immediately notify Illumina if You become aware of any breach of a security measure relative to the Service or Results, whether imposed by You or Illumina, or any unauthorized access to or use of the Service or Results. If Illumina is so informed or if Illumina otherwise reasonably believes that a breach of a security measure or unauthorized access or use has taken place, Illumina has the right, in its sole discretion, to restrict Your access to the Service until You can establish to Illumina's satisfaction that You have addressed the cause(s) of the security breach or the unauthorized access and use. Notwithstanding anything else to the contrary, Illumina has no duty to take any action upon Your notice under this Section or Illumina becoming aware of a breach of a security measure or unauthorized access or use, and You shall solely be responsible for any such breaches and unauthorized access and use regardless of any act or failure to act by Illumina. You agree to only use the Service in compliance with applicable laws and regulations. You agree that You are authorized to use and transmit Data on or through the Service, including that Your use and transmission of Data on or through the Service complies with all applicable laws and regulations, including without limitation, any data privacy laws and laws protecting intellectual property rights and that You have obtained all necessary permissions (including, without limitation, all consents from human subjects) to use and transmit the Data on or through the Service. You acknowledge that Illumina has no responsibility to monitor or screen the Data for compliance with any law or regulation or for any other purpose. You shall defend, indemnify and hold harmless Illumina, its affiliates, their non-affiliate collaborators and development partners and their respective officers, directors, representatives and employees against any claims, liabilities, damages, fines, penalties, causes of action, and losses of any and every kind, including without limitation, personal injury or death claims, and infringement of a third party's intellectual property rights, resulting from, relating to, or arising out of (i) Your breach of any of the terms and conditions of this Agreement, or (ii) any unauthorized use of the Service.

12. **TERM AND TERMINATION.**

a. The license to the Service will commence up on the Service being made available to You and will continue for the period set forth in the quotation or invoice (the "**Term**"). You agree that if You do not purchase additional use of the Service following the expiration of the Term, Illumina may suspend or terminate the Service upon the expiration of the Term. The Term may be extended for additional periods upon written agreement of you and Illumina and payment of applicable fees.

b. Illumina may terminate the license to the Service (i) at any time upon written notice if You materially breach this Agreement and You fail to cure such material breach within thirty (30) days of Illumina's prior written notice to You detailing the material breach; or (ii) immediately if You becomes insolvent, ceases to do business as a going concern or if a petition has been filed by or against You under any bankruptcy, insolvency or similar law or You make an assignment for the benefit of creditor.

c. Illumina may suspend or terminate Your access to the Services if You materially breach this Agreement or if Your account is used for any malicious, illegal, or harmful purpose.

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a. "**Third Party Content**" means any content within the Services that is either provided by third parties, or made available on third party websites and linked to or otherwise used in connection with the Services. You acknowledge that all of the intellectual property rights in the Third Party Content is owned by the third party who created and/or provided such Third Party Content. You are not authorized under Agreement to use that Third Party Content except as expressly permitted. Any rights you have in the Third Party Content of others must be agreed upon by You and the owner of such Third Party Content.

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c. You acknowledge and agree that, although Illumina may periodically screen, modify, refuse, or remove certain Third Party Content, (i) Illumina is not responsible for any such Third Party Content, (ii) Illumina makes no guarantees about the accuracy, currency, suitability, or quality of the information in such Third Party Content, and (iii) Illumina assumes no responsibility for any unintended, objectionable, inaccurate, misleading, or unlawful Third Party Content made available by other users and third parties.

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e. Third Party Programs. The Product may contain third party software for which Illumina is required to provide attribution (“Third Party Programs”). Some of the Third Party Programs are available under open source or free software licenses. This Agreement does not alter any rights or obligations you may have under those open source or free software licenses. The licenses that govern the terms and conditions of use of the Third Party Programs included in the Service are provided in the READ ME provided with this Service. The READ ME also contains copyright statements for the various open source software components (or portions thereof) that are distributed with the Service.

#### 14. LIMITED WARRANTY

a. Provided that You have paid the fees applicable to your access to the Service, Illumina warrants that the Service will substantially conform to its Specifications during such period that all fees have been paid. The foregoing warranties do not apply to the extent a non-conformance is due to: (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation or Specifications or any other Excluded Use; (ii) improper handling, installation, maintenance, or repair (other than if performed by Illumina personnel); (iii) unauthorized alterations; or (iv) use with a third party’s good not provided by Illumina. In order to be eligible for repair or replacement under this warranty, you must (i) promptly contact Illumina’s support department to report the non-conformance, (ii) cooperate with Illumina in confirming or diagnosing the non-conformance, and (iii) grant Illumina’s authorized repair personnel access to the Service in order to confirm the non-conformance and make repairs. Illumina will, in its sole discretion, repair or replace non-conforming access to the Service that is covered by this warranty, provided that Illumina can reasonably identify and confirm such nonconformance, or terminate your access to the Service and refund to you a pro-rata amount of the fees paid by you to Illumina for (i) access to the Service, and (ii) any unused fees for storage and compute. The preceding states your sole remedy and Illumina’s sole obligations under the warranty.

b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, ILLUMINA AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICE OR SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ILLUMINA, ITS EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES.

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