

1. Definitions. “Consumable(s)” means Seller branded reagents that are intended by Seller to be consumed through the use of Illumina Hardware. “Documentation” means Seller’s user manual, package insert, and similar documentation, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller. “Illumina Hardware” means Illumina branded sequencing kits and instruments. “Product(s)” means the item(s) acquired hereunder. “Purchaser” means the person or entity acquiring the Product with the intent to use the Product, from (i) Seller or (ii) Seller’s authorized distributor or reseller. “Seller” means seqWell, Inc. 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. “Specifications” means Seller’s written technical specifications for the Product in effect on the date that the Product ships from Seller.

2. Rights to Products upon Purchase. Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, personal, non- sublicenseable right under Seller’s IP, to use the Product only in Purchaser’s facility only for Purchaser’s Permitted Use (“Permitted Rights”). “Permitted Use” means use for internal research specifically excluding any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) is a re-use of a previously used Consumable, (c) is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Product, (d) is the separation, extraction, or isolation of components of the Product or other unauthorized analysis of the Product, (e) gains access to or determines the methods of operation of the Product, (f) is the transfer to a third-party, or (g) is a clinical, diagnostic, or other non-research use of the Product (each of (a) – (g), is referred to as an “Excluded Use”). Except as expressly stated in this Section no right or license under any Seller intellectual property rights is or are granted, expressly, by implication, or by estoppel, to Purchaser. “IP” means the intellectual property owned or controlled by Seller and Seller’s affiliates, as of the date the Product ships, that pertain to or cover any aspect or feature of the Product (or use thereof) in all applications and all fields of use. Purchaser agrees that (i) Purchaser’s use of the Product in any manner or for any purpose other than Permitted Use is a breach of these terms and conditions, (ii) actual knowledge by Seller, or Seller’s affiliates, that Purchaser is using the Product in any manner or for any purpose other than Permitted Use does not (A) waive or otherwise limit any rights that Seller, or Seller’s affiliates, may have as a result of such use of the Product, including without limitation, any rights or remedies available under these terms and conditions, at law and/or in equity, (B) grant Purchaser a license to any intellectual property owned or controlled by Seller or Seller’s affiliates whether by implication, estoppel, or otherwise with respect to such use of the Product, and (iii) any trade usage, course of performance, or course of dealing between Seller and Purchaser, will not be used to interpret these terms and conditions, including without limitation, the scope of the Permitted Use rights for the Product conferred under this Section.

Purchaser is solely responsible for determining whether Purchaser has all intellectual property rights that are necessary for Purchaser’s intended uses of the Product, including without limitation, any rights from third parties or rights from Seller. Seller makes no guarantee or warranty that Purchaser’s specific intended uses will not infringe the intellectual property rights of a third party.

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 Products by Purchaser.

a. Unauthorized Uses of Products. Purchaser agrees to use each Consumable only one time. The limitation does not apply if the Documentation or Specifications for the Product expressly state otherwise. Purchaser agrees not to, nor authorize any third party to, use the Product as described in any Excluded Uses. Purchaser further agrees that the contents of and methods of operation of the Product are proprietary to Seller and the Product contains or embodies trade secrets of Seller.

4. Regulatory. The Product is labeled For Research Use Only. Purchaser acknowledges that (i) the Product 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, whether research, commercial, diagnostic, or otherwise, and (ii) Purchaser must ensure it has any regulatory approvals that are necessary for Purchaser’s intended uses of the Product. Purchaser further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of the Product.

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,

6. EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE PRODUCT, ITS USE, SELLER’S PERFORMANCE OR 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’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.

7. Limitations on Warranties. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN SECTION 7 BELOW SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCT, 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.

8. 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. The warranties described in this Agreement exclude any stand-alone third party goods that may be acquired or used with the Product.

a. Warranty for Consumables. Seller warrants that the Product, other than custom Product, will conform to their 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 Product by Seller, but in either event, no later than 12 months from the date of shipment. With respect to custom Product (i.e., Product made to specifications or designs of Purchaser or provided to Seller by, or on behalf of, Purchaser), Seller only warrants that the custom Product will be made and tested in accordance with Seller’s standard manufacturing and quality control processes. Seller makes no warranty that custom Product will work as intended by Purchaser or for Purchaser’s intended uses.

b. 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 or Specifications, (ii) improper handling, installation, maintenance, or repair (other than if performed by Seller’s personnel), (iii) unauthorized alterations, (iv) Force Majeure events, or (v) use with a third party’s good not provided by Seller (unless the Product’s Documentation or Specifications expressly state such third party’s good is for use with the Product).

c. Procedure for Warranty Coverage. In order to be eligible for replacement under this warranty Purchaser must (i) within the warranty period 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.

d. Sole Remedy under Warranty. Seller will, at its option, replace non-conforming Product that is covered by this warranty, provided that Seller can reasonably identify and confirm such nonconformance. The warranty period for replaced Product is 90 days from the date of shipment, or the remaining period on the original Product warranty, whichever is later. The preceding states Purchaser’s sole remedy and Seller’s sole obligations under the warranty.

9. Indemnification.

a. Infringement Indemnification by Seller. Subject to these terms and conditions, including without limitation, the Exclusions to Seller's Indemnification Obligations (Section 8(b) below), the Conditions to Indemnification Obligations (Section 8(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that the Product when used for Permitted Use, in accordance with these terms and conditions, and in accordance with the Product's Documentation and Specifications 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 infringement 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 Product. This Section states the entire liability of Seller for any infringement of third party intellectual property rights.

b. Exclusions to Seller Indemnification Obligations. For the avoidance of doubt, Seller has no obligation to defend, indemnify or hold harmless Purchaser for any infringement claim to the extent such infringement arises from: (i) use of the Product in any manner or for any purpose other than Permitted Use, (ii) use of the Product in any manner not in accordance with its Specifications, its Documentation, or the rights expressly granted to Purchaser under these terms and conditions, (iii) use of the Product in combination with any other products, materials, or services not supplied by Seller, (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, (vii) use of stand-alone third party goods that may be acquired or used with the Product, or (viii) use of the Product in any manner or for any purpose that requires rights to any third party intellectual property (each of (i) – (viii), is referred to as an “**Excluded Claim**”).

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 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) Purchaser's breach of any of these terms and conditions or (ii) any Excluded Claim.

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, and (v) providing reasonable assistance to the other party in the defense of the claim or action; provided that, the party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

10. Payment Terms. Seller will invoice upon shipment. All payments are due within 30 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 shall bear all fees and administrative costs of sending such wire transfers so that the net amount receivable by Seller is exactly equal to the invoice amount being paid. 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.

11. 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 and risk of loss transfers to Purchaser when the Product is made available at such address.

12. 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 the 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.

13. General.

a. Applicability of Terms and Conditions. These terms and conditions, including any terms in the Documentation, exclusively govern the ordering, purchase, supply, and use of the 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.

b. Order Changes/Cancellations. Orders for Products may not be changed or cancelled once placed. If Purchaser cancels an order, Purchaser forfeits to Seller any deposit paid related to such order.

c. 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 Massachusetts, U.S.A., if Purchaser is located in the United States or (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.

d. 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.

e. 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 agrees, 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.

f. 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, Seller may do any, all, or any combination of the following in the event Purchaser breaches any of these terms and conditions: (i) cease performance, including without limitation, cease further shipments of the 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, or (iv) terminate any remaining product warranty for the affected Product.

g. 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.

h. Seller Affiliates. Any actions or rights that may be performed or exercised by Seller 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.

i. 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, fire, flood, tornado, earthquake, hurricane, lightning, government actions, 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.

j. 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.

k. Assignment. Purchaser may not assign or transfer these terms and conditions or any rights or obligations, whether voluntary, by operation of law or otherwise, without the prior written consent of Seller; provided that, only notice to Seller and no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Purchaser to a party that (i) agrees in writing to be bound by these terms and conditions, and (ii) is not a competitor of Seller or any of Seller's business units or Seller's affiliates. Seller may assign these terms and conditions or all or part of the right to payments. Any assignment or transfer made in contravention of the terms hereof shall be null and void. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

l. 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 in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.

m. 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 this Agreement, 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.

n. 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.

seqWell Inc.
Terms and Conditions of Sale