1. Definitions; Interpretation. “Agreement” means either (i) the Quotation, Order Confirmation, and the applicable Service Description which form a part thereof; (ii) all electronic information and terms of Illumina referenced during an Electronic Order, including these terms and conditions and the applicable Service Description which form a part thereof in the case of an Electronic Order; or (iii) all terms referenced in an Order Confirmation, including these terms and conditions and the applicable Service Description which form a part thereof in the case of an Order placed without a Quotation and that is not an Electronic Order. “Customer” means the purchaser of the Services hereunder. “Inventories” means the Materials as described in the Quotation, and terms and conditions. “Electronic Order” means an order placed by Customer utilizing Illumina’s electronic commerce system (e.g., iCom). “Intellectual Property Rights” means all patent rights, copyrights (including rights in computer software), trade marks, trade names, get up and logo, service marks, business names (including internet domain names), copyrights, trademarks and other intellectual property or similar proprietary rights of whatever nature, current or future, under the laws of any jurisdiction, whether registered or not and including all applications or rights to apply therefore and registrations thereto. “Order Confirmation” means a sales order confirmation document provided by Illumina. “Quotation” means a written quotation provided by Illumina to Customer. “Results” are data that is generated through performance of the Services as specifically described in the applicable Service Description. “Results Work Product” means, subject to section 7, the Results and all discoveries and inventions, including without limitation discoveries and inventions relating to expressions, that arise directly out of the Services, including without limitation, any and all discoveries and inventions. “Sample(s)” means the sample(s) to be provided by Customer to Illumina as described in the applicable Service Description and/or Quotation. “Sample Requirements” means the quantity, quality, and other requirements for each Sample as specified in the applicable Service Description and rights, risks in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether or not patentable)) and all other intellectual property or similar proprietary rights of whatever nature, current or future, under the laws of any jurisdiction, whether registered or not and including all applications or rights to apply therefore and registrations thereto. “Specifications” means the written specifications for Services that are contained in the Service Description. Sections, titles and headings in this Agreement are for convenience only and are not intended to affect the meaning or interpretation hereof. Whenever required by the context, the singular term shall include the plural, the plural term shall include the singular, and the gender of any pronoun shall include all genders. As used in this Agreement except as the context may otherwise require, the words “including”, “includes”, “including”, and “such as” are deemed to be followed by “without limitation”, whether or not they are in fact followed by such words or words of like import, and “will” and “shall” are used synonymously. Except as expressly stated, any reference to “days” shall be to calendar days and “business day” shall mean a day other than Saturdays, Sundays or a bank holiday recognised in England and Wales. 2. Applicability of Terms and Conditions. This Agreement shall exclusively govern the ordering, purchase and provision of the Services, and shall prevail over and conflict with any purchase, orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. “Specifications” means the written specifications for Services that are contained in the Service Description. In the event that any payment is not made within the time period specified in this Agreement, Illumina reserves the right to charge a cancellation fee equal to the costs reasonably incurred by Illumina up to that point and for which an invoice has not been sent, including but not limited to Illumina’s then current list price of all materials used or produced, including, without limitation, flow cells and reagents. 6. Ownership of Samples; Regulatory Compliance. Customer represents and warrants that it owns or otherwise controls the Samples and that it has the right to provide the Samples to Illumina for the purpose described herein. Illumina shall use the Samples solely for the purpose of performing the Services. Illumina agrees that it will promptly return or destroy, in Customer’s sole discretion, any unused Samples or portions thereof following the delivery of the Results. Customer shall obtain and maintain all necessary licences and consents and comply with all applicable laws and regulations in relation to the transfer of the Samples to Illumina and the performance of the Services. 7. Intellectual Property. The Results Work Product shall be owned by Customer and all right, title, and interest in, to and under the Results Work Product, including without limitation all Intellectual Property Rights therein, shall vest immediately upon their creation in the Customer. Results Work Product shall not include any discoveries or inventions, including without limitation all discoveries and inventions relating to expressions, that were in Illumina’s possession or known by Illumina or its affiliated entities prior to performance of the Services, and any materials, processes, or methods used by Illumina in the performance of the Services and any Intellectual Property Rights owned by or licensed to Illumina prior to the performance of the Services, including without limitation in each case any modifications or improvements thereto and Intellectual Property Rights therein. Customer shall at all times retain all right, title, and interest in the Samples provided hereunder. 8. Research Use Only. Customer acknowledges that the Services are provided for research use only and are not being performed in a clinical laboratory. The Services are not an article or accessory intended to be used specifically for the medical purpose of: diagnosis, treatment, prevention, monitoring or alleviation of a disease, injury or disability; compensation for an injury or disability; investigation, replacement or modification of the anatomy or or a physiological process or state; or control or support of contraception; and the Results are not intended to be medical advice. The Services have not been subjected to any conformity assessment or other regulatory review or certified, approved or cleared by any conformity assessment body or other regulatory body in any country for diagnostic use or any other purpose. 9. Limited Warranty. Illumina represents and warrants to Customer that all Results delivered by Illumina hereunder shall conform to the Specifications in all material respects. Except as expressly set forth in this section 9 and to the extent permitted by law, the results are provided to customer on an “as is” basis, and Illumina disclaims to the maximum extent permitted by applicable law, express or implied, any and all warranties, express or implied, including without limitation, any
implied warranty of satisfactory quality, fitness for a particular purpose, care and skill, accuracy, utility, or non infringement with respect thereto.

10. Indemnification. Illumina shall indemnify, hold harmless Customer, its affiliated entities and their respective directors, officers, employees, agents, successors, and assigns from and against any liabilities, expenses, or costs arising out of any claim, complaint, suit, proceedings, or cause of action brought by a third party pertaining to infringement of such third party’s valid and enforceable Intellectual Property Rights resulting from the methods, materials, or processes specified by Illumina in the Service Description and used by Illumina in performance of the Services and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable legal fees) awarded against Customer (and Illumina, as the case may be) in connection with any such action.

Customer shall indemnify and hold harmless Illumina, its affiliated entities and their respective directors, officers, employees, agents, successors, and assigns from and against any liabilities, expenses, or costs arising out of any claim, complaint, suit, proceedings or cause of action brought by a third party pertaining to (i) infringement of such third party’s valid and enforceable Intellectual Property Rights resulting from Customer’s (a) providing the Samples, information and other materials, (b) specification or selection of any methods, materials, or processes to be used in the performance of the Services, other than those methods, materials, or processes that are specified by Illumina in the Service Description and used by Illumina in performance of the Services, (c) the collection, protection, and provision of the information in the case of genotyping or regions of interest in the case of targeted sequencing, and (ii) or arising out of any actions Customer has taken based on its analysis, interpretation, or use of the Results and any other information provided by Illumina under this Agreement and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys’ fees) awarded against Illumina (and Customer, as the case may be) in connection with any such action.

Each party’s indemnification obligation pursuant to this Section 10 is subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not admitting infringement of any Intellectual Property Right without the indemnifying party’s prior written consent, (iv) not entering into any settlement or compromise of any such action without the indemnifying party’s prior written consent, and (v) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

11. Limited Liability. To the extent permitted by law, in no event will either party be liable to the other for costs of procurement of substitute services, lost profits, data or business, or for any special, indirect, consequential or incidental damages incurred by such party arising out of or in connection with this agreement (or the termination hereof), however caused and on any theory of liability (whether in contract, tort (including negligence), regulatory, or statutory duty) or otherwise, including but not limited to (a) the loss of prospective profits or anticipated sales, or on account of expenses, investments, or commitments in connection with the business or goodwill or otherwise. Illumina’s total and cumulative liability arising under or in connection with this agreement, whether in contract, tort (including negligence), misrepresentation, statutory duty or otherwise, shall in no event exceed the amount received by Illumina from Customer under this agreement. The limitations set forth in this section shall apply even if a party has been advised of the possibility of the loss or damage, or of any failure of essential purpose of any limited remedy. Nothing in this agreement shall limit liability of a party or its affiliated entities for death or personal injury caused by negligence or fraud.

12. Privacy. Customer acknowledges that Illumina deems of utmost importance the privacy and anonymity of any individual that is the subject of the Samples. Therefore Customer shall not disclose or provide to Illumina any personal data (as that term is defined in the Data Protection Act 1998), shall comply with all legal, regulatory, and contractual obligations with respect to the use of any personal data. Customer agrees to maintain and use a database of orders and account information pertaining to Customer for purposes of order processing, maintaining records and assisting with future orders of Customer.

13. Confidential Information. Except as provided herein, each party shall maintain in confidence, and shall not use for any other purpose or disclose to any third party, information (of whatever nature) disclosed by the other party or its affiliated entities in writing and marked “Confidential” (or in a similar manner to indicate its confidential nature) or that otherwise is reasonably confirmed in writing within thirty (30) days following such disclosure (collectively, “Confidential Information”). However, the source and identity of Samples, the Results, and the details of the methods, materials or processes used by Illumina in the performance of the Services, the Services, the Work, or the circumstances in which imparted, reasonably would be deemed confidential, shall be considered Confidential Information whether or not so marked. Each party shall disclose Confidential Information disclosed by the other party. The receiving Party shall disclose Confidential Information in accordance with a confidentiality agreement entered into with a party that the disclosing party reasonably believes to be a party that reasonably protect the confidentiality thereof.

Confidential Information shall not include any information that is: (i) already lawfully known to the receiving party at the time of disclosure hereunder, (ii) now or hereafter becomes publicly known other than through breach of this Agreement, (iii) is disclosed to the receiving party by a third party that the disclosing party reasonably concluded was under no obligation of confidentiality to the disclosing party with respect thereto, or (iv) is independently developed by or for the receiving party without reliance on the Confidential Information of the disclosing party. The obligations of confidentiality contained in this Section 13 shall remain in force for a period of no less than three (3) years from the delivery of all the Results, which shall in all events survive its earlier termination.

14. Customer’s Breach; Survival. In addition to any remedies specified elsewhere under this Agreement, and any remedies available to Illumina under law, Illumina may, immediately upon notice to the Customer, do any, all, or any combination with respect to any (i) successor by way of change of control or sale of all or substantially all of its stock or assets to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina’s reasonable judgment, a competitor of Illumina or any of its affiliated entities. Illumina may assign or transfer this Agreement to any (i) successor by way of change of control or sale of all or substantially all of its stock or assets to a party that (i) ceases performance hereunder, or (ii) terminates any remaining warranty for the affected service. All provisions of this Agreement that by their nature should survive termination shall survive without limitation Sections 5, 11, 13, 15, and 16. All payment obligations incurred hereunder. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

15. Miscellaneous. a. Customer acknowledges and agrees that any future products and/or services (“Unreleased Products”) are subject to new part numbers, pricing, and specifications. Customer agrees that its purchase of the Services hereunder is not in reliance on the availability of any Unreleased Products.

b. No party is authorized to act as agent for the other party under this Agreement, to enter into any settlement or compromise of any such action without the prior written consent of the indemnifying party, to operate in a manner likely to impair the enforceability of the indemnifying party’s rights under this Agreement, or to exercise any right or remedy provided herein or to require any performance of any term of this Agreement that shall not be construed as a waiver and/or single or partial exercise of any right or remedy provided herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement 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 of this Agreement. Except as expressly provided in this agreement, the rights and remedies of each party under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or in equity, or otherwise. Nothing in this Section 7 shall impair the right of either party to enforce its rights and remedies under this Agreement, with partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this agreement.

c. All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (c) one (1) day after deposit with commercial express courier specifying 2-day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

d. Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any change of control or the sale of all or substantially all of its stock or assets to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina’s reasonable judgment, a competitor of Illumina or any of its affiliated entities. Illumina may assign or transfer this Agreement to any (i) successor by way of change of control or sale of all or substantially all of its stock or assets to a party that (i) ceases performance hereunder, or (ii) terminates any remaining warranty for the affected service. All provisions of this Agreement that by their nature should survive termination shall survive without limitation Sections 5, 11, 13, 15, and 16. All payment obligations incurred hereunder. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

e. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction over any dispute or claim under or in connection with this Agreement or its subject matter or formation.
f. Illumina shall not be in breach of this Agreement nor liable 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, lighting, any action taken by a government or regulatory authority, 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, interruption or failure of any utility service, raw materials or equipment, or Customer’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.

g. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. The parties acknowledge and agree that by entering into this Agreement, they do not rely on any statement, representation, assurance or warranty of any person or entity other than as expressly set out in the Agreement. Each party agrees that it shall have no right or remedy (other than for breach of contract) in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this Section shall exclude or limit liability for fraud. No amendment to this Agreement will be effective unless in writing and signed by both parties. No waiver of any right, condition, or breach of this Agreement will be effective unless in writing and signed by the Party who has the right to waive the right, condition or breach and delivered to the other Party.

h. Any actions or rights that may be performed or exercised by Illumina hereunder may be performed or exercised by Illumina itself or any of its affiliates. By way of non-limiting example, Illumina’s affiliates may carry out the Services, invoicing and receipt of payment. Except pursuant to this Section 15(h) no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person or entity that is not a party to this Agreement. The parties to this Agreement may rescind or terminate this Agreement or vary any of its terms without the consent of any third party.