

TERMS AND CONDITIONS (DRAGEN)

1. System; Definition. The DRAGEN System (the “**System**”) consists of: (a) one (1) DRAGEN Bio-IT Processor on PCIe Card (“the **DRAGEN Card**”), and (b) the DRAGEN Software Suite in object code, including any Updates (as defined below), if any, that Illumina makes available to User (the “**DRAGEN Software**”).
2. License. Subject to these terms and conditions and solely during the Term, Illumina hereby grants to User, a single site, non-exclusive, non-transferable, non-sublicensable and limited license to install the DRAGEN Software in object code form on a single computer and to use the DRAGEN Software solely in connection with User’s research and educational activities at User’s facilities and solely in connection with the DRAGEN Card(s).
3. Server. User may purchase one or more computer servers (each a “**Server**”) from Illumina, which Server will contain the DRAGEN Card and DRAGEN Software, as applicable. Any Server purchased by User from Illumina includes the OEM manufacturer’s terms and conditions specific to the Server and such terms are incorporated into these terms and conditions by this reference. Any purchase order issued by User for a Server shall be non-cancellable and each such order is subject to acceptance by Illumina either in writing or by shipping the Server to User.
4. Documentation. Illumina will provide to User an installation guide and user manual for the System and will provide other technical written materials related to the System and/or the Server as necessary for User’s use of the System and/or Server (collectively, the “**Documentation**”).
5. Delivery. To the extent applicable, Illumina shall deliver the DRAGEN Card(s), Server, and DRAGEN Software, to the delivery location in the quantities and on the date(s) agreed in writing by the parties.
6. Price and Payment Terms.
 - a) User may purchase one or more System licenses based on its end usage of the System. The number of licenses purchased as well as the price and the payment terms is or will be set forth in the system price quotation (the “**Quotation**”).
 - b) The fees paid for the System include support and maintenance as described in Section 11 (Support and Maintenance). The fees for the System and the price for the Server(s) do not include (i) shipping and handling charges, (ii) any federal, state or local sales, use or excise taxes (including VAT) or any other tax, nor (iii) any customs fees, duties, tariffs or other governmentally imposed fees, all of which are to be paid by User. If paid by Illumina, such costs, charges, duties, levies and other government fees will be invoiced by Illumina.
 - c) Unless otherwise specified in the Quotation, all invoices are due and payable by User within thirty (30) days from the date of User’s receipt of the invoice.
 - d) Payments are to be made by wire transfer to the account set forth in the invoice, or as otherwise directed by Illumina. In the event the invoice is not paid when due, Illumina reserves the right to charge a late payment fee of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Illumina does not receive payment within forty-five (45) days after User’s receipt of the invoice, Illumina may, in its sole discretion and upon written notice to User, turn off User’s access to the DRAGEN Software.

7. Term and Termination.

- a) The license to the DRAGEN Software shall commence upon the DRAGEN Software being made available to User and shall continue for the period set forth in the Quotation (the “**Term**”). User acknowledges that the DRAGEN Software and DRAGEN Cards will “time out” and cease to work upon expiration of the Term. The Term may be extended for additional periods upon written agreement of Illumina and User and payment of applicable fees.
- b) Illumina may terminate the license to DRAGEN Software (i) at any time upon written notice if User fails to comply with all of its material terms and conditions and fails to cure such material breach within thirty (30) days of Illumina’s prior written notice to User detailing the material breach; or (ii) immediately if User becomes insolvent, ceases to do business as a going concern or if a petition has been filed by or against User under any bankruptcy, insolvency or similar law or User makes an assignment for the benefit of creditors.
- c) Upon expiration or earlier termination of the Term, (i) the licenses granted to User hereunder shall immediately terminate; (ii) User shall immediately discontinue any and all use of the DRAGEN Software; and (iii) User shall immediately and permanently erase and remove all copies of the DRAGEN Software from the Server or any other computers, and User shall not retain any copies of the DRAGEN Software, in whole or in part, including in electronic back-up files.

8. System Use by User. User will be provided with a unique password (“**Login Credentials**”) which must be used to log into the System. User shall maintain control of the Login Credentials at all times. User is solely responsible for compliance with any and all applicable laws, regulations and governmental policies that pertain to its use of the System.

9. Prohibited Activities. Notwithstanding anything to the contrary in these terms and conditions, User shall not, directly or indirectly, (a) sell, distribute, provide access to, export, transfer, convey, or convert the DRAGEN Software, in whole or in part, to any other person, party or entity, including affiliates of User (“**Third Party**”); (b) service, repair, modify, alter, replace, reverse engineer, disassemble, decompile or otherwise change the System (or any components thereof); (c) copy, modify, correct, adapt, translate, enhance prepare derivative works or improvements, or attempt to derive or gain access to the source code of the DRAGEN Software; (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the DRAGEN System (or any component thereof) to any Third Party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; or (f) use the DRAGEN Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property rights or other right of Illumina or any Third Party, or that violates any applicable law. In the case of Open Source Software included with or in the DRAGEN Software, (i) such software is not licensed to User by Illumina, and User’s rights with respect to such software is set forth in the Documentation or is otherwise included in the “Help” or “About” box in the DRAGEN Software and (ii) the term “DRAGEN Software” does not include Open Source Software. For purposes of these terms and conditions, “**Open Source Software**” means all software that is distributed as “free software,” “open source software” or under a similar licensing or distribution terms, including software that is available under the Open Software License (OSL), GNU Affero General Public License (AGPL), GNU General Public License (GPL), and GNU Lesser General Public License (LGPL).

10. Ownership. Subject to the express rights and licenses granted by Illumina to User herein, Illumina reserves and retains all right, title and interest in and to the System and Server and all intellectual property rights therein. Intellectual property rights relating to the System are solely and exclusively owned by Illumina. All modifications, enhancements or changes to the System or Server (and all intellectual property rights therein) are and shall remain the property of Illumina without regard to the origin of such modifications, enhancements or changes. Except for the express licenses granted in these terms and conditions, no other rights are granted User in Illumina’s intellectual property or other rights, whether express,

implied, by estoppel or otherwise. User agrees that it shall not challenge the intellectual property rights in and to the System and Server, including all without limitation copyrights, patents, and trademarks. As between User and Illumina, Licensee reserves and retains sole and exclusive ownership of all right, title and interest in and to the User Data, including all intellectual property rights arising therefrom or relating thereto. **“User Data”** means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by the System by or on behalf of User.

11. Support and Maintenance.

- a) Illumina will provide support for the System and Server, as applicable, in accordance with its standard business practices.
- b) Illumina may provide updates, version upgrades and patches (**“Updates”**) to the DRAGEN Software from time to time at Illumina’s discretion. All Updates shall be available to User as a download and provided at no additional charge specifically for the licenses purchased by User during the Term. All Updates shall be deemed part of the DRAGEN Software.

12. Limited Warranties.

- a) Warranty Illumina warrants that, as applicable, the (i) the Server and DRAGEN Card will substantially conform to the relevant Documentation for 12 months following shipment, and (ii) the DRAGEN Software will substantially conform to the relevant Documentation during the Term.
- b) Exclusions. 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) use that is not in accordance with these terms and conditions, (iii) improper handling, installation, maintenance, or repair (other than if performed by Illumina personnel), (iv) unauthorized alterations, or (v) use with a third party’s good (unless the DRAGEN Software’s Documentation or technical specifications expressly state such third party’s good is for use with the DRAGEN Software). ILLUMINA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVERS OR ANY OPEN SOURCE SOFTWARE. THE SERVERS AND SUCH OPEN SOURCE SOFTWARE ARE PROVIDED “AS IS” AND WITHOUT WARRANTY, PROVIDED THAT ILLUMINA WILL PASS THROUGH TO USER THE MANUFACTURER’S WARRANTY FOR THE SERVER.
- c) Claims and Remedies. If the Server, DRAGEN Card, or DRAGEN Software do not meet the warranty provided herein, User must contact Illumina through the Illumina DRAGEN Customer Portal as soon as reasonably practicable after the failure is discovered and will report to Illumina in detail how such Server, DRAGEN Card, or DRAGEN Software failed to comply with the warranty. **Illumina will, at its option, repair or replace non-conforming product that is covered by this warranty, provided that Illumina can reasonably identify and confirm such nonconformance.** The foregoing shall be User’s sole and exclusive remedy and Illumina’s sole liability for any breach of any warranty.
- d) Disclaimer of Warranty. The warranties provided by Illumina extends only to User and are non-transferable. The above warranties are exclusive, and Illumina makes no other representations or warranties of any kind whatsoever, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR THAT THE SYSTEM WILL MEET USER’S REQUIREMENTS OR THAT ALL BUGS AND ERRORS IN THE DRAGEN SOFTWARE WILL BE CORRECTED. ILLUMINA MAKES NO WARRANTY WITH RESPECT TO THE RESULTS TO BE ACHIEVED BY USER USING THE SYSTEM.

13. Indemnification.

- a) Mutual Defense and Indemnity. Each party will defend, indemnify and hold the other party harmless from and against any claim, demand, proceeding, action or lawsuit (each, a **“Claim”**) and costs and expenses related thereto (including, without limitation, reasonable attorneys’ fees) by an unaffiliated third party arising out of the indemnifying party’s gross

negligence, wrongful conduct, or breach of the licenses or use restrictions set forth in these terms and conditions.

b) Intellectual Property Indemnification. Illumina shall defend, indemnify and hold User harmless from and against any third party **Claim** alleging that the System infringes, misappropriates or otherwise violates the valid and enforceable intellectual property right of any third party (an "Intellectual Property Claim").

c) Mitigation. At any time after notice of an Intellectual Property Claim or if Illumina believes there is a basis for an Intellectual Property Claim, then Illumina may, at Illumina's sole option and expense, either (i) procure the right for User to continue using the System as provided in these terms and conditions, or (ii) replace or modify the System, with a card or software that has substantially similar functionality. If Illumina deems (i) or (ii) not commercially reasonable, Illumina may immediately terminate the licenses granted in these terms and conditions by written notice to User and promptly refund to User the amount paid by User prorated for the remaining portion of the Term.

d) Limitations and Exclusions. Notwithstanding anything to the contrary, Illumina shall have no obligations or liability under Section 13.b. (Intellectual Property Indemnification) to the extent any Intellectual Property Claim is caused by (i) the combination of the System with any product, software or service not provided by Illumina to User, (ii) use of the System in violation of any restriction or limitation set forth in these terms and conditions with respect to the System, (iii) use of any version or release of the DRAGEN Software other than the most recent version or release made available to User if the Intellectual Property Claim would have been avoided by the use of the most recent version or release, or (iv) User's failure to comply with Illumina's written direction to cease any activity that in Illumina's reasonable judgment maybe ruled to be an infringement or misappropriation of a third party's intellectual property rights.

e) Procedural Conditions and Requirements. Each party's obligations and liability under this Section 13 (Indemnification) with respect to any Claim or Intellectual Property Claim, as applicable is conditioned upon the indemnified party: (i) notifying the indemnifying party providing prompt written notice of the Claim, (ii) permitting the indemnifying party to assume the full and sole control of the defense of the Claim and settlement negotiations for the Claim (provided, however, that the indemnifying party will obtain the indemnified party's prior written consent in connection with any settlement that adversely affects the rights of such indemnified party, such consent to not be unreasonably withheld or delayed), and (iii) providing all reasonable information and assistance requested by the indemnifying party related to the Claim or the defense or settlement of the Claim; provided however, failure to provide such notice as outlined under subsection (i) herein and reasonable cooperation as outlined under subsection (iii) herein does not relieve indemnifying party of its obligations under this Section except, and then only to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure(s). The indemnified party is entitled to engage independent counsel, at its sole expense, subject to the indemnifying party having control of the defense and settlement of the Claim.

f) Sole Remedy. THE TERMS IN THIS SECTION 13 SHALL BE USER'S SOLE AND EXCLUSIVE REMEDY AND ILLUMINA'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

14. Disclaimer of Liability. To the fullest extent allowed by law, EVEN IF A LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, In no event shall Illumina be liable, whether for breach or repudiation of contract, tort, breach of warranty, negligence or otherwise for any (I) special, incidental, consequential, punitive, indirect or exemplary damages of any kind, however caused, whether or not such party was advised OR WAS AWARE of the possibility of such loss or damages, including ANY SUCH damages arising from or related to the results obtained through the use of the System, loss of use, loss of data, downtime or for loss of revenue, profits, goodwill or business or other financial loss, OR (II) AMOUNTS THAT exceed the aggregate of the amount paid or payable by User for use of the System during the Term.

15. Injunctive Relief. Each party agrees that a breach or threatened breach of Sections 2 (License), 8 (System Use by User), 9 (Prohibited Activities), 10 (Ownership) of these terms and conditions may result in irreparable and continuing damage to

the non-breaching party, for which there may be no adequate remedy at law. In the event of such breach or threatened breach, the non-breaching party, in addition to any other remedies it may have at law or in equity, may seek a restraining order, injunction, or other similar remedy in order to specifically enforce the provisions of these terms and conditions.

16. Compliance with Laws; Export Control. Each party agrees to comply with applicable laws and regulations in its performance of these terms and conditions. User agrees to adhere to all applicable export control laws and regulations and to not, directly or indirectly, sell, export, re-export, transfer, divert or otherwise dispose of the System, in whole or in part, including to any country prohibited by U.S. laws or regulation.
17. Governing Law; Venue. The laws of the United States of America and the State of California govern all matters arising out of or relating to these terms and conditions without giving effect to any conflict of law principles. The United National Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.
18. Force Majeure. Except with respect to the obligation to pay amounts due, neither party shall be liable to the other party for failure or delay in the performance of any of its obligations under these terms and conditions for the time and to the extent such failure or delay is caused by earthquake, riot, civil commotion, war, terrorist acts, flood, governmental acts or restriction, or any other cause that is beyond the reasonable control of the respective party.
19. Arbitration. In Illumina's sole discretion, any dispute, claim or controversy arising out of or relating to these terms and conditions, shall be determined by confidential binding arbitration conducted in the English language, under generally accepted arbitration rules and procedures in a venue to be determined by Illumina. In all cases of arbitration each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrator's fees of arbitration; neither party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless required by law; the decision of the arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of these terms and conditions; judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

20. 10. Other Terms.

- a) Each party is an independent contractor relative to the other party, and nothing herein shall be construed to create a partnership, joint venture, agency or other relationship between the parties other than the contractual relationship expressly set forth herein.
- b) These terms and conditions, including attached exhibits, constitutes the full and entire understanding and agreement between the parties with respect to the subject matter of these terms and conditions, and supersedes all prior understandings, discussions, negotiations and prior and contemporaneous agreements between the parties with respect to the subject matter of these terms and conditions, including any quotations, purchase order, and any other documents exchanged concerning the System or Server. No terms or conditions on User's purchase order (even if Illumina accepts such purchase order) or other document shall be binding on either party.
- c) These terms and conditions may not be assigned or otherwise transferred, in whole or in part, by either party without the prior written consent of the non-assigning party, except that Illumina may assign or transfer this agreement, without User's prior written consent, to an Illumina affiliate, or to a successor to all or substantially all of its assets or business. An assignment by operation of law shall be deemed an assignment for purposes of the foregoing. Any attempted assignment or transfer shall be void. No waiver of any provision of these terms and conditions will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party in exercising any right, power or remedy under these terms and conditions will operate as waiver of any such right, power or remedy. If any one or more of the provisions or parts of a provision contained in these terms and conditions is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect any other provision or part of a provision of these terms and conditions.