

Terms and Conditions - Certification

1. Definitions. “**Brand Guidelines**” means the guidelines issued by Illumina regarding use of Licensed Marks, as may be updated by Illumina from time to time. “**Certification Data Sheet**” means the description of the Certification Program provided by Illumina to a Lab. “**Certification Guide**” refers to a document specific to the type of certification for which a Participant applies and describes the exams, proficiency requirements and best practices for such specific certification (including the Certification Data Sheet), which may be updated by Illumina from time to time upon notice to Certified Provider upon posting at illumina.com. “**Certification Process**” means the certification process for attaining Certified Provider status with respect to Certification Products, as more fully outlined in the Certification Guide. “**Certification Program**” means the program for achieving and maintaining Certified Provider status with respect to Certification Products as more fully set forth in the Certification Guide. “**Certification Products**” means the specific Illumina products referenced in a Quotation hereunder with respect to which Participant intends to undertake the Certification Process and maintain compliance with applicable Qualification Criteria. “**Certified Provider**” means a Lab that has successfully completed the Certification Process with respect to Certification Products and is maintaining compliance with respect to all applicable Qualification Criteria. “**Lab**” means a core or services laboratory with the primary remit of providing services in exchange for compensation (i.e., “fee for service”). “**Illumina**” means Illumina, Inc. or its wholly owned affiliates. “**Intellectual Property Rights**” means all patent rights, copyrights, trade secrets, know-how, trademark, service mark and trade dress rights and other intellectual property rights, current or future, under the laws of any jurisdiction, together with all applications therefore and registrations thereto. “**Participant**” means a Lab to which Illumina issues a Quotation for undergoing the Certification Process to become a Certified Provider. “**Qualification Criteria**” means the qualification criteria for attaining and maintaining Certified Provider status, as more fully outlined in the Certification Guide. “**Quotation**” means a written quotation for certification under the Certification Process with respect to Certification Products provided by Illumina to Participant.

2. Certification Process; Maintenance of Qualification Criteria. Illumina shall provide relevant criteria and tools to Participant, and Participant shall successfully complete the Certification Process. In the event Participant fails to maintain any Qualification Criteria after already having been certified as a Certified Provider, Participant will have such time period as provided in the Certification Guide within which to cure such default. If Participant fails to cure within this grace period, Participant shall immediately cease to be a Certified Provider and shall lose privileges associated with the Certification Program until such time as Participant again completes the Certification Process at Participant’s sole expense. For the avoidance of doubt qualification as a Certified Provider is only applicable with respect to the specific certification for which Participant completed the Certification Process and complied with the Qualification Criteria in a particular calendar year. Annual recertification will be required to maintain the benefit set associated with the Certification Program, including without limitation any trademark license granted by Illumina to Certified Provider. It is the responsibility of the Participant to successfully recertify.

3. Using Discounts. Participant shall be entitled to the available discounts as more fully set forth in the Certification Guide. Discounts may not be combined with other discounts available to Participant should it participate in any other program with Illumina but Participant shall be entitled to use the greatest then-available discount to make purchases of qualifying Illumina products and services. Available discounts have no value and are not redeemable for cash and may only be used during the Term.

4. Payment. Participant agrees to pay Illumina the corresponding fees pursuant to the Quotation(s) provided to Participant, for costs associated with the applicable certification items set forth therein. Participant additionally agrees to pay Illumina all applicable renewal fees, as applicable, pursuant to the then-current renewal fee schedule as set forth in the Certification Guide or additional Quotation(s).

5. Regulatory. In no way does the certification of a laboratory constitute accreditation of laboratory operations (for example, CAP/CLIA), or approval for any tests or methods run within the Lab. Certification is in no way an endorsement of any IVD, IUO, LDT DTC, RUO or other service or product offerings made available by Certified Provider.

6. Trademark License. Illumina hereby grants to Participant, only for so long as Participant remains a Certified Provider, a worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free, paid-up license to use the Illumina marks set forth in the Certification Guide (“**Licensed Marks**”) solely in connection with services provided by Participant to Participant’s customers with respect to Certification Products (“**Services**”). Participant will conspicuously display the Licensed Marks on any advertising, merchandising (including packaging and shipping containers), and documentation for the Services in accordance with these terms and conditions and with the Brand Guidelines. Participant recognizes and agrees that no ownership rights are vested or created by the limited rights of use granted to Participant in connection with this use of the Licensed Marks, and that all goodwill associated with the use thereof inures to the benefit of Illumina. Illumina reserves the right to terminate, restrict, or withhold the use of the Licensed Marks if Illumina, in its sole discretion, determines that Participant’s image quality or product performance does not enhance Illumina’s goodwill or Participant does not substantially follow the Brand Guidelines. Participant hereby grants Illumina only for so long as Participant retains status as a Certified Provider, a worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free, paid-up license to use certain Participant trademarks and service marks, trade names and logos to be specifically identified by Participant (collectively hereinafter referred to as “**Participant Marks**”) solely in connection with the Services provided by Participant. Illumina recognizes and agrees that no ownership rights are vested or created by the limited rights of use granted to Illumina in connection with this use of the Participant Marks, and that all goodwill associated with the use thereof inures to the benefit of the Participant.

7. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ILLUMINA BE LIABLE TO PARTICIPANT OR ANY THIRD PARTY FOR 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 CERTIFICATION PROGRAM, THE CERTIFICATION HANDBOOK, THE CERTIFICATION PROCESS, PARTICIPANT’S INABILITY TO ACHIEVE OR LOSS OF STATUS AS A CERTIFIED PARTICIPANT, ILLUMINA’S PERFORMANCE UNDER THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE).

8. No Warranty. Illumina makes no warranties regarding the Certification Program, the Certification Handbook, Certification Process or status as a Certified Provider. THE FOREGOING ARE PROVIDED TO CUSTOMER ON AN “AS IS” BASIS AND ILLUMINA, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE FOREGOING, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR BASED ON COURSE OF CONDUCT OR TRADE CUSTOM OR USAGE.

9. Indemnification. Participant shall indemnify, defend and hold harmless Illumina (including its officers, trustees, employees and affiliates) against any and all third party claims, losses, damages, costs or liabilities arising out of the Services or Participant’s negligence or willful misconduct.

10. Termination. Illumina may terminate Participant’s status as a Certified Provider and these terms and conditions in the event that Participant or its affiliates (a) materially breaches any term of these terms and conditions; (b) fails meet the requirements of the Certification Process or otherwise achieve status as a Certified Provider with respect to a particular Illumina instrument within one (1) year from Illumina’s corresponding Quotation; (c) breaches any term of Certification Handbook, including, but not limited to, any Qualification Criteria; or (d) 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 that is not dismissed within sixty (60) days.

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11. General

a. Applicability of Terms and Conditions. These terms and conditions constitute the entire agreement between the parties with respect to the subject matter hereof and shall exclusively govern the Certification Program, Certification Process, Qualification Criteria and Participant's application for, qualification with respect to and maintenance of Certified Provider status, 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. 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.

b. Governing Law; Arbitration. These terms and conditions, their interpretation, and the performance of the parties shall be governed by the laws of the State of California, U.S.A. Illumina and Participant agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions. 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.

c. Force Majeure. Illumina 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 Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Participant'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.

d. 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.

e. Assignment. Participant may not assign or transfer these terms and conditions or any rights or obligations associated with the Certification Program or otherwise, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided that, only notice to Illumina 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 Participant to a party that (i) agrees in writing to be bound by these terms and conditions, and (ii) is not a competitor of Illumina or any of Illumina's business units or Illumina's affiliates. Illumina may assign 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.

f. Healthcare Law Compliance. Participant acknowledges and agrees that as a healthcare company, Illumina, and Illumina'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). Illumina agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.

g. Miscellaneous. Except as expressly stated in these terms and conditions, no right or license under any of Illumina, or Illumina'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. No amendment to these terms or waiver of any right, condition, or breach will be effective unless made in writing and delivered by Illumina to Participant. 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.