TERMS AND CONDITIONS OF SALE

Unless otherwise specifically agreed in writing by Seller, these Terms and Conditions of Sale ("**Terms and Conditions**") will apply to any and all purchase orders, orders, order confirmations, and any sale or delivery of Seller hardware ("**Products**"), proprietary kits ("**Test Kits**"), and/or related services ("**Services**") (or all of the above) by Exokeryx, Inc. ("**Seller**") to any customer ("**Buyer**"). Seller does not accept, expressly or impliedly, any additional or different terms or conditions that Buyer presents, except where expressly and unambiguously agreed upon by Seller in writing. By ordering, receiving, accepting, or using Products, Test Kits, or Services, or by otherwise proceeding with any transaction after receipt of these Terms and Conditions, Buyer agrees that these Terms and Conditions, along with each purchase order shall constitute the entire agreement between the Buyer and Seller with respect to the purchase and sale of the corresponding Products, Test Kits and Services ("**Agreement**").

1. Product

1.1 Marketed for Research Use Only. The Product is sold for research use only and not approved or cleared by the U.S. Food and Drug Administration ("**FDA**") and/or any other applicable regulatory authority. The Product is sold and supplied only for Buyer's internal research use. No license is conveyed or implied for Buyer to use, and Buyer agrees not to use, such Product in any manner requiring FDA or other regulatory approval, clearance or registration. Buyer acknowledges that the Product is not approved, designed or intended for any use with life critical applications, as part of any treatment of humans or any other applications where product failure could lead to injury to persons or loss of life or catastrophic property damage. SELLER DISCLAIMS ANY AND ALL LIABILITY, AND SHOULD BUYER USE PRODUCT IN SUCH ULTRAHAZARDOUS APPLICATIONS, IT DOES SO ENTIRELY AT ITS OWN RISK. Furthermore, Buyer agrees to fully indemnify, defend and hold Seller harmless from and against (i) any and all claims, demands, actions, litigation, and proceedings of any kind arising out of or related to any use outside of Buyer's internal research use ("**Use Claims**"), and (ii) any and all liens, liabilities, awards, judgments, damages, costs, expenses (including reasonable attorney's fees) arising out of or related to any Use Claim.

1.2 Cancellable Sale. Buyer may cancel the purchase of the Product within thirty (30) days of the delivery of the Product in the event that the Product does not comply with the Specifications upon delivery and is not capable of meeting such Specifications following Seller's attempt to correct. Such right to cancel must be exercised no later than thirty (30) days of the delivery of the Product upon written notice to Seller and returning to Seller the product in the condition required. Following providing such notice to Seller, Buyer shall, at its expense, freight prepaid with full original value declared, forthwith return to Seller the Product, including all parts and accessories supplied by Seller, unencumbered, in good repair, merchantable condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by properly packing it for shipment and delivering it to any place designated by Seller. FOR THE AVOIDANCE OF DOUBT, BUYER WILL CONTINUE TO BE OBLIGATED TO PAY ALL AMOUNTS DUE HEREUNDER UNTIL RETURN OF ALL PRODUCT TO SELLER IN THE REQUIRED CONDITION. If the Product, upon its return, is not in good repair, condition, and working order, ordinary wear and tear excepted, and/or has not been maintained in accordance with the then-current documentation published by Seller for the Product ("**Documentations**"), or

is otherwise missing any components or accessories, the Buyer shall reimburse Seller for all reasonable costs incurred to place the Product in such condition including replacing any missing components or accessories. Buyer covenants that if Buyer fails to return the Product as provided in this Section, it shall not assert Seller's failure to mitigate its damages as a defense to any claim, suit or action for damages or deficiency that may be filed by Seller, its successors or assigns. Upon Seller's confirmation of receipt of the Product in good repair, condition and working order, ordinary wear and tear excepted, including all components and accessories originally provided by Seller, then (i) any price for the Product paid by Buyer to Seller under this Agreement for the returned Product shall be paid back to Buyer by Seller; and (ii) the agreement between the Parties, in as far as it relates to the purchase of such returned Product shall be terminated.

1.3 Title; Security Interest. Title of the Product shall remain in Seller until the full Product price has been paid to Seller. Failure to pay the Product price when due shall give Seller the right, without liability, to repossess all Product sold to the Buyer by Seller under the respective agreement, pursuant to applicable law, and to avail itself of any other legal remedy available to it. If Seller is required to avail itself of legal remedies to repossess the Product, or bring suit for the price of the Product, all court costs and reasonable attorneys' fees shall be paid for by the Buyer. Seller shall have a security interest, and Seller is hereby granted a security interest, in the Product, to secure full payment of the Product price hereunder. Buyer shall, upon request of Seller, execute a UCC-1 financing statement and Seller shall have all rights and remedies of a secured party pursuant to the Uniform Commercial Code as adopted in California.

1.4 Delivery and Acceptance. Delivery shall be in accordance with EXW (Incoterms 2020) Seller's facility. The manner of shipment shall be at Seller's option. Buyer shall be responsible for all shipping charges. Product is deemed accepted by Buyer unless Buyer notifies Seller in writing within five (5) days of delivery of defects. All claims for loss or damage during shipment must be filed by Buyer with the carrier. Claims against Seller for shortages occurring before delivery to carrier are subject to Buyer's compliance with Seller's RMA policy, incorporated by reference herein. The sale of any of Product to Buyer in no way conveys to Buyer, either expressly or by implication, any license to any of Seller's Intellectual Property Right whatsoever, except as may be granted by the Seller in the materials which accompany the Product upon delivery. Seller expressly reserves its rights under any such claim and asserts that additional restrictions may apply to the use of the Product, as set forth in the in the materials which accompany the Product.

1.5 Risk of Loss. The risk of loss or damage to Products shall pass to the Buyer upon delivery to the carrier at Seller's facility. Buyer shall inspect the Product upon delivery and report to Seller within five (5) days of delivery any defect in any of the Product. UNLESS BUYER PROVIDES WRITTEN NOTICE OF DEFECT WITHIN FIVE (5) DAYS OF DELIVERY, THE PRODUCT SHALL BE DEEMED IN GOOD WORKING ORDER AND ACCEPTED BY BUYER.

1.6 Installation. The Product shall be installed and placed in good working order by Buyer in accordance with Documentation. The Buyer shall make available a suitable place of installation with all facilities as specified in the Documentation. Seller shall not be responsible for installation of data communication lines between the computer and associated data entry, collection, printing, and other equipment devices.

1.7 Returns. Returns will not be accepted by Seller for any reason other than for: (i) verifiable breach of the Product Warranty occurring within the Warranty Period, or (ii) mishandled shipments directly caused by Seller. Return requests involving mishandled shipments must be brought to Seller's attention within fifteen (15) days of original ship date. Seller reserves the right to reject any request regarding mishandled shipments submitted more than fifteen (15) days after the original ship date. In the event that Seller authorizes a return, Seller reserves the right to credit, replace, or repair material at its discretion.

1.8 Buyer Acknowledgements and Responsibilities. Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning any Products purchased, if any. Buyer will forward such information to its employees, contractors, and customers who may distribute, handle, process, sell, or used such Products, and advise such parties to familiarize themselves with such information. Buyer agrees that Products sold hereunder will not knowingly be resold or given in sample form to persons using or proposing to use the Products for purposes contrary to recommendations given by Seller or prohibited by law, but will be sold or given as samples only to persons who can handle, use, and dispose of the Products safely. Buyer agrees to comply with all applicable laws, regulations, and ordinances including all applicable export and import laws.

2. Test Kits

2.1 Purchase Orders. All purchase orders delivered to Seller by Buyer under this Agreement shall be delivered to Seller in writing on Seller's purchase order form or electronically using an agreed EDI or other mutually agreed electronic framework. By accepting the purchase order, Seller in each case agrees that it is willing and able to provide all quantities referenced in such purchase order during the period referenced therein. Purchase orders shall be deemed accepted by Seller only upon confirmation, in writing, delivered to Buyer by Seller. Seller shall use commercially reasonable efforts to accept all purchase orders provided by Buyer. Seller's acknowledgement of purchase order acceptance will include the delivery date for the Test Kits ordered proposed by Seller. Either Party may cancel any purchase order at any time prior to shipment of the goods and shall not be subject to any charges or other fees whatsoever as a result of such cancellation. Buyer may by written communication make changes to any purchase order subject to an adjustment to the delivery date issued by Seller ("**Delivery Date**") or, where applicable the Test Kit price, or both, where appropriate. Seller reserves the right to cancel the purchase order upon any failure to agree to such adjustments. If following shipment, Buyer is unable to accept Test Kits requested in a purchase order for reasons outside of the control or responsibility of Seller, Buyer shall promptly notify Seller and may cancel in whole or in part a purchase order, provided that Buyer will reimburse Seller as required under the terms of the Agreement. Seller will take appropriate action to avoid or minimize any resulting non-recoverable cost. Purchase orders shall be delivered as close to practicable to the Delivery Date stated in Seller's confirmation. Seller shall notify Buyer should it not be able to deliver the Test Kits within ten (10) calendar days of the Delivery Date stated in Seller's confirmation of the applicable purchase order. Seller is responsible for all shipment preparation, including provision of containers, labeling, packaging, country-of-origin marking, loading and handling. Seller shall designate a carrier pursuant to Seller's standard shipping practices unless otherwise specified in writing by Buyer. Seller shall ensure that shipment preparation is in accordance with the written agreement between Buyer and Seller and any additional instructions set forth on Buyer's purchase

order and agreed to by confirmation of Seller. All Test Kits shall be shipped to the Buyer location designated in the applicable purchase order. Seller shall deliver the Test Kits free and clear of all liens and encumbrances or other defects in title. Title to and risk of loss of the Test Kits will pass to Buyer upon delivery to the carrier at Seller's facility. Each purchase order will be considered a separate sale, although shipment may occur in one or more installments. In the event of cancellation pursuant to the terms of the agreement between Buyer and Seller, Buyer will compensate Seller for demonstrated non-recoverable costs associated with the cancelled purchase order which shall be the manufacturing costs of items already produced to satisfy the purchase order which was cancelled, plus the cost of raw materials and/or long lead time parts held by Seller, all of which cannot be disposed of or used in any other way or for any other customer or purchase order. Seller shall invoice Buyer for the Test Kit price of the Test Kits at the time of shipment or as otherwise mutually agreed in writing. The invoice shall set forth the Test Kit price in effect at the time that the underlying purchase order is accepted by Seller. Seller's invoice shall additionally reference Buyer's applicable purchase order numbers and applicable taxes. Buyer shall pay all undisputed invoices issued for Test Kits within thirty (30) days after receipt of the respective invoice. If Buyer disputes any portion of the invoice, Buyer shall timely provide notice regarding any disputed amounts and pay all undisputed amounts with respect to such invoice. Seller shall be solely responsible for submitting any necessary regulatory applications and other filings to regulatory authorities with respect to the sale of Test Kits to Buyer. When an accepted purchase order provides for any additional services with regard to the Test Kits, those services shall be considered Services hereunder.

2.2 Seller Inability to Supply. If for any reason including but not limited to force majeure Seller is unable to supply the total demand for any Test Kits specified in an agreement, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

3. Services

3.1 Services to Be Performed. All Services to be performed by Seller shall be set forth in the specific purchase orders. The performance of all Services shall be controlled by the Terms and Conditions herein. Seller shall use commercially reasonable efforts to provide the Services by the date specified in the purchase order accepted by Seller, in its sole discretion, unless Buyer is notified otherwise by Seller of a delay in Seller's ability to timely perform such Services.

3.2 Modification. No addition, change or modification to a purchase order setting forth details of Services or an amendment hereto shall be effective unless made in writing and signed by an authorized officer of both Parties. Buyer acknowledges that any changes to any terms governing the transaction between Buyer and Seller in each case regarding the Services may affect or delay the performance of the Services and may involve changes to the applicable Service Fees thereunder. Seller shall not be obligated to implement any requested changes to a purchase order affecting Services until a revised purchase order or written amendment in each case covering the request modification to the Services and, as applicable, Service Fees, is executed by Seller. Seller, in its sole discretion, reserves the right to cancel the purchase order and discontinue providing Services upon any failure to agree to such adjustments.

3.3 Obligations of Seller. Seller shall perform the Services in a timely, professional and workmanlike manner in accordance with standard industry practices and applicable professional standards. Seller may subcontract or employ any third parties which Seller determines, in its sole discretion, are necessary in order to perform the Services.

4. Confidential Information

4.1 All Confidential Information disclosed by Seller to, or learned by, Buyer shall be deemed to be Seller's Confidential Information, regardless of whether marked or identified as "CONFIDENTIAL" or "PROPRIETARY."

4.2 The obligations and restrictions in this Section shall not apply to Confidential Information that falls within the following exceptions, provided, however, that any combination of individual items of information shall not be deemed to be within any of the exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception:

(a) is or becomes part of the public domain through no act or omission of Buyer;

(b) is in the rightful possession of Buyer without confidentiality obligations at the time of disclosure by Seller to Buyer as shown by Buyer's then-contemporaneous written files and records kept in the ordinary course of business; or

(c) is obtained by Buyer from a third party without an accompanying duty of confidentiality and without a breach of such third party's obligations of confidentiality.

4.3 Buyer may disclose Seller's Confidential Information to the extent required by applicable law, rule or order of court, or government regulation; provided, however, that Buyer shall take reasonable measures to preserve confidentiality of any such disclosure and shall provide sufficient prior written notice to Seller to permit Seller to take steps to avoid the need for such disclosure or to obtain a protective order governing the same, and Buyer will furnish only that portion of Seller's Confidential Information that is legally required to be disclosed, and any of Seller's Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

4.4 Buyer agrees to protect Seller's Confidential Information with the same degree of care that it uses to protect its own Confidential Information, but in all events will use at least a reasonable degree of care. In addition to such degree of care, Buyer shall not in any way:

(a) disclose or otherwise transfer Seller's Confidential Information to any third party at any time except as approved by Seller in writing in advance;

(b) use, copy, reproduce (whether by mechanical or electronic means), modify or transfer Seller's Confidential Information and, provided that the Buyer shall be permitted to review Seller's Confidential Information as necessary for the use of Products, or as otherwise authorized by Seller in writing, in each case only to the extent necessary for such purpose;

(c) remove any trademark, copyright, patent, or mask work notices or other proprietary legends contained within any of Seller's Confidential Information; or

(d) disclose the Parties' discussions about Seller's Confidential Information to any third party.

4.5 Buyer agrees that it is permitted to disclose Seller's Confidential Information only to its employees who have a specific need to know such information regarding the use of Products, and in each case, only to the extent necessary for the use of Products. Buyer will cause all of its employees to comply with this Section. Buyer will promptly report to Seller any actual or suspected violation of this Section 4 and will take all further steps requested by Seller to prevent, control, or remedy any such violation. Any failure by any of Buyer's employees to comply with this Section, or any act or omission by any of Buyer's employees that, if committed by Buyer, would constitute a breach of this Section, will constitute a breach of these Terms and Conditions by Buyer for which Buyer will be jointly and severally responsible.

4.6 Notwithstanding the obligations herein, the U.S. Defend Trade Secrets Act of 2016 ("**DTSA**") provides that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (iii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, DTSA provides that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

5. Price/Taxes

5.1 Product price. The Product price is EXW (Incoterms 2020) Seller's facility. All transportation and installation charges will be paid by Buyer. The Product price is exclusive of customs, duties or taxes, and Buyer shall be responsible for all federal, state, local and use taxes, designated, levied, or based on the Product price or on the Agreement or the Product, including state and local privilege or excise taxes (exclusive of taxes on Seller's income). If exemption from such taxes is claimed, Buyer must provide a certificate of exemption with this Agreement and Buyer shall indemnify Seller for any unpaid taxes in the event such exemption is not applicable.

5.2 Test Kit price. The Test Kit price is EXW (Incoterms 2020) Seller's facility. The Test Kit price may be updated by mutual agreement of the Parties from time to time by amendment of the agreement between the Parties. The Test Kit price is exclusive of customs, duties or taxes, and Buyer shall be responsible for all federal, state, local and use taxes, designated, levied, or based on the Test Kit price, including state and local privilege or excise taxes (exclusive of taxes on Seller's income). If exemption from such taxes is claimed, Buyer must provide a certificate of exemption with this Agreement and Buyer shall indemnify Seller for any unpaid taxes in the event such exemption is not applicable.

5.3 Invoicing and Payment for Services.

(a) Invoicing and Payment. Seller shall submit invoices for Services fees to Buyer according to the frequency set forth in the applicable purchase order and, if Services are to be invoiced on a time and materials basis as set forth in the applicable purchase order, shall additionally provide monthly timesheets documenting tasks and hours spent performing the Services.

(b) Payments. Buyer shall pay Seller the Services fees for the Services in the applicable purchase order as reflected in each invoice provided by Seller. All payments due hereunder shall be payable in United States Dollars. Each Party shall be responsible for taxes based on its own net income, employment taxes of its own employees, and for taxes on any property it owns or leases.

5.4 Terms of Payment. Payment for the Product shall be made in accordance with the payment terms set forth in the Purchase Agreement between Buyer and Seller. If a deposit is required under the Payment Terms, it shall be required to be submitted to Seller concurrent with the execution of the Purchase Agreement. If Seller accepts partial payment in an amount less than the full amount due, such acceptance shall neither constitute a waiver of Seller's right to collect the balance nor an accord and satisfaction, notwithstanding Seller's endorsement of a check or other instrument. Any amount not paid when due shall accrue interest at the higher of one percent (1%) per month or the maximum amount allowed by law.

6. Intellectual Property Rights

6.1 No License. Seller shall solely own and have exclusive worldwide right, title and interest in and to the Intellectual Property Rights arising with respect to the Product and Test Kits. No implied license, right or obligation is granted, directly or indirectly, with respect to any Intellectual Property Rights of Seller, provided that Buyer shall have the right to use the Product and Test Kits for Buyer's internal research only.

6.2 Use Restrictions. Buyer shall not modify, alter, adapt, merge, decompile, disassemble or reverse engineer the Product or Test Kits, including, but not limited to, related products such as cartridges that may be supplied by Seller for use with the Product. Buyer shall not challenge, contest or otherwise impair Seller's ownership of its Intellectual Property Rights, or the validity or enforceability of any such Intellectual Property Rights.

6.3 Intellectual Property Claims. Under no circumstances shall Seller be obligated to indemnify, hold harmless or defend Buyer from any third-party suit with respect to any claim of infringement or misappropriation of any patent, trademark, copyright, mask work right, trade secrets or other Intellectual Property Rights.

7. Warranties, Limitation of Liability, and Indemnification

7.1 Product Warranty. Seller warrants that, for a period of twelve (12) months from the date of delivery in accordance with EXW Seller's facility ("**Warranty Period**"), the Product (i) will be free from defects in workmanship or material, and (ii) will conform in all material respects to the Specifications under normal use and service (collectively, "**Product Warranty**").

Deviations from the Specifications which do not materially affect operational or functional performance of the Product shall not be deemed to constitute defects of material or workmanship or a failure of the Product to comply with such Specifications. Use of the Product will be under the Buyer's exclusive management and control. Buyer will be responsible for assuring the proper use, care, maintenance management and supervision of the Product. The terms of this warranty do not apply to any Product which has been subject to misuse or neglect, or damaged by accident (including fall, fire, exposure to water and abnormal electrical exposure), or that has been modified by anyone without the Seller's authorization. Additionally, no warranty is given, and Seller shall not be obligated to make repairs, to the extent that the problem in question arises from defects in or incompatibility of Buyer's own systems and equipment which were not purchased from Seller. The warranties contained herein shall extend only to Buyer and shall not apply to Buyer's affiliates or customers. In the event that the Product is not free from defects as warranted herein, Seller's sole and exclusive obligation shall be to promptly repair or replace such Product or the defective parts or portions thereof within the warranty period described above, at no additional cost to Buyer. After expiration of such warranty period Seller shall not have any further obligations for repair or replacement of such Product, except as provided by further written agreement of the parties. Buyer may purchase a maintenance support agreement (a "**Services Agreement**") for the Product to receive further repair and replacement services. Notwithstanding the foregoing, if Buyer has provided written notice to Seller of a problem, for which a warranty is provided above, within the warranty period, Seller shall prosecute such repairs or replacement of Product until such time as the issue is reasonably resolved. Except as provided above, at no time will Seller have any obligation to refund all or any portion of the purchase price paid for the Product sold and purchased under the terms of this Agreement. Furthermore, Seller shall have no obligation to repair or replace the Product even within the referenced warranty period until and unless Buyer provides to Seller written notice of any claimed defects and a reasonable opportunity to cure such defects.

7.2 Test Kits Warranty. Seller represents and warrants that each Test Kit at the time of delivery will: (a) be free from defects in material, design and workmanship; (b) be manufactured in compliance with applicable U.S. national, state and local laws and regulations; and (c) be suitable for use with the Product (collectively, the "**Test Kit Warranty**"). If upon receipt of Test Kits, Buyer determines that such Test Kits do not conform to the Test Kit Warranty, Buyer shall notify Seller in writing of such deviations with five (5) days of such receipt. The terms of this warranty do not apply to any Test Kit which has been subject to misuse or neglect, or damaged by accident (including fall, fire, exposure to water and abnormal electrical exposure), or that has been modified by anyone without the Seller's authorization. In the event that a Test Kit does not conform to the Test Kit Warranty, Seller's sole and exclusive obligation and Buyer's sole remedy shall be for Seller to replace such Test Kit or the defective parts or portions thereof, at no additional cost to Buyer, provided that Buyer provides written notice of such deviations with five (5) days of Buyer's receipt of the corresponding Test Kit. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, AND SAID EXCLUSION APPLIES SPECIFICALLY BUT IS NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. ANY STATEMENTS, CLAIMS OR INFORMATION CONTAINED IN ANY LITERATURE OR OTHER MATERIALS FURNISHED BY SELLER TO BUYER CONCERNING THE TEST KIT ARE ACKNOWLEDGED TO BE FOR INFORMATION PURPOSES ONLY AND SHALL NOT

CONSTITUTE OR BE DEEMED TO CONSTITUTE WARRANTIES OR REPRESENTATIONS BY SELLER.

7.3 Disclaimer of Warranty of Services. ALL SERVICES ARE PROVIDED "AS-IS" AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, CONCERNING SERVICES AND DELIVERABLES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, WARRANTIES OF MERCHANTABILITY, OR OF MERCHANTABLE QUALITY, OR OF FITNESS FOR ANY PURPOSE, PARTICULARLY, SPECIFIC OR OTHERWISE, EXCEPT AS PROVIDED IN THIS SECTION 7. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, AND SAID EXCLUSION APPLIES SPECIFICALLY BUT IS NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ANY STATEMENTS, CLAIMS OR INFORMATION CONTAINED IN ANY LITERATURE OR OTHER MATERIALS FURNISHED BY SELLER TO BUYER CONCERNING THE PRODUCT ARE ACKNOWLEDGED TO BE FOR INFORMATION PURPOSES ONLY AND SHALL NOT CONSTITUTE OR BE DEEMED TO CONSTITUTE WARRANTIES OR REPRESENTATIONS BY SELLER.

7.4 Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR OTHER DAMAGES WHATSOEVER RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCT, TEST KITS OR OTHER GOODS OR SERVICES SOLD PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF SELLER OR OTHERWISE. IT IS AGREED, HOWEVER, THAT IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE U.S. DOLLAR AMOUNT EQUAL TO THE AMOUNT PAID BY BUYER FOR THE COST OF THE SPECIFIC SERVICE GIVING RISE TO THE CLAIM IN QUESTION, IN EACH CASE. THE DAMAGE LIMITATIONS PROVIDED IN THIS AGREEMENT AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY. THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER BE OBLIGATED TO INDEMNIFY, HOLD HARMLESS OR DEFEND BUYER FROM ANY THIRD-PARTY SUIT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, MASK WORK RIGHT, TRADE SECRETS OR SIMILAR INTELLECTUAL PROPERTY RIGHTS.

7.5 Indemnification. Buyer shall indemnify, defend, and hold harmless Seller and its affiliates, and each of their employees, directors, officers, contractors and agents ("**Representatives**") from and against any and all losses, claims, actions, damages, liabilities, penalties, costs, and expenses (including reasonable attorneys' fees and court costs) brought by a third party, resulting from (i) Buyer's or its Representatives' willful misconduct or negligence, or (ii) Buyer's breach of any representation or warranty hereunder.

8. Export Controls

8.1 Buyer acknowledges that all shipments by Seller are or may be subject to restrictions and limitations imposed by United States export controls, trade regulations and trade sanctions. Buyer at all times will comply with such sanctions, controls and regulations and will cause compliance with such sanctions, controls and regulations in its use and disposition of the Product and Test Kits. With respect to each Product and Test Kit shipment pursuant to this Agreement, Buyer will obtain and supply to Seller in writing all information required by Seller to obtain any U.S. export license, permit, approval or documentation applicable to such shipment. Notwithstanding any contrary provision in this Agreement, Seller will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any.

8.2 If Seller learns, or has reasonable cause to believe, or if any branch or agency of the government of the United States claims, that a violation of any applicable trade sanctions, export controls or trade regulations has occurred or is likely to occur because of any shipment, Seller may, in addition to any other remedy it may have, suspend all shipments to Buyer until: (a) Seller is satisfied that such violation did not occur or has ceased to occur, or (b) such claim is withdrawn or otherwise resolved in favor of Seller.

8.3 Neither Buyer, not its Representatives, shall cause or permit any shipment of the Product or Test Kits to be made by Buyer or by anyone acting on behalf of Buyer, to any country for which a validated export license is required by the United States, or to which shipment is prohibited under trade regulations or trade sanctions of the United States. It shall be the duty of Buyer to inform itself in detail of such export controls, trade regulations and trade sanctions. Buyer will not cause or permit any Buyer Representative to ship any Product or Test Kit to any other part of the world until all necessary import and/or export approvals and clearances have been obtained, and until all United States export controls, trade regulations or trade sanctions applicable to such shipments have been fully complied with. Buyer will indemnify and will hold Seller harmless from and against any claim, loss or liability arising out of any breach of the foregoing covenants.

9. General

9.1 Benefit and Binding Effect. The agreement formed by these Terms and Conditions shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

9.2 Independent Contractors. The relationship between Buyer and Seller is solely that of independent contractors. Neither Party has any authority to bid the other Party, or to assume or create any obligation or waive any right on behalf of the other Party. Nothing in this Agreement may be construed to create a partnership, joint venture, or agency relationship between the Parties.

9.3 Assignment. Neither Party may assign this Agreement or assign its rights or delegate its duties under it without the express prior written consent of the other Party.

9.4 Choice of Law and Jurisdiction. All disputes, claims, or controversies between Buyer and Seller shall be governed by the laws of the State of California without regard to conflict of law provisions. All disputes arising from or related to this Agreement, the Product, the Test

Kits, or the Services, shall be exclusively brought by the Parties in the State or Federal Court of San Diego County, California, and both Parties hereby agree to the exclusive jurisdiction and venue of such Courts.

9.5 Expenses. If any attorney is engaged by Seller to resolve a dispute between Buyer and Seller related to a purchase between Buyer and Seller, with or without the filing of any legal action or proceeding, then Buyer shall immediately pay on demand all such attorney fees and costs incurred by Seller, together with interest thereon from the date of such demand until paid at the highest rate of interest then permitted under applicable usury laws.

9.6 Modification. This Agreement shall not be modified or rescinded except in writing signed by an officer of each Party.

9.7 Severability. Any provision hereof which is prohibited or unenforceable shall, as to such jurisdictions, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity of such provision in any other jurisdiction.

9.8 Waiver. No waiver of any breach of, or failure to enforce any provision of, this Agreement at any time by any Party shall in any way limit the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Agreement.

9.9 Force Majeure. Seller shall not be liable for any loss, delay, or failure to perform resulting from an force majeure event, including but not limited to Acts of God, fire, natural disaster, epidemics and pandemics and their effects, labor stoppage, acts of government, war or military hostilities, inability of carriers to make scheduled deliveries, labor or parts shortages, or any act beyond the reasonable control of the Seller. Quantities so affected may be eliminated from this Agreement without liability, but this Agreement shall remain otherwise unaffected.

9.10 Conflict. If there is any conflict between these Terms and Conditions and any conditions contained in the Proposal, these Terms and Conditions will override those conditions to the extent of the inconsistency unless an inconsistent condition in the Proposal expressly states that it takes precedence over or operates notwithstanding these Terms and Conditions.