

Oxford Nanopore Technologies Ltd.  
Nanopore Community  
Terms and Conditions - 09 January 2017

BY ORDERING THE GOODS AND PAYING THE REQUIRED FEE, YOU (THE “CUSTOMER”) AFFIRM THAT (A) YOU HAVE READ ALL THE TERMS CONTAINED HEREIN, (B) THIS CONTRACT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU, (C) YOU ARE AUTHORIZED TO REPRESENT AND BIND ANY PERSON FOR WHOM YOU WORK AND (D) YOU ACKNOWLEDGE AND ACCEPT THAT OXFORD NANOPORE TECHNOLOGIES, LTD. (“OXFORD NANOPORE”) EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES AVAILABLE UNDER LAW OR THROUGH COURSE OF DEALING, ON ANY GOODS MADE AVAILABLE PURSUANT TO THE NANOPORE COMMUNITY (“COMMUNITY”).

**1. Contractual Terms**

**1.1. Legal Agreement:** These terms herein are a contract between You and Oxford Nanopore under which Oxford Nanopore authorizes You to use the Goods (the “Contract”). This Contract, together with Your Programme Entry (if applicable), Your Order(s) and, to the extent You have joined the PromethION Access Programme Queue, the PromethION Access Programme Terms and Conditions of Deposit (the “Queue Terms”), create a contract between You and Oxford Nanopore for participation in the Community. If any terms of this Contract conflict with the terms of Your Programme Entry or, as applicable, the Queue Terms, the terms of this Contract control. For the avoidance of doubt, Oxford Nanopore’s entry into this Contract with You does not by itself constitute acceptance by Oxford Nanopore of Your participation in the Community.

**1.2. Condition to Use:** OXFORD NANOPORE ENCOURAGES YOU TO USE THE GOODS FOR YOUR OWN EXPERIMENTS ONLY AFTER YOU SUCCESSFULLY COMPLETE THE CONTROL EXPERIMENTS INCLUDED WITH THE GOODS UNDER THE TERMS DEFINED IN THE DOCUMENTATION. The Goods may not be used (i) by any

individual or entity that is, or is affiliated with, a current or potential competitor of Oxford Nanopore (a “Competitor”); (ii) on behalf of or for the benefit of any such Competitor; (iii) for the development of any other product or service that competes or could compete with the products and services of Oxford Nanopore (except to the extent applicable laws specifically prohibit such restriction); or (iv) for monitoring, benchmarking or other competitive purposes. You represent and warrant that You will not use the Goods in contravention of this provision. Without limiting the generality of the foregoing, “Competitor” shall (A) be deemed to include an entity or person that develops, sells, or distributes any third party tool, process or system for genomic sequencing, analysis of nucleic acids or molecule sensing and (B) not be deemed to include customers of competitors solely because they are customers of competitors or government agencies by virtue of their funding of research by competitors of Oxford Nanopore.

**1.3. Publishing Rights:** YOU HAVE THE RIGHT TO PUBLISH AND SPEAK PUBLICLY ABOUT THE RESULTS OF YOUR USE OF THE GOODS, BUT OXFORD NANOPORE

ENCOURAGES YOU TO DO SO ONLY AFTER YOU SUCCESSFULLY COMPLETE THE CONTROL EXPERIMENTS INCLUDED WITH THE GOODS UNDER THE TERMS DEFINED IN THE DOCUMENTATION. IF SO REQUIRED BY OXFORD NANOPORE IN YOUR ORDER, YOU MAY ONLY PUBLISH AND SPEAK PUBLICLY ABOUT THE RESULTS OF YOUR USE OF THE GOODS AFTER PROVIDING THE REQUIRED ACKNOWLEDGMENT OF FITNESS FOR PURPOSE VIA OXFORD NANOPORE'S ONLINE FORM. Notwithstanding the above, You are encouraged to share Your experiences using the Goods with Oxford Nanopore and with other Community participants via the private online forum provided at <http://www.nanoporetech.com>, <http://wiki.nanoporetech.com> or other web address specified by Oxford Nanopore (such website, the "**Oxford Website**") at any time during Your participation in the Community. Publishing and/or speaking publicly about the results of Your use of the Goods and/or posting on the Oxford Website is subject to Your compliance with the terms of this Contract, including clause 14.1.

## 2. Delivery and Inspection

2.1. **Order Fulfillment:** Oxford Nanopore will aim to deliver the Goods to You by the dates specified in the delivery schedule Oxford Nanopore will send to Your account on the Oxford Website. Oxford Nanopore reserves the right, in its sole discretion, to revise the delivery schedule and to determine the number of Goods Oxford Nanopore will make available to You when joining the Community. Any dates quoted for delivery are approximate only, and Oxford Nanopore will not be liable for any delay in delivery. Oxford Nanopore will deliver the Goods to the location set out in the Order ("**Delivery**

**Location**"). Delivery of the Goods will be completed on the Goods' arrival at the Delivery Location. You will promptly make a visual inspection to check that the Goods have arrived in good condition and that You have the correct number of each type of Goods.

2.2. **Right to Use Contact Information:** You grant Oxford Nanopore full right and title to retain and re-use any and all personal information included in Your Order(s) for purposes of providing You notice regarding an Order, support, to facilitate completion of additional orders, and to make You aware of new products and services available from Oxford Nanopore. Your information will not be passed to third party companies for the purpose of marketing third party products or services without Your prior consent for such purposes.

2.3. **Set-Off:** Each Order is a separate, independent transaction and You will pay any amounts due under the Contract relating to an Order in full, without any set-off, counterclaim, deduction or withholding, except for any withholding required by law or except as Oxford Nanopore may otherwise specify in writing from time to time. Oxford Nanopore may at any time, without limiting its other rights and remedies, set off any amount You may owe Oxford Nanopore against any amount payable by Oxford Nanopore to You.

2.4. **No Pre-printed Purchase Order Terms Apply:** Each Order once accepted by us, as confirmed by an email from us, shall become binding upon You and Oxford Nanopore and shall be governed by the terms set out in this Contract. Any terms proposed in Your acceptance of a quotation or a purchase order which add to, vary from, or conflict with the terms herein or in the quotation are hereby objected to. Any

such proposed terms shall be void and the terms herein and in the email confirmation acceptance of the Order shall constitute the complete and exclusive statement of the terms and conditions of the Contract between the parties with respect to the applicable Order.

### 3. Title and Risk

3.1. **Risk of Loss:** The Goods are deemed delivered upon loading onto the commercial carrier at Oxford Nanopore's facility. From the time of such delivery, You are responsible for the risk of loss of or damage to the Goods; provided, that, if specified in the applicable Order, Oxford Nanopore will procure insurance on Your behalf to cover risk of loss during shipment. If the Goods are lost or damaged while being transported, Oxford Nanopore will help Customer in communicating with the carrier with respect to such lost and/or damaged Goods. (CIF - INCOTERM 2010)

3.2. **No Title Transfer:** You will take no title to the Goods, including, without limitation, all Consumables and Software. As between You and Oxford Nanopore, Oxford Nanopore will remain the legal owner the Goods, including, without limitation, all Consumables and Software, and all Intellectual Property Rights therein or appurtenant thereto.

3.3. **Safeguarding Goods:** You will:

(i) maintain the Goods in good condition and in a safe location, under environmental conditions as specified in the Documentation and on the Oxford Website;

(ii) notify Oxford Nanopore immediately if You become subject to any of the events listed in clause 11 (an "Insolvency Event") and, if You

become subject to any Insolvency Event or Oxford Nanopore reasonably believes that such an event is about to happen and notify You accordingly, then without limiting any other right or remedy Oxford Nanopore may have, Oxford Nanopore may at any time require You to return the Goods to it; and

(iii) give Oxford Nanopore such information about the Goods as Oxford Nanopore may request from time to time.

### 4. Use of the Goods

4.1. **Research Use Only:** You acknowledge that the Goods do not have United States Food and Drug Administration ("FDA") or equivalent non-U.S. regulatory agency approval ("Approval"). Accordingly, You acknowledge that the Goods are labeled and intended FOR RESEARCH USE ONLY and NOT FOR USE IN DIAGNOSTIC, THERAPEUTIC, OR CLINICAL PROCEDURES and agree that You shall only use the Goods for Your Research Use. You acknowledge that You have not obtained the Goods for personal, family, domestic, household or other similar use that would trigger the applicability of the consumer protection laws of the jurisdiction in which You are located. The Goods should be used in strict accordance with the Documentation and applicable instructions, warnings and other information in user manuals accompanying such Goods or on their packaging or on the Oxford Website. Unless otherwise expressly stated by Oxford Nanopore in writing, no claim or representation is made or intended by Oxford Nanopore (i) as to any diagnostic, therapeutic, or other clinical use of the Goods; (ii) that any of the Goods has any Approval for use in any diagnostic, therapeutic, or other

clinical procedure, or for any other use requiring compliance with any law, regulation or governmental policy concerning medical devices, laboratory tests or the like (collectively, “**Regulatory Laws**”); (iii) that any of the Goods will satisfy the requirements of the FDA or any other regulatory agency; or (iv) that any of the Goods or their performance is suitable or has been validated for clinical, therapeutic, or diagnostic use, for safety and effectiveness, for any specific use or application, or for importation into Your jurisdiction. You agree that if You elect to use the Goods for a purpose that would subject You or any of the Goods to the application of Regulatory Laws or any other law, regulation or governmental policy, You shall be solely responsible for obtaining any required Approvals and otherwise ensuring that the importation of the Goods into Your jurisdiction and Your use of the Goods complies with all such laws, regulations and policies. The burden of proof for safe use and handling of the Goods is entirely Your responsibility.

4.2. **Limited Use of Flow Cells:** You acknowledge that Hardware is authorized for multiple uses, but shall not be reused longer than its useful life, which is stated on the Oxford Website. You acknowledge that Consumables are authorized for use only in accordance with Documentation. You acknowledge and agree that Flow Cells and Consumables **MUST BE USED** as soon as possible, but in any event, Flow Cells and Consumables **MAY NOT BE USED** more than eight (8) weeks after delivery of such Flow Cells and/or Consumables to You. Consumables may be used only in conjunction with Flow Cells and the Hardware and not with any other products. Other than the uses described in 4.10, the Goods may not

be used for the development of any product or service that competes or could compete with the products or services of Oxford Nanopore. It is Your responsibility to make sure that the Goods are suitable for the particular use for which You intend them. In using the Goods, You acknowledge that there are hazards associated with their use and that the Goods have not been tested for safety and efficacy in food, drug, diagnostic, clinical, medical devices, cosmetic, commercial or any other use.

4.3. **Access to Reports:** Oxford Nanopore will have access to instrument run reports produced by You using the Software (“**Instrument Run Reports**”) and the Software will automatically post Instrument Run Reports to Oxford Nanopore. The Instrument Run Reports will be solely diagnostic in nature relating to Oxford Nanopore Technology and not contain any Biological Data. You agree to enable this access, including across Your firewalls, and the Software license granted hereunder is conditioned upon such access. You hereby grant Oxford Nanopore a worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up right and license to use, copy, modify, and create derivative works using Instrument Run Reports solely for purposes of evaluation and to improve and report on the performance of any Oxford Nanopore product. This license does not extend to Biological Data generated in parallel with the run report.

4.4. **Software License:** Subject to Your compliance with this Contract, Oxford Nanopore hereby grants to You a non-exclusive, non-transferable limited, personal license (without the right to sublicense) under Oxford Nanopore’s Intellectual Property Rights (i) to use the Software for Your Research Use

only and in accordance with any instructions issued by Oxford Nanopore solely for purposes of internal testing and evaluation with Flow Cells and (ii) to copy Software for archival or backup purposes; provided that, (a) all titles and trademarks, copyright, and restricted rights notices are reproduced on such copies and (b) You provide Oxford Nanopore with notice of the location of the computer on which the Software is installed. For the avoidance of doubt, this license is valid for Research Use only.

4.5. **Restrictions on Use:** You must not, and will not permit any third party to: (i) except as otherwise specifically permitted in this Contract, modify or create any derivative works of any Software, Goods or Documentation; (ii) copy the Software except as provided in this Contract or approved in writing by Oxford Nanopore; (iii) separate Software, which is licensed as a single product, into its component parts; (iv) sublicense or permit simultaneous use of the Software by more than one user; (v) reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code for any Software (except to the extent applicable laws specifically prohibit such restriction) nor extract or isolate components of Software or Goods or subject them to non-authorized analysis; (vi) redistribute, encumber, sell, rent, lease, sublicense, use the Goods or Software in a timesharing or service bureau arrangement (including provision of services to third parties using the Software except as provided in this Contract), or otherwise transfer rights to any Goods or Software (You may NOT transfer the Software under any circumstances); (vii) access, read or copy any streaming data output before hdf files are fully written or otherwise use, without specific authorization from Oxford Nanopore,

third party applications, data analysis tools, or third party services to analyze such streaming data output within 48 hours of collection; or (viii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or a component thereof. The Software may be used only in connection with the Goods.

4.6. **Termination:** Your rights with respect to the Software will terminate upon the termination or expiration of this Contract in accordance with Section 14.11.

4.7. **Savings:** All restrictions specified in this clause 4 and elsewhere in the Contract shall apply to the maximum extent permissible under applicable law. If You believe that You have additional rights or the right to act contrary to the express restrictions specified in the Contract under mandatory laws (including, without limitation, national laws implementing Directive 91/250/EEC and similar laws), You agree to provide Oxford Nanopore with at least thirty (30) days prior written notice and any reasonably requested information before exercising such rights, to allow Oxford Nanopore to offer alternatives at its sole discretion.

4.8. **Compliance with Laws:** You represent and warrant that You are authorized to enter into this Contract and comply with its terms. You will at any and all times meet Your obligations hereunder and You will ensure that the way in which and the purposes for which You use the Goods comply with all laws, regulations and government policies that may apply. You are responsible for obtaining any necessary approvals, licenses and permissions that may be required for such use and operation. Without limitation to the other

restrictions set out in this Contract, You warrant that You will in no event use or allow use of the Goods or any parts of them in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical or biological weapons or other military end-use of any kind.

4.9. **Return Goods:** You pledge to keep the Goods in Your possession at the Delivery Location until You return them to Oxford Nanopore or destroy them in accordance with its instructions. You agree that You will not resell, distribute or transfer the Goods to any third party. You shall return to Oxford Nanopore, using the prepaid packaging provided by Oxford Nanopore, the Hardware within thirty (30) days of expiration or termination of this Contract. You shall return to Oxford Nanopore, using the prepaid packaging provided by Oxford Nanopore, each shipment of Flow Cells delivered to You the earlier of: (i) as soon as practical after all Flow Cells delivered in one shipment have been used, or (ii) eight (8) weeks after delivery to You, except that You shall not return Contaminated Flow Cells to Oxford Nanopore and shall instead provide Oxford Nanopore proof of legal and appropriate destruction of Contaminated Flow Cells. In addition, Oxford Nanopore may request that the Goods be returned to Oxford Nanopore or disposed of as soon as possible at any time and You agree to comply with any such request in accordance with any instructions in the Documentation (or on their packaging or on the Oxford Website), or as otherwise specified by Oxford Nanopore in writing; provided, that Oxford Nanopore may not request that the Goods be returned or disposed of at any time at which You have remaining unused, viable Flow Cells.

Notwithstanding the foregoing in this Section 4.9, local laws and regulations applicable to Your disposal of the Goods shall take precedence, and it is Your responsibility to comply with any such laws and regulations and Oxford Nanopore will have no liability in relation to any breach thereof. Oxford Nanopore reserves the right to recover from You monetary compensation for any Goods not returned or for which proof of legal and appropriate destruction (of Contaminated Flow Cells) has not been provided to Oxford Nanopore.

4.10. **Nanopore Extensions:** The Flow Cells will be delivered with pre-loaded nanopores, membranes (that hold the nanopores) and electrochemistry on top of a modified chip surface. None of these components either individually or collectively are allowed to be modified, derivativised, replaced or removed. The Sequencing Kits will include other components: enzymes and adaptors that enable sample preparation methods, molecular ‘tethers’ that enable improved analyte to nanopore binding through interactions with the membranes, enzymes that allow for controlled transport of analytes through nanopores, buffered solutions for improved ionic conductance, solutions for washing the Flow Cells between samples and other components as provided by Oxford Nanopore from time to time. You may not analyse, modify or reverse engineer these components, but may develop and use alternative versions (“**Nanopore Chemistries**”). In addition, You are encouraged to develop and use: (i) new application protocols, (ii) sample preparation methods, (iii) data analysis tools, such as, software written to APIs (application programming interfaces) published by Oxford Nanopore (but not the Software itself) and/or (iv) new

uses of the Goods (“**Nanopore Extensions**”). Your right to create and use Nanopore Extensions and Nanopore Chemistries is conditioned on Your compliance with the Nanopore Extension Requirements. “**Nanopore Extension Requirements**” means: (A) all titles and trademarks, copyright, patent marking and restricted rights notices are reproduced on any materials embodying Nanopore Extensions or Nanopore Chemistries; (B) any materials embodying Nanopore Extensions or Nanopore Chemistries must carry prominent notices stating that You modified it, and giving a relevant date and that the Nanopore Extension or Nanopore Chemistry must be used only with a Flow Cell; (C) use of the Nanopore Extension and/or Nanopore Chemistry may not be conditioned on payment of license fee (or consideration) for use of same; (D) the Nanopore Extension or Nanopore Chemistry may not be disclosed to or used by any of Oxford Nanopore’s Competitors and You may not authorize any of Oxford Nanopore’s Competitors to use the Nanopore Extension or Nanopore Chemistry; (E) any Nanopore Extension or Nanopore Chemistry is made available under terms and conditions that provide that the Nanopore Extension and/or Nanopore Chemistry is provided “AS IS” and (F) with respect to any Nanopore Extension or Nanopore Chemistry created pursuant to this section 4.10, use is limited to Research Use. Notwithstanding anything herein to the contrary, the Goods may not be used for the development of any other product or service that competes or could compete with the products or services of Oxford Nanopore.

## 5. Payments

5.1. **Payment:** You agree to pay (a) the Nanopore Community Fee set forth in

Your Order(s) (the “**Nanopore Community Fee**”), (b) other fees for Flow Cells and Consumables set forth in Your Order(s) from time to time and (c) delivery charges (for both delivery of Goods to You and return of Goods to Oxford Nanopore) as specified in Your Order(s) or in notification(s) sent to Your account on the Oxford Website. If, after You have paid the Nanopore Community Fee, You are not approved for participation in the Community, Oxford Nanopore shall promptly, and in any event no more than fifteen (15) days after notice is given that You are not approved, refund to You the Nanopore Community Fee.

5.2. **Taxes:** If any taxes (including any value added tax (“**VAT**”)), charges or government fees (including import or export duty) apply, You will be responsible for paying them and Oxford Nanopore will add them to Your Order(s) where appropriate. The price of the Goods is also exclusive of insurance, transport and delivery costs and Oxford Nanopore will charge You and You agree to pay the delivery fee specified in Your Order(s). This fee will be included on Your Order(s).

5.3. **Payment Terms:** You agree to pay the invoice in full and in cleared funds within 30 days of the date of the invoice, in the manner specified on the invoice. Payment must be made to the account specified by Oxford Nanopore on the invoice in U.S. Dollars. Time of payment is of the essence.

5.4. **Suspension for Non-Payment:** If You fail to make any payment due to Oxford Nanopore under the Contract by the due date for payment, Your participation in the Community will be suspended (for the avoidance of doubt, without refund of the Nanopore Community Fee) until the account is fully paid up.

## 6. Maintenance and Support

### 6.1. No Continuing Support Obligation:

Oxford Nanopore provides no assurance that any specific errors or discrepancies in the Goods will be corrected. Limited technical support, Documentation and other literature will be available on the Oxford Website. You will have access to the Oxford Website during Your participation in the Community. Oxford Nanopore reserves the right, but does not have the obligation to provide additional support at no additional cost, or for a fee to be agreed in Your Order(s). Provision of the Goods under this Contract is for testing purposes and shall not create any obligation for Oxford Nanopore to continue to develop, productize, support, repair, offer for sale or in any other way continue to provide or develop Goods either to You or to any other party.

6.2. **Limited Remedy:** If Goods are defective or dysfunctional, Oxford Nanopore will provide replacement Goods with no additional payment or delivery charges required, provided, that the no replacement Goods will be provided for Goods that have been misused, mishandled, neglected, or stored improperly or otherwise used in ways contrary to the Documentation or this Contract.

## 7. Warranties

THE GOODS AND SOFTWARE ARE PROVIDED "AS IS" AND, EXCEPT FOR ANY WARRANTY, CONDITION OR GUARANTEE THAT CANNOT BE EXCLUDED BY APPLICABLE LAW, ALL WARRANTIES IMPLIED OR OTHERWISE NOT STATED IN THIS SECTION 7 ARE EXCLUDED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO ANY SUCH WARRANTIES, CONDITIONS OR GUARANTEES WHICH

CANNOT BE LAWFULLY EXCLUDED, OXFORD NANOPORE DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, ADEQUACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY KIND WITH RESPECT TO THE GOODS AND SOFTWARE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE (INCLUDING ANY PURPOSE RELATING TO A CUSTOMER'S LEGAL OR REGULATORY COMPLIANCE OBLIGATIONS). WITHOUT LIMITATION OF THE FOREGOING, OXFORD NANOPORE EXPRESSLY DOES NOT WARRANT THAT THE GOODS OR THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OF THE GOODS OR THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. YOU ASSUME RESPONSIBILITY FOR THE RESULTS OBTAINED FROM YOUR USE OF THE GOODS AND SOFTWARE. YOU SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE GOODS AND THE SOFTWARE. You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by Oxford Nanopore or its agents which is not set out in this Contract. Oxford Nanopore makes no warranty or representation and gives no indemnity in respect of any third party's products, whether or not obtained from Oxford Nanopore. Oxford Nanopore's supply of any such third party-produced products will be subject to separate terms and conditions of the manufacturer or licensor, which will be specified at the time of purchase in relation to such product. CERTAIN OF THE SOFTWARE LICENSED HEREUNDER MAY BE A BETA RELEASE AND MAY CONTAIN DEFECTS. THE PRIMARY PURPOSE OF THIS BETA TESTING LICENSE IS TO OBTAIN FEEDBACK ON



SOFTWARE PERFORMANCE, THE IDENTIFICATION OF DEFECTS AND SUGGESTIONS FOR ADDITIONAL FEATURES. YOU ARE ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE SOFTWARE AND/OR ACCOMPANYING DOCUMENTATION AND MATERIALS. IT IS POSSIBLE THAT THE USE OF THE GOODS MAY RESULT IN DATA THAT CANNOT BE INTERPRETED WITH THE SOFTWARE. SUBJECT TO OTHER PROVISIONS HEREIN, YOU MAY DEVELOP SOFTWARE TO INTERPRET DATA GENERATED USING THE SEQUENCING KIT PROVIDED BY OXFORD NANOPORE OR A CUSTOM SAMPLE PREPARATION. Any samples, training materials, descriptive material or advertising related to the Goods, whether or not, produced by Oxford Nanopore and any descriptions contained in or on the Oxford Website or in Oxford Nanopore's marketing materials or product literature are produced for the purpose of general information only and shall not form part of this Contract or have any contractual force.

## **8. Limitation of Liability**

8.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OXFORD NANOPORE WILL NOT BE LIABLE TO YOU, WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE, FOR ANY LOSS OF PROFIT, BUSINESS, OPPORTUNITY OR SAVINGS OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND HOWSOEVER ARISING (WHETHER IN TORT (INCLUDING FROM OXFORD NANOPORE'S NEGLIGENCE), IN CONTRACT, UNDER STATUTE OR OTHERWISE). OXFORD NANOPORE WILL NOT BE LIABLE FOR ANY DELAY IN

PERFORMING OR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT WHERE SUCH DELAY OR FAILURE IS CAUSED BY FORCE MAJEURE. THE GOODS ARE SOLD "AS IS" AND WE GIVE NO GUARANTEES OR WARRANTIES IN RELATION TO THE GOODS. EXCEPT WITH RESPECT TO OUR OBLIGATIONS UNDER ARTICLE 9 AND SUBJECT TO SECTIONS 14.5 AND 14.6, IN ALL EVENTS THE MAXIMUM DAMAGES OF ANY TYPE FOR WHICH OXFORD NANOPORE SHALL BE LIABLE UNDER THIS IS \$100, AND WITH RESPECT TO OXFORD NANOPORE'S OBLIGATIONS UNDER ARTICLE 9, THE MAXIMUM AMOUNT FOR WHICH OXFORD NANOPORE IS AT RISK, INCLUDING ITS OWN INTERNAL COSTS INCURRED IN DEFENDING YOU, IS FIVE MILLION DOLLARS (\$5,000,000.00). HOWEVER, THESE PROVISIONS DO NOT LIMIT OXFORD NANOPORE'S LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

8.2. **Duration of Claims:** Any action for breach of contract with respect to the Goods or the Software must be commenced within one year of delivery of the Goods or the Software, following which You covenant not to bring or permit the making of any claim, action or proceeding in connection with this Contract or its subject matter.

## **9. Indemnification**

9.1. **Oxford Nanopore Indemnity:** In consideration of Your compliance with this Contract, Oxford Nanopore agrees to defend and indemnify You from and against any third party claims alleging that the Goods or the Software in the form delivered infringe any copyright or trademark or misappropriate any trade secret or knowingly infringe any presently existing patent. Oxford Nanopore shall not have any obligation or liability to the extent any infringement or misappropriation is

caused by (i) modifications to the Goods or the Software made by or on behalf of anyone other than Oxford Nanopore, (ii) the combination of the Goods or the Software with items not furnished by Oxford Nanopore, (iii) a breach of this Contract by You, including, a failure to follow the processes or protocols defined by Oxford Nanopore, or (iv) Your failure to use corrections or modifications provided by Oxford Nanopore, or (v) third party materials. This clause sets forth Oxford Nanopore's sole and exclusive liability and Your sole and exclusive remedy with respect to infringement claims in connection with this Contract.

9.2. **Your Indemnity:** In consideration of Oxford Nanopore granting to You the right to use the Goods, to the fullest extent permitted under applicable law, You agree to defend and indemnify Oxford Nanopore from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Oxford Nanopore in connection with (i) any breach by You of the provisions of this Contract, (ii) any failure to use the Goods or the Software in accordance with Oxford Nanopore's written instructions, (iii) any introduction by You of hazardous substances into or onto the Goods, or (iv) otherwise arising in connection with Your use of the Goods or the Software.

9.3. **Indemnification Procedures:** In the event that a Party (the "Indemnitee") intends to seek indemnification under this Section 9, it will promptly inform the other Party (the "Indemnitor") of a claim after receiving notice of the claim and will permit the Indemnitor to

direct and control the defense of the claim and will provide such reasonable assistance as reasonably requested by the Indemnitor (at the Indemnitor's cost) in the defense of the claim provided always that Indemnitee will not make any admission on behalf of the Indemnitor. The Indemnitee will in any event take reasonable steps to mitigate or reduce its loss pursuant to any claim.

## 10. Intellectual Property

10.1. **Reservation of Rights:** You acknowledge that Oxford Nanopore is the sole and exclusive owner of all Intellectual Property Rights in and to the Oxford Nanopore Technology, all components thereof, any processes for use of the same, all media, printouts, papers, support materials or hard copies containing such Oxford Nanopore Technology, and/or related documentation, including any intellectual property therein or appurtenant thereto. You shall take no action that, in any way, would infringe upon the copyrighted or *droit d'auteur* protected programs, Goods, Software, or data of Oxford Nanopore, or that would infringe upon Oxford Nanopore Technology or Oxford Nanopore's Intellectual Property Rights therein. You shall not remove any proprietary, copyright, *droit d'auteur*, confidential or trade secret legend from any portion of the Goods, the Software or any data or support materials provided to You by Oxford Nanopore. Except where prohibited by applicable law, You agree not to contest Oxford Nanopore's ownership of any copy right or other applicable Intellectual Property Right in Oxford Nanopore Technology. Your rights to use the Goods and the Software exist only to the extent specifically provided in this Contract. You retain all right, title and interest in materials You owned prior to entering

into this Contract, including any intellectual property therein or appurtenant thereto, and any Biological Data created by You, whether or not created while using the Goods.

10.2. **Feedback:** You understand that the Oxford Nanopore Technology continues to be developed. As such, You may encounter problems with the Oxford Nanopore Technology. It is expressly understood, acknowledged and agreed that if You provide Oxford Nanopore suggestions, comments and feedback regarding the Oxford Nanopore Technology, including but not limited to usability, bug reports, test results, and any Instrument Data generated using the Oxford Nanopore Technology and any content You may add to the Oxford Website (collectively, “**Feedback**”), Oxford Nanopore may use such Feedback. You hereby grant Oxford Nanopore a worldwide, limited exclusive, perpetual, irrevocable, royalty free, fully paid up right and license to use, copy, modify, sell, distribute, sub-license, and create derivative works using such Feedback that is an improvement to or derivative work of the Goods and the Software (“**Derivatives**”) and a non-exclusive, perpetual, irrevocable, royalty free, fully paid up right and license to use, copy, modify, sell, distribute, sub-license, and create derivative works using any other Feedback. Oxford Nanopore may, in its sole discretion, and without compensation to or attribution of You or any third party, use Feedback You provide in any way. The limited exclusive license is subject to Your continuing right to use Derivatives in connection with Your use of Goods. Further, You represent and warrant that Your Feedback is not subject to any license terms that would purport to require Oxford Nanopore to comply with any additional obligations with respect to any products that

incorporate any Feedback. If You are a U.S. government entity, the foregoing right and license shall be construed as a non-exclusive permission and shall apply only to the extent permitted under applicable U.S. federal law.

10.3. **Disclose Inventions:** You are encouraged to disclose to Oxford Nanopore any and all inventions, discoveries, Intellectual Property Rights and other proprietary interests in modifications, enhancements, derivative works, or improvements You make with respect to the Goods and the Software. You are not required to disclose to Oxford Nanopore any inventions with respect to Biological Data. Your use of any inventions, discoveries, Intellectual Property Rights and other proprietary interests in modifications, enhancements, derivative works, or improvements You make with respect to the Goods or as a result of using the Goods excluding any inventions with respect to Biological Data shall be for Research Use only.

10.4. **Restricted Rights Notice:** The Goods and the Software made available under this Contract incorporate commercial computer software programs developed exclusively at private expense. Use, duplication and disclosure by any government shall be in accordance with, and subject to these terms and conditions that are customarily provided to the public. If You are a government entity and/or Your use is funded by the government, You are hereby on notice that any data provided by Oxford Nanopore pursuant to this Contract is developed exclusively at private expense and are trade secrets, confidential and privileged, or are commercial or financial data and are confidential or privileged. To the extent required under applicable law, this data may be reproduced and used by the

government with the express limitation that it will not, without written permission of Oxford Nanopore, be used for purposes of manufacture nor disclosed outside the government and that the applicable rights legends shall be marked on any reproduction of any technical data, whether reproduction is in whole or in part. Oxford Nanopore reserves all rights and licenses not expressly granted under this Contract, including, without limitation, all rights in trademarks and associated goodwill.

**10.5. Intellectual Property Release:** You understand that the Oxford Nanopore has Intellectual Property Rights relating to the Goods, including Consumables, as well as to the use of those Goods, including Consumables. Oxford Nanopore hereby grants to You a non-exclusive, non-transferable limited, personal release from claims of infringement of Oxford Nanopore's Intellectual Property Rights with respect to Your participation in the Community solely to the extent You comply with all of the terms of this Contract and Oxford Nanopore protocols for use of the Flow Cells. This release is valid for Research Use only.

## **11. Customer Insolvency**

If You become subject to any of the events listed below or Oxford Nanopore reasonably believes that You are about to become subject to any of them and notifies You accordingly, then without limiting any other right or remedy available to Oxford Nanopore, Oxford Nanopore may cancel or suspend any deliveries under this Contract without incurring any liability for so doing, and any outstanding amounts in respect of the Goods and the Software delivered to You will become immediately due. For the purposes of this Section 11, the relevant events are: Your insolvency;

Your proposal of an individual, company or partnership voluntary arrangement; having a receiver, administrator or manager appointed over the whole or any part of Your business or assets; a petition presented, order made or resolution passed for Your winding up, bankruptcy or dissolution; if You should otherwise propose or enter into any composition or arrangement with Your creditors or any class of them; if You cease or threaten to cease to carry on business or if You claim the benefit of a statutory moratorium; or You suffer any event which is analogous to any of these events in any part of the world.

## **12. Equitable Relief**

You acknowledge that any breach by You of this Contract will cause Oxford Nanopore irreparable harm not compensable with money damages, and that in the event of such breach, Oxford Nanopore shall be entitled to injunctive relief, without bond, from any court of competent jurisdiction.

## **13. Entire Agreement**

This Contract constitutes the whole and only agreement between You and Oxford Nanopore relating to the subject matter of this Contract. For the avoidance of doubt, this Contract replaces and supersedes the Early Access Terms and Conditions, if applicable. This Contract does not supersede any other written or electronic agreement between the parties, if any. To the extent permitted under applicable law, the terms of this Contract apply to the exclusion of any other terms that You may seek to impose or incorporate, including any terms specified on a purchase order, or which are implied by statute, trade, custom, practice or course of dealing. Except in the case of fraud, each party acknowledges that in entering into Contract it is not relying upon any pre-

contractual statement. Except in the case of fraud, no party shall have any right of action against any other party to Contract arising out of or in connection with any pre-contractual statement. For the purposes of this clause, "pre contractual statement" means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Contract made or given by any person at any time prior to this agreement becoming legally binding.

## 14. General

**14.1. Confidentiality:** You agree not to disclose to third parties and to use Your best efforts to keep confidential at all times all Oxford Confidential Information You receive from Oxford Nanopore. You agree not to use Oxford Confidential Information other than for the purposes contemplated by this Contract. You acknowledge and agree that, unless otherwise specifically provided herein or agreed by Oxford Nanopore in writing, the Goods and the Software, including the specific design and structure of individual components, provided to You by Oxford Nanopore constitute confidential proprietary information and trade secrets of Oxford Nanopore. You agree not to transfer, copy, disclose, provide or otherwise make available Oxford Confidential Information to any third party, except in the provision of research services to third parties using the Goods or the Software, without the prior written consent of Oxford Nanopore. You agree to use best efforts to maintain the security of the Oxford Confidential Information provided to You by Oxford Nanopore. You will use your best efforts to cooperate with and assist Oxford Nanopore in identifying and preventing any unauthorized use,

copying, or disclosure of the Goods or the Software. You shall secure and protect all printed materials, manuals, software programs, disks, copies and other media, if any, that embody, contain or describe any Oxford Confidential Information in a manner consistent with the protection of Oxford's rights therein and to take appropriate action by instruction or agreement with Your employees to satisfy Your obligations hereunder. You further agree that you shall be strictly liable for all damages to Oxford Nanopore that results from any disclosure of any Oxford Confidential Information to any third party. If You are a government entity subject to legal requirements regarding public disclosure, You will not be in breach of this Contract as a result of its compliance with such laws; provided, to the extent permitted by applicable law, that: (a) You promptly inform Oxford Nanopore of a request to disclose any Oxford Confidential Information or making a determination that disclosure of any of the same is required under applicable law; and (b) You identify, and disclose to Oxford Nanopore, the requesting party, the information to be disclosed and the specific binding legal authority requiring such disclosure with sufficient time for Oxford Nanopore to interpose an objection to such disclosure or take such other action as Oxford Nanopore deems necessary to protect the Oxford Confidential Information. The Software, Specifications and Instrument Data are treated by Oxford Nanopore as trade secrets.

**14.2. Audit:** To audit compliance with this Contract, You agree that upon five (5) days' notice, Oxford Nanopore shall have the right to inspect and audit Your records related to this Contract. Any such inspection or audit shall be conducted during regular business

hours. If such inspections or audits disclose You have breached the provisions of this Contract, then Oxford Nanopore may terminate this Contract immediately. Nothing in this clause shall be deemed to limit any legal or equitable remedies available to either party and Oxford Nanopore is entitled to pursue equitable remedies to the fullest extent permitted under applicable law.

**14.3. Export Control:** To the best of Your knowledge (after reasonable inquiry), You represent and warrant that You are not a citizen, national, or resident of, and are not under control of, the government of Cuba, Iran, Sudan, Libya, North Korea, Syria, nor any country or territory to which the United States, UK or the EU has prohibited export and that You and Your relevant personnel are not (i) listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers; (ii) listed on the United States Department of Commerce Table of Denial Orders; or (iii) listed as a “designated person” on the HM Treasury Consolidated List of asset freeze targets designated by the United Nations, the EU and the UK, as updated from time to time. The Goods or part of them may be listed on export control lists such as the UK Strategic Export Control Lists published by the UK Department of Business, Innovation and Skills, as updated from time to time, or otherwise subject to local export control laws and regulations and You shall not, directly or indirectly, sell, export, re-export, transfer, divert or otherwise send any Goods or Software or associated information or technology to any destination or person prohibited under US, UK, EU or other local laws or regulations (without an appropriate export license, if applicable), and to

the best of Your knowledge (after reasonable inquiry), You will not use the Goods or Software for, and will not allow the Goods or Software to be used for, any purposes prohibited by United States, UK or EU law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction. The Goods and Software may only be used in the jurisdiction to where they are delivered and may not be redistributed.

**14.4. New Zealand Customers:** If You are located in New Zealand, to the extent permitted by applicable law, each party agrees (a) that it is “in trade” (as such term is generally understood under the laws of New Zealand) and (b)(i) to contract out of the Fair Trading Act 1986 to the fullest extent permitted and (ii) that it is fair and reasonable that the parties be bound by this provision.

**14.5. Australian Customers:** This Section 14.5 applies if You are located in Australia. Nothing in this Contract excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term of condition, implied or imposed by any legislation that cannot lawfully be excluded or limited, including under the *Competition and Consumer 2010* (Cth) (for the purposes of this Section 14.5, a “**Non-Excludable Provision**”). To the maximum extent permitted by law, Oxford Nanopore’s entire liability for breach of a Non-Excludable Provision in relation to this Contract or Your use of the Goods and/or Software is limited to (at Oxford Nanopore’s option): (i) replacing the relevant Goods and/or Software, (ii) supplying the relevant Goods and/or Software again or (iii) repairing the relevant Goods and/or Software.

- 14.6. United Kingdom Customers:** This Section 14.6 applies if You are located in the United Kingdom. Nothing in this Contract excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term of condition, implied or imposed by any legislation that cannot lawfully be excluded or limited, including under the Unfair Contract Terms Act 1977, as amended by the Consumer Rights Act 2015 (the “UTCA”) (for the purposes of this Section 14.6, a “**Non-Excludable Provision**”). To the maximum extent permitted by law, the Parties agree that any limitation of liability, remedy, warranty, guarantee or other term of condition set forth in this Contract is reasonable (as such term is defined in the UTCA). To the maximum extent permitted by law, in the event any limitation of liability, remedy, warranty, guarantee or other term of condition set forth in this Contract (i) is deemed not to be reasonable (as such term is defined in the UTCA) and is therefore not excludable or (ii) is otherwise deemed to be a Non-Excludable Provision, Oxford Nanopore’s entire liability for breach of a Non-Excludable Provision in relation to this Contract or Your use of the Goods is limited to (at Oxford Nanopore’s option): (i) replacing the relevant Goods and/or Software, (ii) supplying the relevant Goods and/or Software again or (iii) repairing the relevant Goods and/or Software.
- 14.7. Assignment and other dealings:** Oxford Nanopore may at any time assign, transfer, mortgage, charge, subcontract or deal in any other way with any or all of its rights and obligations under this Contract. You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other way with any or all of Your rights and obligations under this Contract without Oxford Nanopore’s prior written consent.
- 14.8. Severance:** If any provision of this Contract is found to be invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any such modification or deletion shall not affect the validity and enforceability of the rest of the Contract.
- 14.9. Waiver:** A waiver by Oxford Nanopore of any right or remedy arising under this Contract or by law is only effective if given in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay to exercise any right or remedy provided under the Contract or by law will constitute a waiver by that party of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
- 14.10. Notices:** Any notice under this Contract must be given in writing, which may include email. Notice by post should be sent to Your or Oxford Nanopore’s address as specified on the applicable Order(s), or to the relevant party’s registered office where no such address has been given, or as You or Oxford Nanopore may otherwise direct in writing from time to time. Notice will be deemed received: (i) if delivered personally, on the date of delivery; (ii) if sent by prepaid first class post or other next working day delivery service, on the second Business Day after posting; (iii) if delivered by commercial courier, on the date the courier’s delivery receipt is signed; or (iv) if sent by fax or email, one Business Day after transmission.

**14.11. Termination:** This Contract shall remain in effect until the earlier of (i) Your first purchase pursuant to a Bulk Purchase Agreement with Oxford Nanopore or (ii) six (6) months after Your first delivery under this Contract. Except as otherwise provided in Section 10.4, either party may terminate this Contract at any time for any reason or no reason by providing the other party advance written notice thereof. Upon any expiration or termination of this Contract, the rights and licenses granted to You under this Contract shall immediately terminate, and You shall immediately cease using, and will return to Oxford Nanopore (or, at Oxford Nanopore' request, destroy), the Goods, including, without limitation, the Software, Documentation, and all other tangible items in Your possession or control that are proprietary to or contain confidential information of Oxford Nanopore. Termination of the Contract will not affect any of the parties' rights and remedies that have accrued as at termination. Clauses 3.2, 4, 5 (with respect to any Goods delivered prior to termination) and 7-14 shall survive the expiration or termination of this Contract.

**14.12. No Joint Venture:** Nothing in this Contract shall constitute or create a joint venture, partnership or any other similar arrangement between You and Oxford Nanopore.

**14.13. Third Party Rights; Successors:** A person who is not a party to this Contract shall have no right to enforce its terms, except for Metrichor Ltd. and its respective affiliates, who are express third-party beneficiaries of this Contract. This Contract is binding upon each party's respective successors and assigns.

**14.14. Governing Law and Jurisdiction:** With respect to Goods used outside

North or South America, this Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the laws of England. You hereby consent to the exclusive jurisdiction of the courts located in England for resolution of any dispute or claim arising in connection with this Contract; provided, however, that Oxford Nanopore may, at its sole option, enforce this Contract in any jurisdiction in which You are subject to suit.

## **15. Additional Definitions**

**“Biological Data”** means any data that provide a characterization of the biological, genetic, biochemical and/or physiological properties, compositions, or activities of the sample materials. Biological Data shall include nucleotide sequence data.

**“Bulk Purchase Agreement”** means the agreement provided by Oxford Nanopore for the purchase of Consumables, Flow Cells or other goods or services beyond those provided under this Contract

**“Business Day”** means a day when banks in London, England are open for business.

**“Commercial”** means primarily intended for or directed towards commercial advantages or monetary compensation; provided, that “Commercial” shall not include use of a PromethION (together with Flow Cells and Consumables) for such purposes by You if You are, and for so long as You remain, an “authorized service provider” under the terms set forth for qualification as an “authorized service provider” on the Oxford Website.

**“Consumable”** means a Wash Kit, Sequencing Kit and other chemicals and materials available from Oxford Nanopore and used to run samples in the quantity appropriate for Your use, which standard quantity is stated



on the Oxford Website, and of a type and mix suited to Your use, which type and mix is requested in Your Programme Entry and/or Order, as applicable. Consumables include, without limitation, enzymes and adaptors that enable sample preparation methods, molecular tethers that enable improved analyte to nanopore binding through interactions with the membranes, enzymes that allow for controlled transport of analytes through nanopores, buffered solutions for improved ionic conductance and solutions for washing the Flow Cells between samples.

**“Contaminated Flow Cells”** means any Flow Cells that have been used with or otherwise been in contact with materials of Biohazard Level 3 or higher.

**“Documentation”** means, with respect to the Goods, Oxford Nanopore’s user manuals, package inserts and similar documentation for the Goods in effect on the day the Goods ship, which may contain additional terms and conditions, whether provided with the Goods at the time of shipment or electronically on the Oxford Website, and with respect to the Software, all functional specifications associated with such Software made available to You on the Oxford Website or on the Software.

**“Instrument Data”** shall mean any data generated by or through use of Hardware, including, without limitation, instrument run reports, run parameters, run operating conditions, and any data generated by or available through use of Software that is not Biological Data

**“Flow Cell”** means the flow cell for use in conjunction with the MinION, PromethION, Voltrax or other device made available by Oxford Nanopore under this Contract.

**“Force Majeure”** means an event beyond a party’s reasonable control, and which could not have been foreseen or which if it could have been foreseen was unavoidable (if You

are located in France, as that concept is generally understood by French courts), such as (without limitation) industrial disputes, change in laws, strikes, failure of energy sources or transport networks, acts of God, war, terrorism, riot, civil commotion, failure of technical facilities, collapse of building structure, malicious damage, breakdown of machinery or default of suppliers or subcontractors; provided, that if You are located in France, (a) “unavoidable” has a meaning consistent with its meaning as generally understood by French courts and (b) default of suppliers or subcontractors shall not constitute force majeure.

**“Goods”** means, collectively, the Hardware, the Flow Cells and Consumables.

**“Hardware”** means the MinION, the PromethION and/or any other device made available by Oxford Nanopore under this Contract.

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, moral rights (“*droits d’auteur*”), trademarks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Order”** means the Your order for the Goods, as set out in an electronic order placed via the Oxford Website.

**“Oxford Confidential Information”** means any information disclosed by Oxford

Nanopore that is disclosed in a manner such that You should reasonably understand such information to be confidential. Oxford Confidential Information shall, regardless of marking, include but shall not be limited to, the Hardware, the Flow Cells, the Consumables, Hardware pricing, Flow Cell pricing, Consumables pricing, Order interface specifications, equipment, Software, Instrument Data, Oxford Nanopore research, development, trade secrets, software design, data collection, inventions, source code, APIs, software specifications, software routines, screen displays, data entry formats, data base structures, data base formats, flow charts, printouts and prompting sequences embodied in any software; provided, however, Oxford Confidential Information shall not include (a) any information already in the public domain (or widely known by the public) (other than as a result of a violation of any duty of confidentiality) at the time of disclosure by Oxford Nanopore; (b) Biological Data; (c) information already known to You at the time of disclosure (other than as a result of a violation of any duty of confidentiality); or (e) information disclosed to You in good faith by a third party who has an independent right to such information (other than as a result of a violation of any duty of confidentiality).

**“Oxford Nanopore Technology”** means: Goods, including corrections, extensions, modifications or derivative works of Goods or any components thereof; processes for preparing samples for use with Goods; means of analyzing, including algorithms, data generated using Goods; and reagents and/or combinations or reagents used in connection with Goods.

**“Person”** includes any person, firm, partnership, company, corporation, association, organization or government or government agency.

**“Programme Entry”** means the form You submitted to Oxford Nanopore to register for the Community.

**“Research Use”** means use for internal research (which includes research services provided to third parties, provided such services are not Commercial) and **specifically excludes** any act by You, or if permitted by You, a third party to: (a) use the Goods other than in accordance with this Contract, the Goods’ Specifications, Oxford Nanopore’s instructions or the Documentation; (b) use the Goods in a manner that requires grants of rights or a license not otherwise granted hereunder; (c) use Consumables, where such use is a re-use of a previously used Consumable; (d) use the Goods for a clinical, diagnostic, Commercial or other non-research purpose; (e) use the Hardware in conjunction with reagents or consumables not sold by or authorized for use with the Hardware by Oxford Nanopore; (f) use the Consumables in conjunction with non-Oxford Nanopore hardware, Flow Cells or devices; (g) modify or create any derivative works of the Goods (except to the extent applicable laws specifically prohibit such restriction); (h) copy the Goods except as approved in writing by Oxford Nanopore (except to the extent applicable laws specifically prohibit such restriction and, if You are located in France, as permitted by an in accordance with article L122-6-1 IV of the French Intellectual Property Code); (i) separate the Goods into their component parts; (j) reverse engineer, decompile, disassemble or otherwise attempt to derive the composition of the Goods (except to the extent applicable laws specifically prohibit such restriction); (k) extract or isolate components of the Goods or subject them to non-authorized analysis; (l) gain access to or determine the methods of operation of the Goods; (m) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to Goods; or (n) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Goods or components thereof.

**“Sequencing Kit”** means kits for preparing Your samples.

**“Software”** means any code made available to You in connection with the Hardware, including, without limitation, any embedded software and Oxford Nanopore’s ‘MinKNOW’ and ‘Metrichor Agent’ software.

**“Wash Kit”** means the wash or flushing solution.

**“We,” “us,” “our”** and **“Oxford Nanopore”** refer to the seller, Oxford Nanopore

Technologies Ltd, registered in England and Wales, and its affiliates.

**“You”** means the customer identified in the Programme Entry and/or Order, as applicable; provided, that, the rights to order and use Goods and/or publish results of use of Goods may be limited to a particular individual or a particular department as indicated in the Programme Entry and/or Order, as applicable.