



850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
T 650.570.6667 F 650.638.6677
www.appliedbiosystems.com

November 28, 2011

Ms. Roberta Wagner
State of West Virginia
Department of Administration
Purchasing Division
2019 Washington St East
Charleston, WV 25305-0130

RE: Request for Quotation No. LBS12060; Due Date: December 13, 2011 at 1:30 PM

Dear Ms. Wagner:

Applied Biosystems (AB) is pleased to respond to the above referenced Request for Quotation with the enclosed, which includes our Quotation No. 20792973 for a 7500 Fast DX PCR System. Also included are the State's completed bid documents.

AB sells laboratory instruments and associated maintenance and repair services, and does not use or disclose protected health information, as defined under HIPAA, in providing such services. Typically, AB accesses system diagnostic information, i.e., information that helps us diagnose the performance of your instrument and identify the parts thereof that need repair. Although there may be rare instances in which AB needs to look at scientific results generated by the instrument to assess performance of the instrument, such exposures are unlikely to be individually identifiable, and are, in any event, incidental exposures contemplated by the HIPAA privacy rule as not requiring a business associate agreement. Should a contract or purchase order ensue from this solicitation and bid, we request that the HIPAA Business Associate Addendum (BAA) referenced in this RFQ not be included therein.

Please be sure to reference the appropriate Quotation number on any resulting Purchase Order(s).

Should you have any questions regarding our products and/or pricing, please contact Kim Fitzgerald at 301-800-9771 or via email at kim.fitzgerald@lifetech.com. For any contractual issues, please contact me as provided below.

Thank you in advance for your time and consideration.

Sincerely,

Ruba Ramahi
Applied Biosystems LLC
Ph: 650.638.5647
Fax: 650.638.5143
Ruba.ramahi@lifetech.com

RECEIVED

2011 NOV 29 AM 11:49

WV PURCHASING
DIVISION



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

**Request for
 Quotation**

RFQ NUMBER
 LBS12060

PAGE
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
 ROBERTA WAGNER
 304-558-0067

*630125201 800-248-0281

APPLIED BIOSYSTEMS LLC
 850 LINCOLN CENTRE DR

FOSTER CITY CA 94404

HEALTH AND HUMAN RESOURCES
 BPH - LABORATORY SERVICES

167-ELEVENTH AVENUE
 SOUTH CHARLESTON, WV
 25303 304-558-3530

VENDOR

SHIP TO

Received
 NOV 17 2011

DATE PRINTED 11/10/2011	TERMS OF SALE Site Services MS-446-2	SHIP VIA	F.O.B.	FREIGHT TERMS
BID OPENING DATE: 12/13/2011		BID OPENING TIME 01:30PM		

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS	493-08	APPLIED BIOSYSTEM 7500 FAST REAL-TIME PCR SYSTEM DX	\$ 60,628.00	\$ 60,628.00
<p>TO PURCHASE AN INTEGRATED SYSTEM DESIGNED TO PERFORM QUANTITATIVE REAL-TIME PCR (POLYMERASE CHAIN REACTION), AND QUALITATIVE POST-PCR (END-POINT) ANALYSIS AND MUST BE CAPABILITY OF PERFORMING THE RAPID DETECTION OF THE 2009 NOVEL H1N1 INFLUENZA (SWINE FLU). ATTACHED SPECIFICATIONS AND REQUIREMENTS. SYSTEM MUST BE APPLIED BIOSYSTEMS 7500 DX FAST REAL-TIME PCR INSTRUMENT OR EQUAL.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>INQUIRIES: WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 11/22/2011. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE 650-638-5047	DATE 11-21-2011
TITLE Contract Specialist	FEIN 06-1534213	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
 LBS12060

PAGE
 2

ADDRESS CORRESPONDENCE TO ATTENTION OF:
 ROBERTA WAGNER
 304-558-0067

*630125201 800-248-0281
 APPLIED BIOSYSTEMS LLC
 850 LINCOLN CENTRE DR
 FOSTER CITY CA 94404

SHIP TO
 HEALTH AND HUMAN RESOURCES
 BPH - LABORATORY SERVICES
 167-ELEVENTH AVENUE
 SOUTH CHARLESTON, WV
 25303 304-558-3530

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/10/2011				

BID OPENING DATE: 12/13/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25311</p> <p>FAX: 304-558-4115 E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>THIS TEAM EXHIBIT HAS BEEN REPLACED BY THE ONLINE VERSION WHICH IS AVAILABLE HERE: HTTP://WWW.STATE.WV.US/ADMIN/PURCHASE/VRC/VENPREF.PDF</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE 650-635-5647	DATE 11-21-2011
TITLE Contract Specialist	FEIN 06-1534213	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
LBS12060

PAGE
3

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER
304-558-0067

RFP NO.

*630125201 800-248-0281
APPLIED BIOSYSTEMS LLC
850 LINCOLN CENTRE DR
FOSTER CITY CA 94404

SHIP TO

HEALTH AND HUMAN RESOURCES
BPH - LABORATORY SERVICES
167-ELEVENTH AVENUE
SOUTH CHARLESTON, WV
25303 304-558-3530

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/10/2011				

BID OPENING DATE: **12/13/2011** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER:-----RW/FILE 22-----</p> <p>RFQ. NO.:-----LBS12060-----</p> <p>BID OPENING DATE:-----12/13/2011-----</p> <p>BID OPENING TIME:-----1:30 PM-----</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Sub Chalk</i>	TELEPHONE 650-638-5647	DATE 11-21-2011
TITLE <i>Contract Specialist</i>	FEIN 06-1534213	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

**Request for
 Quotation**

RFQ NUMBER:
 LBS12060

PAGE:
 4

ADDRESS CORRESPONDENCE TO ATTENTION OF:
 ROBERTA WAGNER
 304-558-0067

*630125201 800-248-0281

APPLIED BIOSYSTEMS LLC
 850 LINCOLN CENTRE DR

FOSTER CITY CA 94404

VENDOR

SHIP TO

HEALTH AND HUMAN RESOURCES
 BPH - LABORATORY SERVICES

167-ELEVENTH AVENUE
 SOUTH CHARLESTON, WV
 25303 304-558-3530

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/10/2011				

BID OPENING DATE: 12/13/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0002	1	LS		962-24-00-000	\$ 560.00	\$ 560.00
	SHIPPING AND HANDLING CHARGE					
***** THIS IS THE END OF RFQ LBS12060 *****						TOTAL: \$ 61,188.00

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE 650-638-5647	DATE 11/25/2011
TITLE Contract Specialist	FEIN 06-1534213	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.html and is hereby made part of the agreement provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).

SPECIFICATION AND REQUIREMENTS

Test Equipment Specifications

1. Integrated system must be capable of processing 96 samples simultaneously in a 96-well plate in less than 40 minutes with consistent and accurate results.
2. System must be able to detect a five-color system of dyes that will not require the addition of new filters.
3. System must be able to use variable excitation capacity that allows for greater sensitivity for a range of dyes such as FAM/SYBR GREEN 1, VIC/JOE, NED/TAMRA/Cy3, ROX/TEXAS RED and Cy5 or dyes specific to alternate equipment bid in place of the Applied Biosystems 7500 Fast Dx Real-Time PCR Instrument.
4. Once instrument is calibrated for specific dyes, the user must be able to use any of those dyes in an experiment without needing to recalibrate the instrument if there is a change to the assay's reaction volume, reaction vessel or reaction sealant.
5. System must have the following dimensions or less: 34 cm (13.99 in) x 45 cm (17.72 in) x 49 cm (19.29 in). System must weight 34 kg (75 lbs) or less.
6. System must have a temperature range of 4°C – 94°C and an accuracy of +/-0.50°C of set point/display temperature, measured at 3 minutes after clock start.
7. Assay Reader must have a reaction volume of 10 – 30ul per 96 well plates.
8. Any and all validation and calibration kits needed for initial system validation must be included in total equipment cost.

Computer Equipment Specifications

1. Computer system must be a standalone notebook that operates independently and will not be connected to the facility LAN (Localized Area Network).
2. Instrument must be supplied with specialized application software which is able to perform quantitative real-time PCR (Polymerase Chain Reaction), Absolute Quantitation, Allelic Discrimination, Plus/Minus, Isothermal Applications, Multicomponenting Algorithm and compare up to 10 plates of gene expression assays.
3. System must be equipped with SDS v1.4 (Sequence Detection Software or equivalent necessary to operate equipment) to ensure instrument control, data collection and advanced data analysis.

Installation Requirements

1. Full instrument installation and performance qualification must be performed by a Certified Field Service Engineer, must be included at no additional cost and must be completed within 30 days of equipment delivery.
2. System must be supported by a Service Engineer to perform validation which includes Installation Qualification, Operation Qualification and Instrument Performance Qualification (IQ/OQ/PQ).

3. Successful vendor is required to provide a certificate of Workers' Compensation.
4. Successful vendor shall furnish proof of commercial general liability insurance prior to issuance of contract. Unless otherwise specified in the bid documents, the minimum amount of insurance coverage required is \$250,000.

Warranty Requirements

1. Must include a one year service package which includes: instrument spectral calibration, planned IQ/OQ/PQ instrument recalibration every 6 months, priority phone and email access to instrument and application technical support.
2. Must include a one year warranty for emergency repair, including parts and labor, and OQ/PQ after any major part change.

Shipping and Delivery Requirements

1. Shipping terms to be F. O. B. Destination, Prepaid unless vendor states differently when submitting quotation.
2. If shipping costs are incurred they must be included as a separate line item and part of the total cost of the equipment.
3. Must be delivered within 60 days of approved purchase order.
4. Delivery must be inside delivery and must be made Monday through Friday, 8:00 a.m. through 4:00 p.m.

RFQ COST SHEET

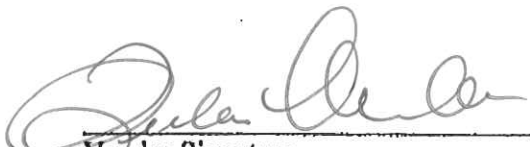
Bidders shall provide a cost for the following:

ABI 7500 Fast Dx Real-Time PCR instrument, or equal \$ \$ 60,628.00

Freight/Shipping Charge \$ \$ 500.00

Total Cost \$ \$ 61,128.00

The award will be made to the vendor with the lowest overall total cost of the equipment which meets all requested specifications and requirements. Payment will be made in arrears.


Vendor Signature

11-28-2011
Date

WV-96
Rev. 10/07

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: Applied Biosystems LLC

Signed: Jubia Giler

Title: Contracts Specialist

Date: 11/28/2011

ATTACHMENT
P.O.# LBS12060

This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

Paul A. G. 11-28-2011
Signature Date

Contracts Specialist
Title

Applied Biosystems LLC
Company Name

Signature Date

Title

Agency/Division

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**

- ____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 ____ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 ____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

2. **Application is made for 2.5% resident vendor preference for the reason checked:**

- ____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

3. **Application is made for 2.5% resident vendor preference for the reason checked:**

- ____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

4. **Application is made for 5% resident vendor preference for the reason checked:**

- ____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

- ____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

- ____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code*, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: Applied Biosystems LLC Signed: [Signature]
 Date: 11-28-2011 Title: Contract Specialist

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. LBS12060STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT**

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATUREVendor's Name: Applied Biosystems, LLCAuthorized Signature: Phillip G. [Signature] Date: 11/28/2011State of CaliforniaCounty of San Mateo, to-wit:Taken, subscribed, and sworn to before me this 28th day of November, 2011.My Commission expires May 14, 2014

AFFIX SEAL HERE

NOTARY PUBLIC [Signature]

North American
Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

To: Roberta Wagner
State of West Virginia
2019 Washington Street
CHARLESTON WV 25311

Quote No.: 20792973
Quote Valid To: 12/31/2011
Quote Date: 11/22/2011
Pay Terms: Net 30 Days
Freight Terms: FOB DESTINATION - FRT QUOTED

Telephone No.
Fax No.

**Please reference Quote No.
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
0001	4406984	7500 FAST Dx INSTRUMENT,LAPTOP The Applied Biosystems 7500 Fast Dx Real-Time PCR instrument with the SDS v1.4 Security, Auditing and E-Signature software is a real-time nucleic acid amplification and detection system that measures nucleic acid signals from reverse transcribed RNA and converts them to comparative quantitative readouts using fluorescent detection of dual-labeled hydrolysis probe. The 7500 Fast5 Dx Real-Time PCR Instrument is to be used only by technologists trained in laboratory techniques, procedures and on use of the analyzer. Customer is responsible for any validation of assays and compliance with any regulatory requirements that pertain to their procedures and uses of the instrument. INCLUDES: - 7500 Fast Dx Real-Time PCR Instrument and Software Kit - Tower or Notebook computer - Precision plate holder for tubes/strips - User Manuals - Installation by certified Service Engineer - One year warranty for parts, labor, travel and one service engineer visit at 6-months after installation.	1.00	65,900.00	60,628.00	60,628.00
0002	ZGD0SC7500FASTDX	OQPQ WARRANTY 7500FAST DX	1.00	4,990.00	0.00	0.00
0003	ZGD2-SC7500FASTDX	SVC. 7500FASTDX, 2 OQ/PO, 1 PM	1.00	14,484.60	14,484.60	14,484.60

Warranty Information. Applied Biosystems' product warranties are included with shipment of its products, or you may call Applied Biosystems for a copy of any product warranty. The warranty period for instruments begins on the earlier of the date of installation or ninety (90) days from the date of shipment for instruments installed by Applied Biosystems personnel. For instruments installed by the buyer or anyone other than Applied Biosystems, the warranty period begins on the date the instrument is delivered. Unless otherwise expressly indicated on Applied Biosystems' quotation, Applied Biosystems makes no warranty whatsoever in regard to products furnished by third parties. Such products are subject to the warranties, if any, of their respective manufacturers to the extent they are transferable or otherwise available to Applied Biosystems' customers.

Terms and Conditions. This quotation, including Applied Biosystems' General Terms and Conditions of Sale furnished with this quotation, and, if software is included, Applied Biosystems' applicable end user software license agreement, sets forth the terms on which Applied Biosystems is offering to sell the product(s) listed on this quotation. Applied Biosystems' end user license agreement for instrument operating software can be found on Applied Biosystems website, at: <http://www.appliedbiosystems.com/legal>. Licenses for stand alone software are in click wrap form. You may contact Applied Biosystems for a copy at any time. By issuing a purchase order or otherwise ordering the product(s), the customer expressly agrees to these General Terms and Conditions of Sale (and operating software end user software license agreement, if applicable) to the exclusion of all others not expressly agreed to in writing by an authorized representative of Applied Biosystems. If you have any questions, please call Applied Biosystems' Customer Account Services at 800-874-9868. Stenographical/clerical errors are subject to correction. Most recent quotation will supersede all prior quotations. All amounts are in USD.

Sales Representative: Kim Fitzgerald

Prepared by: Joanna Gerber

North American
Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

QUOTE NO.: 20792973
QUOTE VALID TO: 12/31/2011
QUOTE DATE: 11/22/2011

To: Roberta Wagner
State of West Virginia

**Please reference Quote No.
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
<p>AB Instrument Services for Diagnostics Plan Includes:</p> <ol style="list-style-type: none"> 1. Parts, labor and travel for remedial repair. 2. Two scheduled Instrument Operational Qualification/Performance Qualification (OQ/PQ) service visits at no additional cost to the customer during the plan period, as required (A). Any re-calibration and performance qualification after major repairs that occur during the plan period. Service does not include validation of assay for compliance of regulatory requirement as pertains to customer, customer's procedures, or use of device. The customer is responsible for any validation of assays, and compliance with any regulatory requirements that pertain to their procedures and uses of the instrument 3. No charge for annual planned maintenance visit(s). The number of planned maintenance visits scheduled during the plan period is indicated in AB's quotation. 4. Guaranteed priority response time of 2 business days after receipt of a service call for remedial repair of instruments located in AB's Service Zones 1 and 2. If AB fails to arrive at the instrument location within Zone 1 or Zone 2 within 2 business days for reasons other than customer's failure to provide access to AB or causes beyond the reasonable control of AB, AB will provide customer a service plan renewal credit in an amount equivalent to one day's pro-rated charge for each day AB's response is late. (See footnote (B) for call time cut off, other details, and terms and conditions.) 5. Target response time of 2 business days for remedial repairs outside of Zones 1 and 2. AB will use reasonable efforts to respond within 2 business days from receipt of a service call. 6. Priority telephone and email access to instrument technical support. 7. Telephone and email access to application technical support. 8. Instrument recalibration as required. <p><u>Important Notes and Footnotes</u> It is customer's responsibility to provide access to AB so AB may complete service, planned maintenance, Operational Qualification /Performance Qualification, and other service calls within the plan period. Calls not completed within a plan period will be cancelled unless AB failed to make reasonable efforts to complete the call within the plan period. (A) AB may perform more than the scheduled number of OQ/PQs at AB's sole discretion. Servicing does not include validation of assay for compliance with</p>						

North American
Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

QUOTE NO.: 20792973
QUOTE VALID TO: 12/31/2011
QUOTE DATE: 11/22/2011

To: Roberta Wagner
State of West Virginia

**Please reference Quote No.
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
<p>regulatory requirements as pertains to customer, customer's procedures, or use of device. The customer is responsible for any validation of assays, and compliance with any regulatory requirements that pertain to their procedures and uses of the instrument. (See Instrument OQ/PQ protocol 4425186 for details. OQ/PQ must be performed by AB Field Service Engineers to maintain DX designation.) (B) A service call for remedial repair must be received by AB's service center before 2:00 PM local time (U.S.A. Eastern, Central, Mountain, or Pacific time) for priority response time service. Each late day's pro-rated credit is an amount equal to 1/365th of the annual fee for the service plan covering the instrument with respect to which the service call was made. If a service plan covers more than one instrument, the pro-rata credit is determined by allocating a pro-rata portion of the plan's annual fee to the instrument with respect to which the service call was made. The credit may be used by customer when renewing its current service plan covering that instrument for a consecutive period, as a credit against plan fees. To be eligible to use the credit, AB's Service Plan Administrator must receive notice in writing (email notification is satisfactory) of the customer's intention to use the credit for a renewal at the time of renewal, but in any event no later than fifteen (15) days after the expiration of the service plan period in which the credit was earned. The credit described above is AB's sole obligation and customer's sole remedy for failure of AB to respond to a service call within two business days for the AB Instrument Services for Diagnostics Plan. The address of AB's Service Plan Administrator is Applied Biosystems Service Plan Administrator, 850 Lincoln Centre Drive, Foster City, California 94404 (email: ServiceSales@AppliedBiosystems.com).</p>						
Estimated Shipping and Handling:						560.00
<p>All orders made in reference to this quotation must include all part numbers and quantities as listed. If you would like to modify this order, please contact your Sales Representative at 1-800-874-9868.</p>						

North American
Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

QUOTE NO.: 20792973
QUOTE VALID TO: 12/31/2011
QUOTE DATE: 11/22/2011

To: Roberta Wagner
State of West Virginia

**Please reference Quote No.
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
------	-------------	-------------	-----	-----------------	----------------	----------------------

To place your Applied Biosystems order:

For INSTRUMENTS: Fax # 650-638-5875, Attn: Sales Administration

For CONSUMABLES: Fax #650-638-5998, Attn: Order Administration or phone 1-800-327-3002

-OR-

Visit us on the web at www.appliedbiosystems.com

AB Systems Financing (ABSF) can arrange competitive and flexible customer financing solutions for Applied Biosystems instruments, maintenance services and consumables.*

Please call us at 1-203-664-1537 to learn about how our ABSF program can meet your instrument financing needs.

* ABSF financing solutions are subject to credit approval and satisfactory documentation.

APPLIED BIOSYSTEMS GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from Applied Biosystems ("AB"), including installation of equipment, unless other terms are specifically designated by AB to apply to a specific product or service, or AB and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase or other agreement (See Section 13, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

1. PRICE. The price for any product or service (hereinafter collectively "Product or Products") shall be the price stated in AB's quotation to buyer for the Product ("AB's Quotation") or, if AB has not issued a quotation, AB's list price of the Product at the time AB receives buyer's purchase order. AB's Quotations are valid for 30 days from the quotation date unless otherwise stated in AB's Quotation. If AB's price is stated by reference to a price list, then the price shall be AB's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time AB receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in AB's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against AB's net income), or in lieu thereof, buyer shall provide AB with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer maybe billed as separate items on AB's invoice.

2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS. Payment terms are net 30 days from date of AB's invoice. If AB deems buyer to be or to have become uncreditworthy, AB shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by AB. If payment is not received by the due date, AB may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency or attorney to collect unpaid amounts, AB may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys fees. Buyer hereby grants to AB and AB reserves a purchase money security interest in all tangible Product purchased from AB, and in any proceeds thereof, for all amounts owing to AB for or related to such Product. Upon request by AB, buyer shall sign any reasonable documents required for AB to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants AB authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

3. CREDIT TERMS. AB may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, AB may, without prejudice to any other right or remedy AB may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon AB may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest, whereby the buyer will execute any documents necessary to create and perfect this security, and demand payment against tender of title documents.

4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION. AB may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, AB will use reasonable efforts to ship tangible Product or perfromservices, including equipment installation if agreed to by AB, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in AB's Quotation or otherwise agreed upon in writing by an authorized representative of AB, on or before such date. AB may make delivery in installments, and each installment shall be deemed to be a separate sale. AB may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in AB's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from AB to buyer upon transfer of possession of the Product to a common or other third party carrier at AB's facility. If AB has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless AB otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's consent.

5. CANCELLATION AND DEFERRAL. BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in AB's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to AB at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

6. REJECTION AND RETURN OF PRODUCTS. Any claims for damaged, missing or defective Product must be reported in writing by buyer within 5 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to AB, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from AB. AB may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, AB, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** AB may require that buyer signs and delivers a properly completed certificate of decontamination prior to returning any Product.

7. LIMITED WARRANTY. AB makes only those warranties with respect to Product expressly identified as "warranties" and set forth in AB's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from AB, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by AB. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in AB's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between AB and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with AB's Quotation is for illustrative purposes only, and is not part of any contract between AB and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by AB, whether or not in AB's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in

writing in documentation shipped with Product or otherwise agreed by AB in writing. AB does not provide service or support for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE AB'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.**

8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.

8.1 BY AB. Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, AB agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by AB infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if AB had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, AB shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by AB pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, AB shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

8.1.1 Buyer's Obligations. Buyer must notify AB in writing of any claim for which it may seek defense and indemnity from AB hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to AB, at AB's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. AB shall have sole authority to defend and/or settle any claim under this Section 8. AB's obligations under this Section 8 are contingent upon buyer's compliance with all of the foregoing.

8.1.2 Remedy for Infringement, Rights of AB, Exceptions. If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in AB's opinion is (are) likely to become subject of such a claim, AB shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF AB, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.

8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS. If buyer modifies any Product or furnishes AB with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold AB harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or AB's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

8.3 INDEMNITY DEFENSE. The party providing indemnification in accordance with this section 8 shall have the sole control with respect to the defense and settlement thereof at its expense.

9. COMPLIANCE WITH LAWS, USE OF PRODUCT, VALIDATION. The parties understand and agree that (a) all Products are labeled "For Research Use Only. Not for use in diagnostic procedures."; (b) all Products have not received any governmental approval, clearance, or similar designation ("Product Approvals"), do not satisfy the requirements of any governmental body or other organization, and have not been validated for clinical or diagnostic use, for safety and effectiveness, or for any other specific use or application; and (c) the buyer is solely responsible for compliance with any and all applicable laws, and regulations, and governmental policies that pertain to its use of the Product including, but not limited to, obtaining any necessary Product Approvals. Products should be used by qualified professionals in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation. The burden of proof for safe use and handling of Products sold by AB to the buyer is entirely the responsibility of the buyer.

10. USE RESTRICTIONS. The buyer is not licensed to, and agrees not to: (a) distribute any Product, directly or indirectly, to any third party for any purpose or use, except with prior written consent obtained from AB; (b) use or allow anyone to use an AB supplied Product contrary to applicable instructions; (c) decompile, deconstruct, disassemble or make other attempts to reverse engineer Product; (d) or provide a fee-for-service or other noncollaborative sample processing service to third parties using any AB supplied Product (e.g. wherein the service provider offers standardized services for standardized fees to multiple parties, the customer does not contribute scientifically to the services performed and all rights to the results and discoveries derived therefrom are transferred to the customer).

AB has optimized its Products for use with certain AB products and authorized third party products. Accordingly, AB recommends that buyer not use any Product provided hereunder in combination with any products which are not either: (i) provided by AB or (ii) from a source authorized by AB. The buyer acknowledges that failure to comply with any restriction of use set forth herein (including without limitation the preceding sentence) will (i) constitute a breach of these Terms, (ii) invalidate any warranty provided herein and any applicable service agreement, and (iii) may constitute a violation or infringement of AB's and/or a third party's intellectual property rights.

11. FORCE MAJEURE. AB shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond AB's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, AB shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and AB shall also have the right, to the extent necessary in AB's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as AB may consider equitable.

12. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, AB'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, AB'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY AB OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT AB IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

13. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE. These Terms, together with AB's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of AB "(collectively, "AB's Terms"), and buyer's statement on its purchase order (if accepted by AB) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between AB and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by AB in writing), and AB's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an AB Quotation, shall be deemed acceptance of and agreement to AB's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of AB's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on AB's Quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

14. NO IMPLIED RIGHTS. Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit AB's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by AB in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

15. CHOICE OF LAW. Any contract between AB and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

16. EXPORT CONTROLS. Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

17. MISCELLANEOUS. No amendment of AB's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and buyer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

18. THIRD PARTY PRODUCTS AND SERVICES. Buyer acknowledges and agrees that third party products and services acquired via any AB sales channels are governed by contractual terms provided by the sellers of such third party products and services. AB has no control over and does not guarantee the quality or safety of the third party products or services, the truth or accuracy of third parties' content or listings, the ability of third party sellers to sell products or services, the timely delivery of such products or services, or that the third party seller will complete a transaction. Buyer acknowledges that when the buyer makes a purchase from or enters into a license with a third party seller via an AB sales channel, AB is not a party to such transaction and the contractual relationship is solely between buyer and the third party seller. Buyer further agrees that it is buyer's sole responsibility to pre-approve any third party seller that buyer conducts business with, and that buyer assumes sole responsibility for any risks or liabilities that may arise out of such transaction. Buyer acknowledges that AB makes no representations or warranties regarding the creditworthiness or any other matter regarding any products or services of third parties. It is at the buyer's sole discretion to reject any transaction with a third party seller and obtain the same or alternate products through other channels. Buyer irrevocably waives and releases AB from any claim that buyer may have, now or in the future, known or unknown, as a result of the content, action or inaction of third party sellers, or products or services that buyer purchases or licenses from third party sellers via AB.

19. ADDITIONAL TERMS AND CONDITIONS OF SALE FOR OLIGONUCLEOTIDE PRODUCTS, INCLUDING SPECIAL TERMS TO PROTECT CUSTOMER CONFIDENTIAL INFORMATION. THE FOLLOWING TERMS AND CONDITIONS OF SALE FOR PRODUCTS THAT ARE OLIGONUCLEOTIDE PRODUCTS, IN ADDITION TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE, APPLY TO THE PURCHASE AND SALE OF ALL APPLIED BIOSYSTEMS OLIGONUCLEOTIDE PRODUCTS, INCLUDING TAQMAN® ASSAYS, TAQMAN® LOW DENSITY ARRAYS AND CUSTOM OLIGONUCLEOTIDE SYNTHESIS PRODUCTS.

19.1 DEFINITIONS. The following definitions apply to these Additional Terms and Conditions of Sale for Oligonucleotide Products.

"Confidential Information of Buyer" means each Nucleic Acid Sequence specified by buyer in writing to AB that is intended to be detected by use of a Custom Product or to be included in primers and probes or other oligonucleotide Products manufactured by AB and sold to buyer, and the facts that buyer placed orders for Products containing or intended to detect such sequence and that buyer ordered oligonucleotide Products from AB containing or intending to detect such sequence.

"Custom Product" means (i) an Oligonucleotide Kit that is intended to detect a Nucleic Acid Sequence specified by buyer, or (ii) primers and probes or any other oligonucleotide Product that includes a Nucleic Acid Sequence, or other non-off-the-shelf elements or features, specified by buyer.

"Nucleic Acid Sequence" means the nucleic acid sequence of a genome intended to be detected by use of an Oligonucleotide Kit or that is specified as being included in other oligonucleotide Products.

"Oligonucleotide Kit" means a Product that consists of a combination of reagents and other products that includes at least one oligonucleotide based primer or probe, that is sold by AB as an assay kit, and the use of which is intended to detect at least one specific nucleic acid sequence in a sample.

"Synthesis" means the design (where applicable) or manufacture by AB of Custom Kits or other oligonucleotide Products for delivery to buyer.

19.2 AB'S EVALUATION OF CUSTOM KIT ORDERS. AB may decline the Synthesis, at any stage of the Synthesis process, of any Custom Product ordered by buyer that AB deems to be unsuitable or commercially impractical for Synthesis, whether on technological, cost or other grounds. AB will give written notice to buyer within a reasonable time following its determination to decline Synthesis of a Custom Product. Buyer shall have no obligation to pay any fees for time and materials, or for any other expenses incurred by AB, in connection with any declined Custom Product. All Custom Product orders not declined by AB must be paid for by buyer, and orders may not be cancelled or changed by buyer without the written consent of AB. Buyer understands and agrees that buyer's obligation to pay for all Custom Products that AB proceeds to Synthesize and deliver is firm and irrevocable, regardless of the number of Custom Products declined for Synthesis in a given order. Each purchase order for Custom Products must be for the total amount payable for all Custom Products ordered. The amount corresponding to the charges applicable to declined Synthesis will be reflected in AB's invoice for the order.

19.3 BUYER'S REPRESENTATIONS. By submitting an order, buyer represents, warrants and agrees that

- (i) buyer will provide AB with all information known to buyer regarding biological, radiological, and chemical hazards associated with the handling, transport, exposure to or other use of any materials supplied to AB by buyer;
- (ii) buyer has the right to cause the sequences that buyer has requested AB to manufacture to be manufactured by AB and sold to buyer, that such sequences and the manufacture and sale thereof to buyer will not infringe or result from the misappropriation of the intellectual property rights, including without limitation patent, copyright, trademark and trade secrets, of any third party anywhere in the world (provided that the foregoing shall not be deemed a representation or warranty with respect to methods of manufacture employed by AB), and that the materials buyer furnishes to AB will not infringe or result from the misappropriation of any such intellectual property rights; and
- (iii) the oligonucleotide Products and components thereof sold to buyer shall be for buyer's own internal research and development use only and shall not be resold or otherwise transferred or conveyed to any third party without the prior express written consent of AB.

19.4 CONFIDENTIAL INFORMATION OF BUYER. AB agrees that for seven (7) years after the disclosure by buyer to AB of Confidential Information of Buyer, AB shall not disclose such Confidential Information of Buyer to any third party and will use at least the same degree of care as it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care, to prevent the disclosure of such Confidential Information of Buyer to any third party. This undertaking of confidentiality shall not apply to, and AB shall have no obligations under this paragraph with respect to, any Confidential Information of Buyer that (a) was in AB's possession before receipt from buyer, (b) is or becomes a matter of public knowledge or part of the public domain through no fault of AB, (c) is rightfully received by AB from a third party that was not obliged to keep such information confidential, (d) is developed by AB without reference to Confidential Information of Buyer, or (e) is disclosed by AB with buyer's prior written approval. Notwithstanding the foregoing, AB may disclose Confidential Information of Buyer to the extent required to comply with governmental regulations and other applicable laws or to respond to subpoena or other compulsory legal process, provided in all cases that AB takes reasonable and lawful actions to avoid or minimize the extent of such disclosure and notifies buyer in writing as far in advance of the date of disclosure as is reasonably feasible so that buyer to the extent feasible will have an opportunity to seek to prevent or limit disclosure.

20. ADDITIONAL TERMS AND CONDITIONS OF SALE FOR ION TORRENT PRODUCTS. THE FOLLOWING TERMS AND CONDITIONS OF SALE SHALL APPLY, IN ADDITION TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE, UNLESS EXPRESSLY EXCLUDED HERewith, TO THE PURCHASE AND SALE OF ALL ION TORRENT PRODUCTS. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE AND THE TERMS CONTAINED WITHIN THIS CLAUSE 20, THE TERMS CONTAINED WITHIN THIS CLAUSE 20 SHALL PREVAIL FOR THE SALE AND PURCHASE OF ION TORRENT PRODUCTS.

20.1 ION TORRENT WARRANTY. The AB limited warranty provisions contained within clause 7 of these Terms shall not be applicable to Ion Torrent products ("Ion Torrent Products"). For new Ion Torrent instruments, AB warrants to and only to buyer for twelve (12) months from the date of shipping, that the Ion Torrent software and Ion Torrent instruments are free from defects in material and workmanship and conform to AB's published specifications in all material respects. Where a valid and timely claim in respect of breach of Ion Torrent Warranty is submitted to AB, AB may at its discretion replace, repair or modify the Ion Torrent instrument. Any agreed replacement shall be at 1:1, like-kind basis at no cost to the buyer. For Ion Torrent chips or reagents reasonably determined by AB to be defective, independent of user error, shall be replaced by AB on a 1:1, like-kind basis at no cost to buyer, provided that such defective Ion Torrent chips or reagents were used by buyer prior to their expiration date, or if there is no expiration date, the Ion Torrent chips or reagents were used within six (6) months of receipt, and the defect was promptly reported with appropriate detail to AB's technical support.

NO OTHER WARRANTIES SHALL BE APPLICABLE TO ION TORRENT PRODUCTS (WHETHER OR NOT ANY FURTHER WARRANTY DOCUMENTATION MAY BE INCLUDED IN THE SHIPMENT), WITH THE EXCEPTION OF THIRD PARTY WARRANTIES WITH RESPECT TO THIRD PARTY PRODUCT. ANY THIRD PARTY PRODUCTS ARE NOT COVERED BY THIS SECTION AND ANY WARRANTIES FOR THIRD PARTY PRODUCTS ARE PROVIDED BY THE ORIGINAL MANUFACTURER OF THE THIRD PARTY PRODUCT. Warranties are made only to buyer purchasing the Ion Torrent Product directly from AB, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by AB. ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED. Any description of Ion Torrent Product recited in AB's quotation is for the sole purpose of identifying Ion Torrent Product, and any such description is not part of any contract between AB and buyer and does not constitute a warranty that Ion Torrent Product shall conform to that description. Any sample or model used in connection with AB's quotation is for illustrative purposes only, and is not part of any contract between AB and buyer and does not constitute a warranty that Ion Torrent Product will conform to the sample or model. No affirmation of fact or promise made by AB, whether or not in AB's quotation, shall constitute a warranty that Ion Torrent Product will conform to the affirmation or promise. Unless otherwise specified in writing in documentation shipped with Ion Torrent Product or otherwise agreed by AB in writing, AB does not provide service or support for custom products or other products made to buyer's specifications. THE WARRANTIES IDENTIFIED IN THIS CLAUSE ARE AB'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO ION TORRENT PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.

20.2 SOFTWARE. Buyer acknowledges that the software or firmware components or applications, if any, accompanying the Ion Torrent Product, or provided in connection with services are licensed and not sold to buyer. Some software may be branded Ion Torrent ("IT Software"), and other software may be subject to a separate third party software license agreement. Subject to the terms of this Agreement, and effective only upon receipt of full payment or other applicable license fee, the buyer is granted a limited, nonexclusive, personal, nontransferable (except in connection with the sale of the Product), and royalty-free license to use and execute the IT Software in object code form only and only on the Ion Torrent Product. Buyer shall not use the IT Software or related documentation for any other purpose. Buyer shall not, nor shall it permit any employee or agent of buyer to, adapt, modify, copy, reproduce, reverse engineer, decompile, disassemble, distribute, or prepare derivative works based on the IT Software. The buyer shall not receive any right, title, and interest in and to the IT Software and any improvements thereof, except as expressly provided herein.

20.3 SOFTWARE UPDATES AND SUPPORT. AB has no obligation to provide IT Software updates or remote monitoring and support, but may do so in its discretion. Buyer acknowledges that in order to receive any such IT Software updates and remote monitoring and support, buyer must provide internet connections to Products capable of such updates, monitoring and/or support. IT Software updates and related documentation are provided "AS IS" AND NO REPRESENTATION IS MADE THAT BUYER'S USE OF THE SOFTWARE OR THE ION TORRENT PRODUCTS WILL BE ERROR-FREE OR THAT THE SOFTWARE OR THE ION TORRENT PRODUCTS WILL MEET BUYER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SOFTWARE AND/OR DOCUMENTATION WILL BE CORRECTED. EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN, THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

20.4 OPEN SOURCE SOFTWARE. Notwithstanding anything to the contrary, the software embedded in or provided with the Ion Torrent Products may contain free / open source software (as defined by the Open Source Initiative at <http://www.opensource.org/osd.html>, "OSS"). Copyrights to the OSS are held by the organizations or individuals indicated in the copyright notices included in the documentation or the applicable help, about or source files, and each OSS item is provided subject only to its own applicable license terms. The applicable OSS licenses (or, where permissible, the URLs thereof) can be found in either the documentation or the applicable help, about or source files. To the extent required by the applicable OSS license, the OSS source code is provided in or with the relevant Ion Torrent Product.

20.5 ION TORRENT PRODUCT IMPROVEMENTS. Buyer shall promptly disclose any improvement that relates to (a) configuration, composition, use, manufacturing, layout, or packaging of any Ion Torrent Product; and/or (b) software and techniques relating to the extraction, manipulation, processing, analysis or storage of data ("Product Improvements"). "Product Improvements" shall not include data generated using Ion Torrent Product or discoveries derived therefrom (except as set forth in (a) - (b) above). Except to the extent prohibited by applicable laws, the buyer hereby grants to AB a non-exclusive, worldwide, fully sublicensable, fully paid-up, royalty-free, irrevocable, perpetual license to all Product Improvements.

21. AMERICAN RECOVERY & REINVESTMENT ACT. Applied Biosystems is eligible to receive orders funded by the American Recovery & Reinvestment Act (ARRA). If you are a U.S. Government customer, please call 866-934-5977 in order to place any order funded by ARRA or email ARRAN@appliedbiosystems.com

APPLIED BIOSYSTEMS PERFORMANCE AGREEMENT TERMS AND CONDITIONS

1. These Performance Agreement Terms and Conditions shall govern all orders for and purchases from Applied Biosystems (herein called "AB") of Performance Plans and other agreements for services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment, and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services under all Performance Plans of AB are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Planned maintenance ("Planned Maintenance") will be performed in accordance with AB's Planned Maintenance procedures and checklist for the instrument or component being serviced.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the Customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide service as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the Customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. This Performance Agreement does not cover replacement of parts, costs, repairs or adjustments due to Year 2000 non compliance or for defects caused by or repairs necessitated by acts of nature, misuse, carelessness or unauthorized changes to the instrument made by the Customer, Customer's employees, agents or an unauthorized contractor. This Performance Agreement also does not require AB to repair or replace parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. This Performance Agreement does not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and/or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. The initial term of this Performance Agreement is one year commencing on the date designated by Applied Biosystems in its quotation or otherwise specified to Customer. This Performance Agreement may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received. AB will cease performance under this Performance Agreement on the Termination Date unless the Customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease performance under this Performance Agreement on such Cessation Date.
10. In the event of termination of this Performance Agreement under Section 9, AB shall calculate at its sole discretion the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under this from its effective date until the Termination Date. The Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of this Agreement from its effective date until the Termination Date, whichever is greater, plus ten percent (10%) of the total fee paid for this Performance Agreement, not to exceed the total amount paid. Any payments made by Customer to AB in excess of this amount shall be credited to the Customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Performance Plans. Any unpaid portion of this amount shall be immediately due upon Customer's receipt of an invoice from AB. If a Performance Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Performance Agreement for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Performance Plan or other agreement for services.
11. AB will indemnify and hold Customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on Customer's premises performing services pursuant to this Agreement to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.
12. **IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT FAILURE. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS PERFORMANCE AGREEMENT AND SERVICES RENDERED, IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB PURSUANT TO THIS AGREEMENT.**
13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by this Performance Agreement, including, but not limited to seals, filters, gaskets, etc.
14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the effected parts to be completed outside the Performance Agreement at AB's then prevailing rates for billable service.
15. Ancillary equipment not manufactured by AB and deemed by AB as non-integral to the system or the operation of the instrument may be excluded from this Performance Agreement.
16. AB makes no representation whatsoever that services under this Agreement satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug

Administration or the International Organization for Standardization. Customer agrees that it is the Customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of Customer.

17. This Performance Agreement is not assignable or otherwise transferable by Customer. Any assignment or transfer or attempt to assign or to transfer the Performance Agreement by Customer shall be void.
18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced pursuant to this Performance Agreement will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials.
19. Performance Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.
20. This Performance Agreement, together with AB's quotation regarding the Performance Plan or other services subject to these terms and conditions (collectively, "AB's Terms"), represents the entire agreement between the parties and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms set forth in customer purchase order or any other document not signed by an authorized representative of AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of a Performance Plan in response to AB's quotation or any other AB document that includes or incorporates these shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.
21. No amendment of these terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. No additions or modifications to this Performance Agreement shall be valid unless specifically agreed to in writing by both parties. This Performance Agreement shall be governed by the laws of the State of California, exclusive of its conflict of laws rules.

Choose a service plan that is right for you— whatever your business priorities

Recognized as "Best in Class" worldwide, AB Global Services provides the highest quality support available for Applied Biosystems products and technology. And only AB Service Engineers receive regular factory training on the latest technical developments, repair procedures, software revisions, and application updates.

AB Assurance Plan

This is our premium repair plan designed to help maximize instrument performance and help ensure availability of critical systems. The plan can help you keep your lab running smoothly with preventive maintenance, proactive instrument monitoring, and fast response should an instrument require repair.

Our "Uptime" option provides guaranteed next-business-day on site response. Spare parts on site is also available.

Features:

- Guaranteed 2-business-day on-site response (Zone 1 & 2 only)
- Planned maintenance visit(s) – One for genomics instruments or two for select mass spectrometry instruments (includes engineer labor and travel)
- Factory-certified replacement parts
- Engineer labor and travel included for repair visits
- Smart Services – real-time remote instrument monitoring and diagnostics
- Priority telephone and e-mail access to instrument technical support from our Technical Assistance Center (TAC)
- Phone and e-mail access to application technical support

Contact Us

To learn more about our Service Plans, please e-mail servicecontractsales@appliedbiosystems.com, or call 800.345.5224, options 1,4.

AB Complete Plan

This is our most comprehensive service plan. It's designed not only to maximize instrument performance and ensure availability of critical systems, but also to improve the efficiency of laboratory processes and workflows.

Includes all features included in our AB Assurance Plan, along with:

- Guaranteed next-business-day on-site response (Zone 1 & 2 only)
- On-site Application Consulting
- Qualification Services – includes Instrument Performance Verification (IPV) after maintenance or repair; software validation; and compliance documentation
- Instrument operating software upgrades

On-site Application Consulting sets AB Complete apart from other service plans. Our trained and experienced staff can provide customized assistance to help optimize a customer's protocols, methodologies, and workflows.

The service can help you:

- Increase productivity
- Achieve higher return on your technology investment
- Reduce operating costs and optimize reagent usage

AB Maintenance Plan

This plan is designed to help you maximize instrument performance even if you are on a limited budget. It's ideal for labs that don't have critical availability needs and for those with internal resources and expertise to maintain instrumentation on an ongoing basis.

Features:

- Planned maintenance visit(s) – One for genomics instruments or two for select mass spectrometry instruments (includes engineer labor and travel)
- Targeted 2-business-day on-site response time on remedial repairs
- Phone and e-mail access to application technical support
- Discount on labor, parts and travel for each service call ("Plus" option)

À la Carte Services

Many of the value-added services are available on an à la carte basis allowing you to supplement your in-house abilities or mix and match services based upon your needs and budget. These services include:

- Qualification Service
- Smart Services
- On-site Application Consulting
- Professional Services
- Time and Materials Service
- Priority On-site Response