As filed with the Securities and Exchange Commission on October 22, 2010

Registration No. 333-168858

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 6 TO
FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Pacific Biosciences of California, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**3826**	**16-1590339**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

1380 Willow Road
Menlo Park, CA 94025
(650) 521-8000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Hugh C. Martin
Chief Executive Officer
1380 Willow Road
Menlo Park, CA 94025
(650) 521-8000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Larry W. Sonsini **Donna M. Petkanics** **Wilson Sonsini Goodrich & Rosati, P.C.** **650 Page Mill Road** **Palo Alto, California 94304** **(650) 493-9300**	**Matthew B. Murphy** **Vice President and General Counsel** **1380 Willow Road** **Menlo Park, CA 94025** **(650) 521-8000**	**Alan F. Denenberg** **Davis Polk & Wardwell LLP** **1600 El Camino Real** **Menlo Park, CA 94025** **(650) 752-2000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

If this Form is a post effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

If this Form is a post effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price[(1)]	Amount of Registration Fee[(2)]
Common Stock, par value $0.001 par share	14,375,000	$17.00	$244,375,000	$17,423.94

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(a) under the Securities Act of 1933, as amended. Includes offering price of shares that the underwriters have the option to purchase to cover over-allotments.

(2) The Registrant previously paid this registration fee in connection with the previous filings of this Registration Statement.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 6 to the Registration Statement on Form S-1 (File No. 333-168858) is solely to file Exhibits 5.1, 10.7, 10.8 and 10.9. Accordingly, a preliminary prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 13. Other expenses of issuance and distribution.

Estimated expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale of the common stock being registered under this registration statement are as follows:

SEC registration fee	$ 17,424
FINRA filing fee	24,938
Listing fee	200,000
Printing and engraving expenses	200,000
Legal fees and expenses	1,500,000
Accounting fees and expenses	950,000
Blue Sky fees and expenses (including legal fees)	25,000
Transfer agent and registrar fees and expenses	30,000
Miscellaneous	552,638
Total	$ 3,500,000

Item 14. Indemnification of directors and officers.

Upon the closing of this offering, the Registrant's amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of the Registrant's directors and executive officers for monetary damages for breach of their fiduciary duties as directors or officers. The Registrant's amended and restated certificate of incorporation and bylaws will provide that the Registrant must indemnify its directors and executive officers and may indemnify its employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of a corporation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

The Registrant intends to enter into indemnification agreements with its directors and executive officers, in addition to the indemnification provided for in its amended and restated certificate of incorporation and bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant has purchased and intends to maintain insurance on behalf of each and any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement, to be attached as Exhibit 1.1, provides for indemnification by the underwriters of the Registrant and its executive officers and directors, and by the Registrant of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 17 herein.

Item 15. Recent sales of unregistered securities.

During the last three years, we sold the following unregistered securities:

(1) From January 1, 2007 through July 31, 2010, we sold and issued to our employees, consultants or former service providers an aggregate of 60,364 shares of common stock pursuant to option exercises under the 2004 Equity Incentive Plan, as amended, at prices ranging from $0.20 to $0.26 per share for an aggregate purchase price of $14,473.

(2) From January 1, 2007 through July 31, 2010, we sold and issued to our employees, consultants or former service providers an aggregate of 944,451 shares of common stock pursuant to option exercises under the 2005 Stock Plan, as amended, at prices ranging from $0.70 to $12.74 per share for an aggregate purchase price of $2,345,980.

(3) From January 1, 2007 through July 31, 2010, we granted options under our 2005 Stock Plan, as amended, to purchase 9,384,851 shares of common stock to our employees, directors and consultants, having exercise prices ranging from $1.96 to $12.74 per share for an aggregate exercise price of $56,242,373.

(4) Between July 2008 and July 2009, we sold and issued 13,433,395 shares of Series E convertible preferred stock to 63 accredited investors, at $14.00 per share, for a total consideration of $188,067,530.

(5) Between June and July 2010, we sold and issued 7,132,891 shares of Series F convertible preferred stock to 19 accredited investors, at $15.26 per share, for a total consideration of $108,847,917.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and the registrant believes that each transaction was exempt from the registration requirements of the Securities Act in reliance on the following exemptions:

- with respect to the transactions described in paragraphs (1), (2) and (3), Rule 701 promulgated under the Securities Act as transactions pursuant to a compensatory benefit plan approved by the registrant's board of directors or Section 4(2) of the Securities Act as transactions by an issuer not involving a public offering; and
- with respect to the transactions described in paragraph (4), Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder, and with respect to the transactions described in paragraph (5), Section 4(2) of the Securities Act, in each case as transactions by an issuer not involving a public offering. Each recipient of the securities in these transactions represented his or her intention to acquire the securities for investment only and not with a view to, or for resale in connection with, any distribution thereof, and appropriate legends were affixed to the share certificates issued in each such transaction. In each case, the recipient received adequate information about the registrant or had adequate access, through his or her relationship with the registrant, to information about the registrant.

There were no underwriters employed in connection with any of the transactions set forth in Item 15.

Item 16. Exhibits and financial statement schedules.

(a) Exhibits:

Exhibit number	Exhibit title
1.1#	Form of Underwriting Agreement
3.1#	Amended and Restated Certificate of Incorporation of the Registrant
3.2#	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant
3.3#	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be effective upon closing of the offering
3.4#	Amended and Restated Bylaws of the Registrant, as currently in effect
3.5#	Form of Amended and Restated Bylaws of the Registrant, to be effective upon closing of the offering
4.1#	Specimen Common Stock Certificate of the Registrant
4.2#	Fifth Amended and Restated Investor Rights Agreement, dated June 16, 2010
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation
10.1#	Form of Director and Executive Officer Indemnification Agreement
10.2#	2004 Equity Incentive Plan and forms of option agreements thereunder
10.3#	2005 Stock Plan and forms of option agreements thereunder
10.4#	2010 Equity Incentive Plan and forms of option agreements thereunder to be in effect upon the closing of this offering
10.5#	2010 Employee Stock Purchase Plan and forms of agreement thereunder to be in effect upon the closing of this offering
10.6#	2010 Outside Director Equity Incentive Plan and forms of agreement thereunder to be in effect upon the closing of this offering
10.7†	Collaboration Agreement by and between the Registrant and Gen-Probe Incorporated, dated as of June 15, 2010
10.8†	Exclusive License Agreement by and between the Registrant and Cornell Research Foundation, Inc., dated as of February 1, 2004
10.9†	License Agreement by and between the Registrant and GE Healthcare Bio-Sciences Corp., dated as of September 11, 2006
10.10†#	Exclusive License Agreement by and between the Registrant and Indiana University Research and Technology Corporation, dated May 15, 2005
10.11#	Amended and Restated Lease Agreement by and between the Registrant and Menlo Business Park, LLC, dated as of December 17, 2007
10.12#	Lease Agreement by and between the Registrant and Menlo Business Park LLC, dated August 14, 2009
10.13#	Industrial Lease Agreement by and between the Registrant and AMB Property, L.P., dated December 10, 2009
10.14#	Industrial Lease Agreement by and between the Registrant and AMB Property, L.P., dated September 24, 2009
10.15#	First Amendment to the September 24, 2009 Industrial Lease Agreement by and between the Registrant and AMB Property, L.P., dated as of May 19, 2010

Exhibit number	Exhibit title
10.16#	Industrial Lease Agreement by and between the Registrant and AMB Property, L.P., dated February 8, 2010
10.17#	Employment Agreement by and between the registrant and Hugh Martin effective September 16, 2010
10.18#	Change in Control Severance Agreement by and between the registrant and Hugh Martin effective September 16, 2010
10.19#	Letter Relating to Employment Terms by and between the registrant and Susan K. Barnes effective September 15, 2010
10.20#	Change in Control Severance Agreement by and between the registrant and Susan K. Barnes effective September 9, 2010
10.21#	Letter Relating to Employment Terms by and between the registrant and Stephen Turner effective September 15, 2010
10.22#	Change in Control Severance Agreement by and between the registrant and Stephen Turner effective September 9, 2010
10.23#	Letter Relating to Employment Terms by and between the registrant and James Michael Phillips effective September 15, 2010
10.24#	Change in Control Severance Agreement by and between the registrant and James Michael Phillips effective September 9, 2010
21.1#	List of subsidiaries of the Registrant
23.1#	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
23.2	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1)
23.3#	Consent of Scientia Advisors LLC
24.1#	Power of Attorney

Previously filed.

† Confidential treatment has been requested for portions of this exhibit. These portions have been omitted from this Registration Statement and have been filed separately with the Securities and Exchange Commission.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

We hereby undertake that:

(a) We will provide to the underwriters at the closing as specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(b) For purposes of determining any liability under the Securities Act of 1933, as amended, the information omitted from a form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933, as amended, shall be deemed to be part of this registration statement as of the time it was declared effective.

(c) For the purpose of determining any liability under the Securities Act of 1933, as amended, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Menlo Park, State of California, on October 22, 2010.

PACIFIC BIOSCIENCES OF CALIFORNIA, INC.

By: /S/ SUSAN K. BARNES
Susan K. Barnes
Senior Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated below:

Signature	Title	Date
*	Chairman, Chief Executive Officer and President	October 22, 2010
Hugh C. Martin		
/S/ SUSAN K. BARNES	Senior Vice President and	October 22, 2010
Susan K. Barnes	Chief Financial Officer	
*	Vice President and	October 22, 2010
Brian B. Dow	Principal Accounting Officer	
*	Director	October 22, 2010
Brook Byers		
*	Director	October 22, 2010
William W. Ericson		
*	Director	October 22, 2010
Michael Hunkapiller		
*	Director	October 22, 2010
Randall S. Livingston		
*	Director	October 22, 2010
Susan Siegel		
*	Director	October 22, 2010
David B. Singer		

*By: /S/ SUSAN K. BARNES
Susan K. Barnes
Attorney in Fact

Exhibit Index

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Previously filed.

† Confidential treatment has been requested for portions of this exhibit. These portions have been omitted from this Registration Statement and have been filed separately with the Securities and Exchange Commission.

Exhibit 5.1

October 22, 2010

Pacific Biosciences of California, Inc.
1380 Willow Road
Menlo Park, California 94025

Re: Registration Statement on Form S-1

Ladies and Gentlemen:

This opinion is furnished to you in connection with the Registration Statement on Form S-1 (Registration No. 333-168858), as amended (the "Registration Statement"), filed by Pacific Biosciences of California, Inc. (the "Company") with the Securities and Exchange Commission on October 22, 2010 pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), in connection with the registration under the Securities Act of 14,375,000 shares of the Company's common stock, $0.001 par value per share (the "Shares"). The Shares will be sold by the Company pursuant to an underwriting agreement entered into by and among the Company and the underwriters (the "Underwriting Agreement"), substantially in the form filed as an exhibit to this Registration Statement.

We are acting as counsel for the Company in connection with the sale by the Company of the Shares. In such capacity, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary for the purposes of rendering this opinion.

We express no opinion herein as to the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware (including the statutory provisions and all applicable judicial decisions interpreting those laws) and the federal laws of the United States of America.

On the basis of the foregoing, we are of the opinion, that the Shares to be issued and sold by the Company have been duly authorized and, when such Shares are issued and paid for in accordance with the terms of the Underwriting Agreement, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and we consent to the reference of our name under the caption "Legal Matters" in the prospectus forming part of the Registration Statement.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

Exhibit 10.7

Confidential Treatment Requested by
Pacific Biosciences of California, Inc.

COLLABORATION AGREEMENT
between
PACIFIC BIOSCIENCES OF CALIFORNIA, INC.
and
GEN-PROBE INCORPORATED
Dated as of June 15, 2010

COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the "Agreement") is entered into between Pacific Biosciences of California, Inc., a Delaware corporation ("PacBio"), having a place of business at 1505 Adams Drive, Menlo Park, California 94025 and Gen-Probe Incorporated, a Delaware corporation ("Gen-Probe"), having a place of business at 10210 Genetic Center Drive, San Diego, California 92121. PacBio and Gen-Probe may each sometimes be referred to herein as a "party" and collectively as the "parties."

RECITALS

WHEREAS, the parties each recognize the potential mutual benefit in cooperating in the potential development of instrumentation and related products for the Diagnostics (as defined herein) market (the "Collaboration").

WHEREAS, PacBio owns or has proprietary rights and expertise in Sample Preparation Systems (as defined herein) and Third Generation Sequencing Systems (as defined herein) and associated technologies.

WHEREAS, Gen-Probe owns or has proprietary rights and expertise in the areas of Diagnostics workflow, systems integration, and Sample Preparation Systems, and expertise in the areas of clinical product development and regulatory clearances.

WHEREAS, the parties desire to collaborate toward the joint development of Products (each as defined herein) on the terms and subject to the conditions of this Agreement.

WHEREAS, the parties intend to enter subsequently into one or more Preferred Partnership Agreements (as defined herein), if warranted, to collaborate toward the further development, regulatory clearance and commercialization of Products in the Field, including Products developed under the terms of this Agreement.

WHEREAS, in connection herewith, the parties are also entering into a stock purchase agreement (the "Stock Purchase Agreement"), pursuant to which Gen-Probe shall purchase shares of PacBio's Series F preferred stock for an aggregate purchase price equal to $50 million.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the terms defined in this Article 1 shall have the respective meanings set forth below:

1.1 "Action" shall have the meaning set forth in Section 7.10.

1.2 “Affiliate” shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person (or such lesser percentage as is the maximum percentage permitted under applicable law for foreign ownership where control is exercised by contract or otherwise), or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever (provided, however, that in the case of an entity organized under Section 501(c)(3) of the Internal Revenue Code, the direct or indirect power of a party to direct or cause the direction of the management and policies of the entity shall not in and of itself cause the entity to be deemed an Affiliate for purposes of this Agreement).

1.3 “Agreement” shall have the meaning set forth in the Preamble hereto. 1.4 “Change of Control” shall mean, with respect to a party, any of the following: (a) the sale or disposition of all or substantially all of the assets of such party or its direct or indirect parent corporation to a Third Party, (b) the acquisition by a Third Party which constitutes one person, as such term is used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), together with any such person’s “affiliates” or “associates,” as such terms are defined in the Exchange Act, other than an employee benefit plan (or related trust) sponsored or maintained by such party or any of its Affiliates, of more than 50% of the outstanding shares of voting capital stock of such party or its direct or indirect parent corporation, or (c) the merger or consolidation of such party or its direct or indirect parent corporation with or into another corporation, other than, in the case of this clause (c), an acquisition or a merger or consolidation of such party or its direct or indirect parent corporation in which holders of shares of the voting capital stock of such party or its direct or indirect parent corporation, as the case may be, immediately prior to the acquisition, merger or consolidation will have at least fifty percent (50%) of the ownership of voting capital stock of the acquiring Third Party or the surviving corporation in such merger or consolidation, as the case may be, immediately after the merger or consolidation.

1.5 “Collaboration” shall have the meaning set forth in the recitals.

1.6 “Commercially Available” shall mean, with respect to a product and a party, that such product is made available by such party or its Affiliate to a Third Party through (i) commercial sale or transfer of such product (including pursuant to an OEM supply arrangement) or (ii) commercial sale of a service utilizing such product.

1.7 “Commercially Reasonable Efforts” shall mean the application of efforts and available resources, not materially inconsistent with the exercise of prudent scientific and business judgment. “Commercially Reasonable Efforts” shall be deemed to have occurred if a reasonably prudent business person would have exerted similar efforts after taking into account, among other factors, in no particular order, and with no particular relative weighting: the industry; the relative market timing, potential, and size, and the stage in the development or life of, the relevant product(s) and/or services, and the dependencies and other interrelationships there between; the size and stage in the development or life of the entity; the current and projected future availability of sufficient capital and other resources, and the terms on which such resources are or will be available; and/or any other factor(s) actually considered and/or that a reasonably prudent business person would consider under similar

circumstances. Subject to and without limiting the foregoing, "Commercially Reasonable Efforts" shall require the applicable party to: (i) promptly assign responsibilities for activities for which it is responsible to specific employee(s) who are held accountable for the progress, monitoring and completion of such activities, (ii) set and consistently seek to achieve meaningful objectives for carrying out such activities, and (iii) make and implement decisions and allocate available resources necessary or appropriate to advance progress with respect to and complete such activities.

1.8 "Confidential Information" shall mean, with respect to a party, all information, whether in written, oral or visual presentation form, of any kind whatsoever (including compilations, data, formulae, models, patent disclosures, procedures, processes, projections, protocols, results of experimentation and testing, specifications, strategies, and techniques), and all tangible and intangible embodiments thereof of any kind whatsoever (including apparatus, compositions, documents, drawings, machinery, patent applications, records, reports), which is (i) not generally known, (ii) disclosed by such party to the other party pursuant to and in accordance with the terms of Article 6 of this Agreement and (iii) is identified as confidential, or is otherwise treated by the Disclosing Party as confidential or which the other party has a reasonable basis to believe is confidential at the time of disclosure.

Notwithstanding the foregoing, Confidential Information of a party shall not include information which the other party can establish by written documentation (a) to have been publicly known prior to disclosure of such information by the Disclosing Party to the other party, (b) to have become publicly known, without fault on the part of the other party, subsequent to disclosure of such information by the Disclosing Party to the other party, (c) to have been received by the other party at any time from a source, other than the disclosing party, rightfully having possession of and the right to disclose such information, (d) to have been otherwise known by the other party prior to disclosure of such information by the Disclosing Party to the other party or (e) to have been independently developed by employees or agents of the other party without access to or use of such information disclosed by the Disclosing Party to the other party.

1.9 "Confidentiality Agreement" shall mean the Confidentiality Agreement, dated as of February 12, 2010, between Gen-Probe and PacBio.

1.10 "Development Plans" shall have the meaning set forth in Section 2.1.2.

1.11 "Diagnostics" shall mean the in vitro testing of human specimens (including processed human specimens) for the purpose of medical care of the human from whom the specimen was taken and/or medical care of a human who is the potential recipient of tissue from the human from whom the specimen was taken. For the avoidance of doubt, "medical care" shall include, by way of example and not of limitation, diagnosis, prognosis, treatment, prevention, or monitoring the progress of any and all possible human disease (including infectious, genetic, traumatic, metabolic, degenerative, and neoplastic disease) as well as compatibility of donor and recipient with respect to tissue. At Gen-Probe's sole option, exercisable upon written notice to PacBio, "Diagnostics" shall also mean the in vitro testing of human specimens for the purpose of medical care of a human who is the potential recipient of human blood, plasma or other blood products from the human from whom the specimen was taken. For the avoidance of doubt, such medical care shall include, by way of example and not of limitation, diagnosis of possible disease prior to transplant or transfusion, as well as compatibility of donor and recipient with respect to human blood, plasma, and other blood products.

1.12 “Disclosing Party” shall have the meaning set forth in Section 6.1

1.13 “DNA” shall mean any and all forms of deoxyribonucleic acid, including without limitation methylated and other modified deoxyribonucleic acid sequences and complementary deoxyribonucleic acid synthesized from ribonucleic acid.

1.14 “Effective Date” shall mean June 15, 2010.

1.15 “Essential Ancillaries” shall mean the reagents and other consumables (including chips) that are necessary for the effective use of V2 […***…] or Sample Preparation […***…], in each case to the extent Commercially Available, respectively, from PacBio or Gen-Probe.

1.16 “Field” shall mean the field of nucleic acid sequencing products and services expressly marketed for Diagnostics use, including the parties’ own internal research and development of Products that are intended to be expressly marketed for Diagnostics use. For the avoidance of doubt, solely for purposes of determining whether Gen-Probe and its Affiliates have complied with the exclusivity obligations set forth in Section 4.1, “nucleic acid sequencing” shall not include methods utilizing multiplexed beads (e.g., […***…]) or capillary electrophoresis, as such methods are incorporated in a product offered by Gen-Probe or its Affiliates as of the Effective Date.

1.17 “Front End Sample Preparation” shall mean the isolation, extraction and/or purification of nucleic acid from tissue and bodily fluids obtained directly or indirectly from a human for sequencing, but excluding steps that are integral and specific to the sequencing process itself.

1.18 “Gen-Probe” shall have the meaning set forth in the Preamble hereto.

1.19 “Gen-Probe Copyrights” shall mean all rights under the copyright laws of any jurisdiction in the world and similar laws granting rights for written expression, together with all rights commonly referred to as “moral rights,” to the extent that Gen-Probe has the right to grant licenses, immunities or other rights thereunder as of the Effective Date or thereafter.

1.20 “Gen-Probe Derivative IP” shall have the meaning set forth in Section 7.5.1.

1.21 “Gen-Probe Intellectual Property Rights” shall mean, collectively, the Gen-Probe Copyrights, Gen-Probe Know-How and Gen-Probe Patent Rights.

1.22 “Gen-Probe Inventions” shall have the meaning set forth in Section 7.1.

1.23 “Gen-Probe Know-How” shall mean information, expertise or data developed by or for Gen-Probe (including formulae, procedures, protocols, techniques, data and results of experimentation and testing) to the extent that Gen-Probe has the right, under the laws of any jurisdiction in the world, to grant licenses, immunities or other rights thereunder as of the Effective Date or thereafter.

1.24 “Gen-Probe Patent Rights” shall mean patents and patent applications in any jurisdiction of the world as to which Gen-Probe has an ownership or other licensable interest (other than a license from PacBio pursuant to this Agreement) as of the Effective Date or thereafter, including with respect to any Gen-Probe Invention.

1.25 “Initial Development Plan” shall have the meaning set forth in Section 2.1.1.

1.26 “JAMS” shall have the meaning set forth in Section 9.3.

1.27 “Joint Copyrights” shall have the meaning set forth in Section 7.3.1.

1.28 “Joint Intellectual Property” shall have the meaning set forth in Section 7.6.

1.29 “Joint Inventions” shall have the meaning set forth in Section 7.1.

1.30 “Joint Know-How” shall have the meaning set forth in Section 7.4.

1.31 “Licensed GP IP” shall have the meaning set forth in Section 2.4.1.

1.32 “Licensed PacBio IP” shall have the meaning set forth in Section 2.4.2.

1.33 “PacBio” shall have the meaning set forth in the preamble hereto.

1.34 “PacBio Copyrights” shall mean all rights under the copyright laws of any jurisdiction in the world and similar laws granting rights for written expression, together with all rights commonly referred to as “moral rights,” to the extent that PacBio has the right to grant licenses, immunities or other rights thereunder as of the Effective Date or thereafter.

1.35 “PacBio Derivative IP” shall have the meaning set forth in Section 7.5.1.

1.36 “PacBio Intellectual Property Rights” shall mean, collectively, the PacBio Copyrights, PacBio Know-How and PacBio Patent Rights.

1.37 “PacBio Inventions” shall have the meaning set forth in Section 7.1.

1.38 “PacBio Know-How” shall mean information, expertise or data developed by or for PacBio (including formulae, procedures, protocols, techniques, data and results of experimentation and testing) which relates to the Products to the extent that PacBio has the right, under the laws of any jurisdiction in the world, to grant licenses, immunities or other rights thereunder as of the Effective Date or thereafter.

1.39 “PacBio Patent Rights” shall mean patents and patent applications in any jurisdiction of the world claiming technology as to which PacBio has an ownership or other licensable interest (other than a license from Gen-Probe pursuant to this Agreement) as of the Effective Date or thereafter, including with respect to any PacBio Invention.

1.40 “Person” shall mean an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein, and including Gen-Probe and PacBio.

1.41 “Preferred Access Products” shall mean the products supplied by the parties pursuant to Section 2.2.

1.42 “Preferred Partnership Agreements” shall have the meaning set forth in Section 2.5.

1.43 “Product Development Plans” shall have the meaning set forth in Section 2.1.2.

1.44 “Products” shall mean one or more integrated system products integrating nucleic acid sequencing and Front End Sample Preparation, in each case for use in the Field.

1.45 “Proof of Concept” shall mean, with respect to any product, the demonstration of the reasonable technical and commercial efficacy and feasibility of such product for its intended application.

1.46 “Receiving Party” shall have the meaning set forth in Section 6.1.

1.47 “Sample Preparation” shall mean the isolation, extraction and/or purification of nucleic acid from tissue and bodily fluids obtained directly or indirectly from a human for sequencing.

1.48 “Sample Preparation […***…]” shall mean, individually and collectively, the major […***…] of Sample Preparation System instruments.

1.49 “Sample Preparation Systems” shall mean the reagents, methods, instruments and associated consumables that are used for Sample Preparation, including those that are used for Front End Sample Preparation.

1.50 “Steering Committee” shall mean the committee comprising representatives of Gen-Probe and PacBio as described in Section 3.1 below.

1.51 “Stock Purchase Agreement” shall have the meaning set forth in the recitals.

1.52 “Term” shall mean the period set forth in Section 8.1.

1.53 “Third Generation Sequencing Systems” shall mean the reagents, methods, instruments and associated consumables (including chips) that are used for single molecule sequencing of nucleic acid, as developed by or on behalf of PacBio including without limitation Single Molecule Real Time (SMRT(TM)) sequencing, the current PacBio RS system and the contemplated PacBio […***…] “V2” SMRT DNA sequencing platforms. Gen-Probe acknowledges that, as of the Effective Date, PacBio’s Third Generation Sequencing Systems are designed to sequence DNA (and not RNA).

1.54 “Third Party” shall mean any Person other than Gen-Probe and PacBio and their respective Affiliates.

1.55 “V2 […***…]” shall mean the primary […***…] contained, or intended to be contained, in the V2 System.

1.56 “V2 Proof of Concept” shall have the meaning set forth on Exhibit C

1.57 “V2 […***…]” shall mean, individually and collectively, the V2 […***…] and other major sequencing […***…] contained, or intended to be contained, in the V2 System.

1.58 “V2 System” shall mean the reagents, methods and instruments that are used for single molecule sequencing of nucleic acids, as developed by or on behalf of PacBio, in the contemplated “V2” SMRT DNA sequencing platform.

ARTICLE 2
PRODUCT DEVELOPMENT

2.1 Development Plans.

2.1.1 The initial program for the development of the Products is set forth in Exhibit A (the “Initial Development Plan”).

2.1.2 It is anticipated that progress made under the Initial Development Plan may necessitate changes to the Initial Development Plan or, for any Products identified as warranting further development activities, the adoption of additional development plans (the “Product Development Plans,” and, together with the Initial Development Plan, the “Development Plans”). Product Development Plans may be adopted and the Development Plans may be amended from time to time by the Steering Committee in accordance with the provisions of Article 3. Such actions must be in writing to be effective hereunder. The Development Plans may include, without limitation: work schedules of activities that specify the development phases; time schedules for completion of such phases; deliverables; key assumptions; itemized budgets by development phase, including agreed costs; test methods; the timing of reimbursement payments, if any, tied to the completion of milestones; scale-up activities; product specifications; the final activity that completes the Development Plans; and the respective responsibilities of the parties.

2.1.3 Each party shall designate a contact, which may be a member of the Steering Committee, at their respective offices to receive and transmit communications concerning the Development Plans.

2.1.4 Gen-Probe and PacBio shall conduct their respective development obligations under the Development Plans diligently and in accordance with the Development Plans and in compliance with applicable laws, regulations and standards for good development practices. Gen-Probe and PacBio each shall allocate sufficient personnel, equipment, facilities and other resources to the Development Plans to carry out their respective obligations and use Commercially Reasonable Efforts to accomplish the objectives thereof.

2.1.5 Unless the Steering Committee determines otherwise, each party shall bear its own expenses incurred in performing its obligations under this Agreement.

2.2 Preferred Access Products.

2.2.1 PacBio shall provide to Gen-Probe access to prototype versions of PacBio’s contemplated Third Generation Sequencing System product families, through one or more collaborative research projects to be performed using such prototype systems. Such collaborative research projects shall be of nature and scope, and on such terms and conditions, as are mutually agreed by the parties; provided that […***…].

2.2.2 If, during the Term, PacBio initiates a beta testing program for any Third Generation Sequencing System (whether stand-alone or incorporated into a Product), Gen-Probe shall be permitted to serve as a beta test site for such system, subject to the then-current terms and conditions for such beta test sites that have been established by PacBio for such Third Generation Sequencing System, consistently applied, and subject to Gen-Probe's continued fulfillment of its obligations as a beta test site in accordance with such terms and conditions.

2.2.3 During the Term and thereafter, Gen-Probe shall be entitled to purchase from PacBio, on terms (including warranty terms) that are commercially reasonable for both parties […***…], any Third Generation Sequencing System (whether stand-alone or incorporated into a Product) then Commercially Available from PacBio to its customers generally; provided that such entitlement shall survive a Change of Control of PacBio to the extent any such Third Generation Sequencing System was, immediately prior to such Change in Control: (i) Commercially Available from PacBio to its customers generally or (ii) (a) in active development by PacBio following a successful Proof of Concept and (b) then intended by PacBio to be Commercially Available to its customers generally in the future (provided, however, that PacBio shall not be obligated to provide Gen-Probe such access earlier than when such Third Generation Sequencing System is Commercially Available to PacBio's customers generally).

2.2.4 During the Term and thereafter, PacBio shall be entitled to purchase from Gen-Probe, on terms (including warranty terms) that are commercially reasonable for both parties […***…], any Sample Preparation System (whether stand-alone or incorporated into a Product) then Commercially Available from Gen-Probe to its customers generally; provided that such entitlement shall survive a Change of Control of Gen-Probe to the extent any such Sample Preparation System was, immediately prior to such Change in Control:

(i) Commercially Available from Gen-Probe to its customers generally or (ii) (a) in active development by Gen-Probe following a successful Proof of Concept and

(b) then intended by Gen-Probe to be Commercially Available to its customers generally in the future (provided, however, that Gen-Probe shall not be obligated to provide PacBio such access earlier than when such Sample Preparation System is Commercially Available to Gen-Probe's customers generally).

2.2.5 In addition to, and not in derogation of, Section 2.2.3, during the Term and thereafter, Gen-Probe shall be entitled to purchase from PacBio, on terms (including warranty terms) that are commercially reasonable for both parties […***…], any V2 […***…] (whether stand-alone or embodied in a system) and any Essential Ancillaries therefor, in each case, then Commercially Available from PacBio; provided that such entitlement to purchase shall survive a Change of Control of PacBio (i) with respect to the V2 […***…] (and any Essential Ancillaries therefor), following a successful V2 Proof of Concept and (ii) with respect to any other V2 […***…] (and any Essential Ancillaries therefor), to the extent any such V2 […***…] was, immediately prior to such Change in Control: (a) part of a V2 System

Commercially Available from PacBio or (b) part of a V2 System in active development by PacBio in its Collaboration with Gen-Probe hereunder following a successful Proof of Concept of such V2 […***…] or V2 System; provided, further that any purchase pursuant to this Section 2.2.5 shall be for the sole purpose of Gen-Probe incorporating such V2 […***…] into a Product (regardless of whether such Product was developed under the Collaboration) to be sold in the Field, and in no circumstances for the stand-alone resale of such V2 […***…]. Upon written request in accordance with Section 10.2 by PacBio to Gen-Probe after expiration or termination of this Agreement or any such Change in Control, Gen-Probe shall, within ninety (90) days of receipt of such request, provide to PacBio a good faith, commercially reasonable estimate of the likely quantities and delivery dates for any V2 […***…] (and any Essential Ancillaries therefor) which Gen-Probe contemplates purchasing pursuant to this Section 2.2.5 over the course of the following […***…] calendar quarters. Gen-Probe shall continue to provide a rolling […***…] calendar quarter estimate, on a quarterly basis, so long as Gen-Probe desires to purchase any V2 […***…] (and any Essential Ancillaries therefor) pursuant to this Section 2.2.5.

2.2.6 In addition to, and not in derogation of, Section 2.2.4, during the Term and thereafter, PacBio shall be entitled to purchase from Gen-Probe, on terms (including warranty terms) that are commercially reasonable for both parties […***…], any Sample Preparation […***…] (whether stand-alone or embodied in a system) that is intended to be a part of any Product contemplated by the Collaboration and any Essential Ancillaries therefor, in each case, then Commercially Available from Gen-Probe; provided that such entitlement to purchase shall survive a Change of Control of Gen-Probe with respect to any such Sample Preparation […***…] (and any Essential Ancillaries therefor), to the extent any such Sample Preparation […***…] was, immediately prior to such Change in Control, an intended part of a Product in active development by Gen-Probe following a successful Proof of Concept of such Sample Preparation […***…] or Product; provided, further that any purchase pursuant to this Section 2.2.6 shall be for the sole purpose of PacBio incorporating a Sample Preparation […***…] into a Product (regardless of whether such Product was developed under the Collaboration) to be sold in the Field, and in no circumstances for the stand-alone resale of such Sample Preparation […***…]. Upon written request in accordance with Section 10.2 by Gen-Probe to PacBio after expiration or termination of this Agreement or any such Change in Control, PacBio shall, within ninety (90) days of receipt of such request, provide to Gen-Probe a good faith, commercially reasonable estimate of the likely quantities and delivery dates for any Sample Preparation […***…] (and any Essential Ancillaries therefor) which PacBio contemplates purchasing pursuant to this Section 2.2.6 over the course of the following […***…] calendar quarters. PacBio shall continue to provide a rolling […***…] calendar quarter estimate, on a quarterly basis, so long as PacBio desires to purchase any Sample Preparation […***…] (and any Essential Ancillaries therefor) pursuant to this Section 2.2.6.

2.2.7 The rights and obligations of the parties under this Section 2.2 shall apply equally to the Affiliates of the parties and the provisions of this Section 2.2 shall be interpreted mutatis mutandis with respect to the Affiliates of the parties, it being understood that each party may elect to perform any or all of its obligations under this Section 2.2 exclusively through one or more of its Affiliates (e.g., sale of products outside the U.S. via a non-U.S. Affiliate). Each party shall cause its Affiliates, to the extent applicable, to comply with the provisions of this Section 2.2 as if they were party to this Agreement.

2.3 Access to Information.

2.3.1 Gen-Probe shall provide PacBio access to relevant Diagnostics market research data that Gen-Probe has generated, or will generate during the Term, including, without limitation, the […***…].

2.3.2 PacBio shall provide Gen-Probe access to relevant Diagnostics market research data that PacBio has generated, or will generate during the Term.

2.3.3 Diagnostics market research data provided by one party to another under this Section 2.3 shall be considered Confidential Information pursuant to Article 6 of this Agreement. Without limiting the foregoing, neither party shall reference or disclose Third Party study data (including, without limitation, the […***…]) without the prior written consent of such Third Party.

2.4 Limited License Grants for Development Plans.

2.4.1 License Grant by Gen-Probe. Gen-Probe hereby grants to PacBio a limited, royalty-free, non-exclusive license, for the duration of the Term, to all of the Gen-Probe Intellectual Property Rights reasonably required for PacBio to perform its obligations under the Development Plans (the "Licensed GP IP") and solely for such purposes. PacBio shall not have the right to grant sublicenses under such license, without the express prior written consent of Gen-Probe.

2.4.2 License Grant by PacBio. PacBio hereby grants to Gen-Probe a limited, royalty-free, non-exclusive license, for the duration of the Term, to all of the PacBio Intellectual Property Rights reasonably required for Gen-Probe to perform its obligations under the Development Plans (the "Licensed PacBio IP") and solely for such purposes. Gen-Probe shall not have the right to grant sublicenses under such license, without the express prior written consent of PacBio.

2.5 Subsequent Agreements. During the Term, the parties shall negotiate in good faith one or more definitive agreements that shall set forth the economic and other terms and obligations of the parties in furtherance of the continued development, commercialization and regulatory clearance of the Products (the "Preferred Partnership Agreements"). Such Preferred Partnership Agreements shall take into account the technological, commercial, regulatory and reimbursement findings developed by the parties pursuant to this Agreement. Except as otherwise provided in this Agreement, no party or its Affiliate shall take any steps, during the Term, to commercialize in the Field any Product developed under the Collaboration or pursue any regulatory clearances in the Field in respect of such Product prior to the execution of a Preferred Partnership Agreement in respect of such Product.

2.6 Acknowledgements. Notwithstanding the parties' intentions and obligations, Gen-Probe and PacBio each: (i) expressly disclaims any representation or warranty that any development activities taken pursuant to this Agreement will be successfully completed and (ii) expressly acknowledges the possibility that any or all development or commercialization activities may be unsuccessful despite the use of Commercially Reasonable Efforts. Both parties shall plan accordingly.

ARTICLE 3
GOVERNANCE

3.1 Steering Committee.

3.1.1 The development of Products under the Development Plans shall be coordinated and supervised by the Steering Committee, provided that a Development Plan, and any modification of a Development Plan, shall not be considered to have been approved unless the budget for a Development Plan or a modified Development Plan shall have been approved in writing by the Chief Financial Officer of each party. The Steering Committee's duties shall include (i) determining the priorities of the Collaboration with respect to research activities, which Products to develop and other development matters, (ii) maintaining the Development Plans, including schedules of work and deliverable commitments by each party, (iii) maintaining an accounting of the expenses borne by each party, (iv) facilitating open communication between the parties on matters relating to the development findings and commercialization of Products in the Field, and (v) engaging experts as necessary to identify the market, regulatory and reimbursement requirements for integrating Sample Preparation Systems with Third Generation Sequencing Systems. The Steering Committee shall have the power and authority to appoint joint project teams to oversee and administer activities under this Agreement and shall set the roles and responsibilities for any such project teams.

3.1.2 The Steering Committee shall be comprised of three (3) named representatives of Gen-Probe and three (3) named representatives of PacBio. PacBio and Gen-Probe shall each appoint its respective representatives to the Steering Committee and each party may, from time to time and in its sole discretion, substitute one or more of its representatives by giving notice to the other party of such change. The initial members of the Steering Committee are set forth on Exhibit B. Each party shall bear its own costs for its representatives' participation on the Steering Committee.

3.2 Meetings. The Steering Committee shall convene not less than once each calendar quarter during the Term. All meetings shall be set at times and places convenient to the members of the Steering Committee as determined by the chair of the Steering Committee. Each party shall bear its own travel costs in connection with travel to any meetings of the Steering Committee.

3.3 Committee Actions. A party's representatives on the Steering Committee shall collectively have one vote as to all matters. All Steering Committee actions may only be taken by unanimous vote of the parties. Any approval, determination or other action agreed to by both parties' representatives shall be the approval, determination or other action of the Steering Committee. Except as may be otherwise specifically set forth in this Agreement, any matters as to which the Steering Committee cannot reach a unanimous vote shall be presented to the respective executives of the parties for consideration, in accordance with Article 9.

3.4 Reports. Within thirty (30) days following each Steering Committee meeting, the chairperson shall prepare and provide to each party a reasonably detailed written summary report that shall describe any approval, determination or other action by the Steering Committee.

3.5 Committee Procedures. Meetings of the Steering Committee shall be coordinated and chaired by a representative of one of the parties. The position of chair shall rotate between the parties each nine (9) months. PacBio shall have the right to appoint a representative to serve as the chair of the Steering Committee for the first nine (9) months of the Term.

3.6 Steering Committee Action Prior to End of Development Plans.

3.6.1 In the event that either party reasonably concludes prior to the end of a Development Plan that (i) the development schedule or development budget for a Product will materially exceed the schedule or budget set forth in such Development Plan, (ii) development will not be able to be conducted or be successfully concluded materially consistently with such Development Plan, or (iii) based on anticipated market demand or for any other reason that the commercialization of such Product in the Field would not likely be successful, such party shall promptly notify the Steering Committee, which shall discuss all relevant circumstances and considerations and determine whether any changes are needed to such Development Plan and, if so, make a decision on whether the development work should continue with respect to such Product and whether to modify or terminate such Development Plan.

3.6.2 In the event a Development Plan is terminated under this Section 3.6, the termination notice shall be effective on the date it is received. Such termination shall not in any way relieve either party of obligations already incurred under the Development Plans prior to termination, including obligations, if any, to reimburse the other party for any expense determined to be reimbursable by the Steering Committee.

3.7 Reports and Records. Once each calendar quarter prior to the Steering Committee meeting, each party shall prepare a written summary report describing the work performed to date by such party under all active Development Plans and provide such report to the other party. If agreed by the parties, the foregoing reports may be oral reports given at the Steering Committee meeting. Each party shall maintain complete and accurate records that fully and properly reflect all work done and results achieved by it in the performance of the Development Plans (including all data in the form required under all applicable laws and regulations).

3.8 Inspection of Records. To the extent reasonably required for the performance of a Development Plan, Gen-Probe and PacBio each shall have the right, during normal business hours and upon reasonable notice, to inspect and copy records of the other party created in the course of performing such Development Plan, to the extent such records are directly related to, and within the scope of, the Collaboration. The parties shall develop reasonable procedures for requesting and delivering copies of such records to each other. Each party shall maintain such records and the information of the other party contained therein as Confidential Information hereunder.

3.9 Subcontracts. Upon approval of the Steering Committee, which shall not be unreasonably withheld by either party, each party may subcontract portions of any Development Plan hereunder in the normal course of its business; provided, however, that unless the other party gives its prior written consent, subcontracting with a Third Party shall not involve the transfer or license (including any sublicense) of the other party's intellectual property rights and/or Confidential Information. If the other party consents to a subcontractor's access to Confidential Information of the other party, the subcontractor shall be required to enter into an agreement including confidentiality terms that are at least as restrictive as the confidentiality terms of Article 6 herein along with provisions for the assignment of inventions or intellectual property rights arising from the subcontracted work. The subcontracting party shall supervise the work of any subcontractor to ensure, in part, that the subcontractor's work is in compliance in all material respects with all requirements of the Development Plans and all applicable laws and regulations. For purposes of this Section 3.9, subcontractors requiring approval of the Steering Committee shall not include subcontractors that provide services on-site of either party in the ordinary course of such party's business; provided, however, that such excluded subcontractors shall otherwise be subject to the requirements of this Section 3.9 to the extent they work on any portion of any Development Plan or have access to the Confidential Information of the other party.

3.10 Withdrawal. Notwithstanding anything to the contrary in this Agreement, either party may, upon thirty (30) days written notice to the other party, withdraw from participation in the Steering Committee, in which case, the Steering Committee shall be dissolved and the parties shall administer the Agreement without such committee, and shall make such amendments to the Agreement as may be necessary or advisable in connection therewith. All decisions in this Agreement that prior to such notice required the agreement of the Steering Committee, shall following such notice be subject to the mutual agreement of the parties.

ARTICLE 4
EXCLUSIVITY

4.1 Exclusivity. During the Term, neither party, and neither party's Affiliates, shall (i) jointly develop Products in the Field with any Third Party or (ii) directly or indirectly grant to a Third Party an express license or an express immunity from suit with respect to any technology used or useful in the Collaboration that would permit such Third Party to develop Products in the Field using such technology either on its own, jointly with such party or with any other Third Party; provided that a party shall not be precluded from joint development with or out-licensing to a Third Party in respect of a particular Product if: (a) the parties, jointly and in good faith, determine that one or both parties do not have sufficient capabilities required for the development of a particular Product in the Field, (b) either party requests that the Collaboration include the development of a particular Product in the Field and proposes fair terms with respect to allocation of development costs, and the other party expressly disclaims any interest in such development, or (c) such a license is granted in good faith in connection with the […***…]. Subject to the foregoing restrictions and the other party's intellectual property rights in a Product, each party shall be permitted to develop, promote, market and sell such Product.

***Confidential Treatment Requested

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties. Each of Gen-Probe and PacBio hereby represents and warrants as of the Effective Date (except as specifically otherwise indicated below) as follows:

5.1.1 Corporate Existence and Power. Such party (a) is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is incorporated; (b) has the corporate power and authority and the legal right to own and operate its property and assets, to lease the property and assets it operates under lease, and to carry on its business as it is now being conducted; and (c) to its knowledge, is in compliance with all requirements of applicable law, except to the extent that any noncompliance would not have a material adverse effect on the properties, business, financial or other condition of such party and would not materially adversely affect such party's ability to perform its obligations under this Agreement.

5.1.2 Authorization and Enforcement of Obligations. Such party (a) has the corporate power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder and (b) has taken all necessary corporate action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid and binding obligation, enforceable against such party in accordance with its terms.

5.1.3 Consents. All necessary consents, approvals and authorizations of all governmental authorities and other Persons required to be obtained by such party in connection with the execution of this Agreement have been obtained on or before the Effective Date.

5.1.4 No Conflict. To its knowledge, the execution and delivery of this Agreement and the performance of such party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws or regulations, and (b) do not conflict with, or constitute a default under, any material contractual obligation of such party.

5.1.5 No Notice of Infringement. As of the Effective Date, except as otherwise disclosed in writing to the other party, neither Gen-Probe nor PacBio has received any written notice from a Third Party alleging that any technology of such party expected to be utilized in any Product (each as and to the extent defined as of the Effective Date) to be developed pursuant to this Agreement would infringe the issued patents of such Third Party.

5.2 DISCLAIMER OF WARRANTIES. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE, OR WARRANTY GIVEN, BY GEN-PROBE OR PACBIO THAT ANY PATENT WILL ISSUE BASED UPON ANY PENDING PATENT APPLICATION WITHIN THE GEN-PROBE PATENT RIGHTS OR THE PACBIO PATENT RIGHTS, THAT ANY PATENT WITHIN THE GEN-PROBE PATENT RIGHTS OR THE PACBIO PATENT RIGHTS WHICH ISSUES WILL BE VALID, OR THAT THE USE OF ANY LICENSE GRANTED HEREUNDER, OR THAT THE USE OF ANY GEN-PROBE PATENT RIGHTS OR PACBIO PATENT RIGHTS WILL NOT INFRINGE THE PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON. FURTHERMORE, EACH OF GEN-PROBE

AND PACBIO DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GEN-PROBE INTELLECTUAL PROPERTY RIGHTS AND THE PACBIO INTELLECTUAL PROPERTY RIGHTS, RESPECTIVELY, OR TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

ARTICLE 6
CONFIDENTIALITY

6.1 Confidential Information. For the period commencing on the Effective Date and ending seven (7) years following the expiration or earlier termination hereof, a party and its Affiliates and their respective directors, officers, employees and consultants (the "Receiving Parties") shall maintain in confidence the Confidential Information of the other party and its Affiliates, and shall not disclose to Third Parties the Confidential Information of the other party or its Affiliates (the "Disclosing Parties") except to Affiliates of the Receiving Parties and their respective directors, officers, employees and consultants involved in the performance of obligations under this Agreement. To the extent that disclosure to any Third Party is authorized by this Agreement, prior to disclosure, the Receiving Party shall obtain written agreement of such Third Party to hold in confidence and not disclose, use or grant the use of the Confidential Information of the other party except as expressly permitted under this Agreement. The parties agree that the term of the non-disclosure and non-use obligations of a Third Party shall be co-extensive with the confidentiality obligations of the parties hereunder. A Receiving Party shall notify the applicable Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Upon the expiration or earlier termination of this Agreement, each Receiving Party shall return to the applicable Disclosing Party all tangible items regarding the Confidential Information of the Disclosing Party and all copies thereof; provided, however, that a Receiving Party shall have the right to retain one (1) copy for its legal files for the sole purpose of determining its obligations hereunder. Each party shall cause its Affiliates, to the extent applicable, to comply with the provisions of this Section 6.1 as if they were party to this Agreement.

6.2 Terms of this Agreement. For the period commencing on the Effective Date and ending on the expiration or earlier termination hereof, without the prior express written consent of the other party, which shall not be unreasonably withheld or delayed, neither party nor its Affiliates shall (a) disclose any financial terms or conditions of this Agreement to any Third Party, except as reasonably required in connection with such party's activities hereunder and under appropriate confidentiality restrictions; or (b) originate any initial disclosure to any Third Party of the existence or terms of this Agreement; or (c) originate any initial publicity, news release or any other public announcement (written or oral) relating to this Agreement or the existence of an arrangement among the parties. Notwithstanding the foregoing, the parties shall be allowed to issue mutually agreed upon individual or joint press releases disclosing the general nature of the Collaboration. Either party shall thereafter be free to disclose any information contained in the public disclosure approved pursuant to this Section 6.2 or which is made without confidentiality restrictions pursuant to Section 6.3.

6.3 Permitted Disclosures. The confidentiality obligations under this Article 6 shall not apply to the extent that a party is required to disclose information by applicable law, regulation or order of a governmental agency or a court of competent jurisdiction; provided that such party shall provide written notice thereof to the other party and sufficient opportunity to contest any such disclosure or to request confidential treatment thereof.

ARTICLE 7
DEVELOPED INTELLECTUAL PROPERTY; INTELLECTUAL PROPERTY RIGHTS; ENFORCEMENT

7.1 Ownership of Inventions. Except as set forth in this Article 7, the entire worldwide right, title and interest in all patentable discoveries, inventions and technology, made or developed in the course of the Collaboration, and in any patents or patent applications therein, (a) solely by employees of Gen-Probe or others acting on behalf of Gen-Probe (the "Gen-Probe Inventions") shall, as between Gen-Probe and PacBio, be owned solely by Gen-Probe, (b) solely by employees of PacBio or others acting on behalf of PacBio (the "PacBio Inventions") shall, as between PacBio and Gen-Probe, be owned solely by PacBio, and (c) jointly by employees of Gen-Probe or others acting on behalf of Gen-Probe and employees of PacBio or others acting on behalf of PacBio (the "Joint Inventions") shall, as between Gen-Probe and PacBio, be owned jointly by Gen-Probe and PacBio. Any dispute as to which party owns any such patentable discoveries, inventions, technology, patents or patent applications shall be resolved pursuant to Article 9. Each party hereby assigns any such right, title and interest that it may have to the other party to effect the foregoing allocation of ownership rights and, for such purpose, it shall execute such documents, including assignment agreements and take such steps as reasonably requested by the other party.

7.2 Patent Applications and Payment of Related Expenses.

7.2.1 PacBio shall be responsible for and shall control, at its sole discretion and expense, the preparation, filing, prosecution, maintenance and enforcement of all PacBio Patent Rights that are the subject of this Agreement. Gen-Probe shall be responsible for and shall control, at its sole expense, the preparation, filing, prosecution, maintenance and enforcement of all Gen-Probe Patent Rights that are the subject of this Agreement.

7.2.2 The Steering Committee shall establish a strategy for, including the appointment of a party to lead, the preparation, filing, prosecution and maintenance of patent applications and patents for Joint Inventions. Unless otherwise agreed, the parties shall share equally in the costs, fees and expenses associated with the preparation, filing and prosecution of any patent application claiming a Joint Invention and for the maintenance of such Joint Inventions. In the event Gen-Probe or PacBio fails or elects not to pay its share of any of the foregoing costs, fees or expenses, it shall assign its entire interest in such Joint Inventions to the other party. Unless otherwise agreed, patent applications claiming Joint Inventions shall be prepared and prosecuted promptly by mutually acceptable outside counsel. In the preparation and prosecution of patent applications claiming Joint Inventions, each party shall be solely responsible for communicating its interests to the outside counsel, and no employee of any party shall in any way act as the attorney, agent, or representative of any other party, or otherwise in any way be responsible for representing or protecting the interests of any other party. All decisions of the outside counsel shall be final and binding. To the extent not inconsistent with this Agreement,

neither party may assert any claims against the other party for any act or omission in the preparation, filing, prosecution, issuance, maintenance, licensing, enforcement or defense of patent applications or patents issuing therefrom claiming Joint Inventions.

7.2.3 The parties shall cooperate with one another to the extent necessary in connection with the filing of patent applications for their respective inventions and for Joint Inventions. Within a reasonable period of time after a party files any patent application during or after the Term claiming a Joint Invention conceived during and as a result of the performance of this Agreement, the party filing such an application shall provide the other party with a copy of the application and shall identify with reasonable specificity any Confidential Information of such other party that may be included therein. The party receiving the copy of the application shall then have one (1) month to review the application and notify the filing party as to whether any of the receiving party's Confidential Information is disclosed. If the patent application contains any such Confidential Information or if the filing party shall be required to disclose any Confidential Information pursuant to filing such application, then the filing party shall withdraw such application (without retaining a residual right to claim priority) before any publication, unless the filing party is given the permission of the other party, which permission shall only be withheld if disclosure of such Confidential Information has a adverse impact upon the interests of the party having the right to prevent the disclosure of such Confidential Information.

7.3 Copyrights.

7.3.1 Ownership. Except as set forth in this Article 7, the entire worldwide right, title and interest in all copyrightable works created in the course of the Collaboration (a) solely by employees of Gen-Probe or others acting on behalf of Gen-Probe shall be owned solely by Gen-Probe, (b) solely by employees of PacBio or others acting on behalf of PacBio shall be owned solely by PacBio, and (c) jointly by employees of Gen-Probe or others acting on behalf of Gen-Probe and employees of PacBio or others acting on behalf of PacBio (the "Joint Copyrights") shall be owned jointly by Gen-Probe and PacBio.

7.3.2 Copyright Protection. In order to protect against infringement of a party's copyrights or of Joint Copyrights, the parties shall cooperate to apply an appropriate copyright mark to all materials identified by each of the parties as copyrightable materials that are created in the course of the Collaboration. Each party shall cooperate with the other party, take such actions and execute such documents, as reasonably requested by the other party and at the other party's expense, to assist the other party in the protection of the other party's copyrights. Each party hereby covenants to take no action or make no omission which would constitute an infringement of the other party's claim of copyright protection with respect to such items. Any dispute as to which party owns a copyright shall be resolved pursuant to Article 9. Each party hereby assigns any such right, title and interest that it may have to the other party to effect the foregoing allocation of ownership rights and, for such purpose, it shall execute such documents, including assignment agreements and take such steps as reasonably requested by the other party.

7.4 Know-How. Except as set forth in this Article 7, the entire worldwide right, title and interest in any know-how, trade secrets, information, expertise or data (including formulae, procedures, protocols, techniques, data and results of experimentation and testing) not otherwise addressed in Sections 7.1 or 7.3.1 and developed or created in the course of the Collaboration (a) solely by

employees of Gen-Probe or others acting on behalf of Gen-Probe shall be owned solely by Gen-Probe, (b) solely by employees of PacBio or others acting on behalf of PacBio shall be owned solely by PacBio, and (c) jointly by employees of Gen-Probe or others acting on behalf of Gen-Probe and employees of PacBio or others acting on behalf of PacBio (the "Joint Know-How") shall be owned jointly by Gen-Probe and PacBio. Any dispute as to which party owns any such know-how, trade secrets, information, expertise or data (including formulae, procedures, protocols, techniques, data and results of experimentation and testing) shall be resolved pursuant to Article 9. Each party hereby assigns any such right, title and interest that it may have to the other party to effect the foregoing allocation of ownership rights and, for such purpose, it shall execute such documents, including assignment rights and take such steps as reasonably requested by the other party.

7.5 Derivative Intellectual Property.

7.5.1 Notwithstanding Sections 7.1, 7.3, 7.4 and 7.6, the entire worldwide right, title and interest in any discoveries, inventions, technology, know-how, trade secrets, information, expertise or data (including formulae, procedures, protocols, techniques, data, results of experimentation and testing), and copyrightable works developed or created in the course of the Collaboration that are based on, or constitute improvements, enhancements or modifications of, (a) the Licensed GP IP (the "Gen-Probe Derivative IP") shall be owned solely by Gen-Probe, and (b) the Licensed PacBio IP (the "PacBio Derivative IP") shall be owned solely by PacBio; provided that any discoveries, inventions, technology, know-how, trade secrets, information, expertise or data (including formulae, procedures, protocols, techniques, data, results of experimentation and testing), and copyrightable works developed or created in the course of the Collaboration that use, are based on or incorporate any of, or constitute improvements, enhancements or modifications of both the Licensed GP IP and the Licensed PacBio IP shall be deemed Joint Intellectual Property, and as applicable, Joint Inventions, Joint Copyrights, or Joint Know-How.

7.5.2 Each party shall assign any right, title and interest that it may have to the other party to effect the allocation of ownership rights set forth in Section 7.5.1 and shall cooperate with the other party, execute such documents, including assignment agreements, and take such steps, as reasonably requested by the other party and at the other party's expense, to assist the other party in the protection of the other party's rights pursuant to Section 7.5.1.

7.6 Rights over Joint Intellectual Property. Each party shall own an equal undivided interest in all Joint Inventions, Joint Copyrights and Joint Know-How (including Diagnostic market requirements developed during the course of performing the Collaboration, to the extent not otherwise included in the foregoing) (collectively, the "Joint Intellectual Property") and shall have the right, subject to the provisions of this Agreement, to use, pledge, license, assign or otherwise transfer, its rights in any such Joint Intellectual Property hereunder without the permission, consent of, or compensation or accounting to, the other party, except to the extent that such use or application of Joint Intellectual Property would require a license from the other party (e.g., under a claim other than that which claims the Joint Intellectual Property).

7.7 No Other Technology Rights. Except as otherwise expressly provided in this Agreement, under no circumstances shall a party, as a result of this Agreement, obtain any ownership interest or other right in any discovery, invention or other technology, data or information (or any patent, copyright, trademark, or other intellectual property rights therein) of the other party, including

items transferred by the other party to such party at any time pursuant to this Agreement. There are no implied licenses or rights granted by this Agreement and no implied licenses or rights, and no licenses or rights by estoppel, shall be created by the parties' course of performance hereunder. Except as expressly provided in this Agreement, neither party shall be under any obligation to grant to the other party any rights in any patent, copyright, trademark, or other intellectual property.

7.8 Third Party Technology. The Steering Committee shall discuss Third Party intellectual property rights that may be necessary for the Products. Any such discussions shall, to the extent advisable, take place with legal counsel present in order to preserve legal privileges available to the parties. The Steering Committee shall consider the costs of acquiring rights in such Third Party intellectual property rights in connection with such Products, allocate the costs as appropriate, and agree upon methods for implementing such cost allocations. The Steering Committee shall also consider which party shall take the lead in initiating contact with and negotiating with the Third Party. The parties recognize that if the Steering Committee cannot agree on such cost allocation, neither party shall be under any obligation to separately acquire such rights for use pursuant to this Agreement.

7.9 Enforcement. In the event that either party learns of any Third Party infringement of the Joint Intellectual Property, such party shall promptly provide written notice to the other party, including any evidence of infringement in the possession of the disclosing party.

7.9.1 Except as set forth in this Section 7.9.1, PacBio and Gen-Probe shall jointly defend and enforce any rights in any Joint Intellectual Property so that the legal fees, costs and expenses of both parties and any damage awards are shared equally, and with any damages payable to a Third Party or any recoveries from a Third Party resulting from the enforcement or defense of such rights being shared equally. To the extent necessary, the parties shall appoint a party to lead the defense and enforcement of such rights. The parties shall cooperate fully with one another in legal matters relating to Joint Intellectual Property, including, but not limited to, providing testimony and executing documents. Both parties have the right, but not the obligation, to participate in any action or proceeding with respect to Joint Intellectual Property by counsel of its own choice. Absent further agreement of the parties, and subject to Section 7.9.2, each party may elect not to participate in any enforcement action or proceeding and may elect not to pay its shares of the legal fees, costs and expenses incurred in connection with such action or proceeding. Neither party shall settle any enforcement action or proceeding without the other party's prior written consent if the proposed settlement will impact the other party's rights under the Joint Intellectual Property (e.g., by admitting invalidity). In any event, if both parties are participating in an enforcement action or proceeding, then neither party shall settle such action or proceeding without the other party's prior written consent.

7.9.2 Subject to 7.9.1, any recovery or other relief for infringement of Joint Intellectual Property shall first be allocated to reimburse the reasonable and actual expenses incurred in the enforcement process in a manner that results in equal net expenses to PacBio and to Gen-Probe. Any remainder shall be shared equally by PacBio and Gen-Probe if they both participated (i.e., such that the legal fees, costs and expenses of both parties and any damage awards are shared equally) in the enforcement process. If only one party participated in the enforcement process, the participating party shall be solely entitled to the relief obtained in the enforcement action or proceeding.

7.10 Third Party Infringement. In the event that any Third Party makes a written claim or demand, or brings an action, suit or proceeding (collectively, an "Action"), against either party, alleging infringement, unauthorized use or misappropriation of such Third Party's patents, copyrights, technology, other intellectual property rights or confidential information, and an adverse result from such Action is reasonably likely to have a material impact on the development of any Products in the Field in the good faith determination of such party, such party shall promptly notify the other party in writing, and provide copies of all materials or papers received by or served on such party from or by such Third Party. For the avoidance of doubt, the parties' respective obligations to each other with respect to any Third Party Actions arising out of, in connection with or relating to either party's sale or use of any Product or Preferred Access Product shall be as set forth in the Preferred Partnership Agreement for such Product or the supply agreement for such Preferred Access Product, respectively.

7.10.1 If an Action relates primarily to the Gen-Probe Intellectual Property Rights, Gen-Probe shall be primarily responsible for responding to the Action, including controlling any litigation and, unless otherwise agreed by the parties, paying the fees, costs and expenses relating thereto or in settlement thereof.

7.10.2 If an Action relates primarily to the PacBio Intellectual Property Rights, PacBio shall be primarily responsible for responding to the Action, including controlling any litigation and, unless otherwise agreed by the parties, paying any fees, costs and expenses relating thereto or in settlement thereof.

7.10.3 The principles of Section 7.9.1 shall apply with respect to any Action that reasonably relates to any Joint Intellectual Property.

7.11 Nothing herein shall require a party to acquire Third Party intellectual property, and the parties acknowledge that a Third Party claim of infringement is subject to Section 7.8 as to the prospective use of the Third Party technology. In the event that any Third Party intellectual property rights are judicially determined to preclude the manufacture, use or sale of any Product in the Field and the parties are unable to obtain prospective rights to such Third Party intellectual property rights on commercially reasonable terms, either party shall have the right to terminate development activities with respect to such Product. The termination of development activities by either party under this Section 7.11 shall mean that the Product shall cease to be an object of development efforts for all purposes under this Agreement and each party shall be permitted to develop, promote, market and sell such Product, subject to the other party's intellectual property rights in such Product, notwithstanding any provision of this Agreement to the contrary (including without regard to the exclusivity provisions of Article 4).

ARTICLE 8
TERM AND TERMINATION

8.1 Expiration. Unless terminated earlier pursuant to Section 8.2 below, this Agreement shall expire on the earlier of: (i) six (6) months after delivery by PacBio to Gen-Probe of a summary report establishing successful V2 Proof of Concept and (ii) thirty (30) months after the Effective Date, provided that in no event shall the Agreement expire prior to eighteen (18) months after the Effective Date (the "Term"). Upon the further written agreement by the parties effected prior to the expiration of the then-applicable Term, PacBio and Gen-Probe may renew this Agreement and extend the original Term.

8.2 Termination.

8.2.1 Breach. Each party may terminate this Agreement after the material breach of this Agreement by the other party, unless the breaching party has cured such breach within sixty (60) days after notice thereof from the non-breaching party. Any dispute with respect to the right of a party to terminate all or a portion of this Agreement shall be subject to resolution pursuant to Article 9.

8.2.2 Voluntary Bankruptcy. Each party may terminate this Agreement if the other party shall (a) seek the liquidation, dissolution, or winding up of itself (other than a liquidation of a solvent company for organizational purposes) or the readjustment of all or substantially all of its debts, (b) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or substantially all of its assets, (c) make a general assignment for the benefit of its creditors, (d) commence a voluntary case under the Bankruptcy Code, (e) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or readjustment of debts, or (f) adopt any resolution of its Board of Directors or stockholders for the purpose of effecting any of the foregoing.

8.2.3 Involuntary Bankruptcy. Each party may terminate this Agreement if a proceeding or case shall be commenced without the application or consent of the other party and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the following shall be entered and continue unstayed in effect, for a period of ninety (90) days from and after the date service of process is effected upon the other party, seeking (a) its liquidation, reorganization, dissolution or winding up, or the readjustment of all or substantially all of its debts, (b) the appointment of a trustee, receiver, custodian, liquidator or the like of itself or of all or substantially all of its assets, or (c) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding up or readjustment of debts.

8.2.4 Acquisition by a Competitor. Each party may terminate this Agreement if the other party undergoes a Change of Control whereby (a) the other party is acquired by, merged with or reorganized or consolidated into a competitor of the terminating party (or an Affiliate of such competitor), or (b) the terminating party's competitor (or its Affiliate) becomes an Affiliate of the other party. For purposes hereof, (a) PacBio's "competitors" shall include Life Technologies, Illumina, and F. Hoffman-La Roche, their respective assigns and successors in interest, and any other entity that competes with PacBio in the DNA sequencing field as of the date of the Change of Control, and (b) Gen-Probe's "competitors" shall include

Abbott Laboratories, F. Hoffman-La Roche, Becton Dickinson & Co., and Qiagen N.V., their respective assigns and successors in interest, and any other entity that competes with Gen-Probe in the molecular Diagnostics field as of the date of the Change of Control.

8.3 Effect of Expiration and Termination. Except to the extent otherwise provided in this Agreement, upon expiration or termination of this Agreement, all rights and licenses granted hereunder shall terminate. Expiration or termination of this Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination. The provisions of this Section 8.3, the provisions of Sections 2.2 (excluding Sections 2.2.1 and 2.2.2), 5.2 and 8.2.1 and Articles 6, 7, 9 and 10 shall survive the expiration or termination of this Agreement, provided, however, that in the case of a termination prior to expiration of this Agreement, Sections 2.2.3, 2.2.4, 2.2.5 and 2.2.6 shall survive such termination solely in respect of the right of the party entitled to declare a termination to purchase Preferred Access Products of the other party.

ARTICLE 9
DISPUTE RESOLUTION AND GOVERNING LAW

9.1 Order. Disputes arising between the parties relating to the making or performance of this Agreement (including ownership of intellectual property rights, breach of confidentiality, inventorship, etc.) shall be resolved in the following order: (i) by good faith negotiation between executives of PacBio and Gen-Probe who have authority to fully and finally resolve the dispute; (ii) if necessary, by non-binding mediation at a location acceptable to the parties using a neutral mediator having experience with the industry (with the costs therefore shared equally); or (iii) as a last resort only, by arbitration of inventorship disputes as provided in Section 9.2, or by arbitration of any other disputes in accordance with Section 9.3. All negotiations pursuant to this clause shall be treated as Confidential Information in accordance with the provisions of Article 6 of this Agreement, and shall also be treated as compromise and settlement negotiations for purposes of Rule 408 of the Federal Rules of Evidence and comparable state rules of evidence.

9.2 Inventorship Disputes. If the parties are unable to resolve any dispute regarding inventorship by negotiation or mediation under Section 9.1, they shall submit such dispute to binding arbitration under the C.P.R. Institute for Dispute Resolution Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes. The arbitrator shall be an independent patent attorney residing in the United States and registered to practice before the United States Patent and Trademark Office. The parties shall request that the arbitrator resolve the inventorship dispute in accordance with the laws of the United States within three (3) months of his or her appointment. The parties shall supply to the arbitrator documentary evidence of inventorship together with a written statement of their position not to exceed twenty (20) pages in length within twenty (20) days of the appointment of the arbitrator. Unless the parties agree to rely on affidavits, the arbitrator shall set a hearing at which each party shall have up to eight (8) hours to present witnesses and to cross examine the witnesses of the other party. If there is a hearing, each party shall provide a statement summarizing the testimony of each witness it may have testify to the other party and the arbitrator at least fifteen (15) days in advance of the hearing. The parties shall request that the arbitrator’s award be in writing not to exceed twenty (20) pages in length and shall include reasoning in support of the award. The resolution of the arbitrator shall be final and binding on the parties, without right of appeal.

9.3 Arbitration Procedure. Except as provided for in Section 9.2, any controversy or claim relating to, arising out of, or in any way connected to any provision of this Agreement shall be finally resolved by final and binding arbitration in accordance with this Section by a single arbitrator who is a former state or federal judge, to be conducted in San Francisco, California if initiated by Gen-Probe, or in San Diego, California if initiated by PacBio, or in such other location as mutually agreed by the parties. Unless the parties agree otherwise, the arbitration shall be conducted by the Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or by any similar arbitration provider who can provide a former judge to conduct such arbitration if JAMS is no longer in existence. JAMS may order a change of venue upon a showing of good cause by respondent. The decision of the arbitrator shall be final, nonappealable and binding upon the parties, and it may be entered in any court of competent jurisdiction. The arbitrator shall be bound by all rules relating to the admissibility of evidence, including without limitation, all relevant privileges and the attorney work product doctrine. Discovery shall be permitted in accordance with the rules and procedures of the forum state unless otherwise agreed to by the parties or ordered by the arbitrator on the basis of strict necessity adequately demonstrated by the party requesting an extension of time. The arbitrator shall have the power to grant equitable relief where applicable under the law. The arbitrator shall issue a written opinion setting forth his or her decision and the reasons therefor within thirty (30) days after the arbitration proceeding is concluded. The obligation of the parties to submit any dispute arising under or related to this Agreement to arbitration as provided in this Article 9 shall survive the expiration or earlier termination of this Agreement.

9.4 Confidentiality. The existence of and any facts or documents related to any proceedings under Sections 9.1, 9.2, and 9.3 shall be treated as Confidential Information in accordance with the provisions of Article 6 of this Agreement. Any mediator or arbitrator shall be bound by an agreement containing confidentiality provisions at least as restrictive as those contained in Article 6 of this Agreement.

9.5 Equitable Considerations. Nothing in this Article 9 shall preclude any party from taking whatever actions are necessary to prevent immediate, irreparable harm to its interests.

9.6 Damages. The parties each agree to waive any right to receive punitive, indirect, incidental, special or consequential damages (including, but not limited to, loss of profits, revenue, or business) relating in any way to this Agreement; provided, however, that the foregoing waiver shall not apply to any breach of a party's obligations of confidentiality under Article 6.

9.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof. The parties agree that the State of California has a substantial relationship to this transaction and each party agrees that the courts of California shall have exclusive jurisdiction over them and agree to submit to the jurisdiction of such courts. Accordingly, any and all litigation, including without limitation litigation relating to this Agreement, shall be brought exclusively in the State of California in the state or federal court having subject matter jurisdiction.

ARTICLE 10
MISCELLANEOUS

10.1 Limitation of Liability.

10.1.1 LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES EXCEPT FOR A BREACH OF A PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER ARTICLE 6 SHALL A PARTY BE LIABLE FOR PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE, OR BUSINESS) IN ANY WAY RELATED TO THIS AGREEMENT, OR THE TERMINATION OF THIS AGREEMENT, OR ARISING OUT OF OR ALLEGED TO HAVE ARISEN OUT OF (i) BREACH OF THIS AGREEMENT, (ii) THE FAILURE BY EITHER PARTY TO DEVELOP ANY PRODUCTS OR PROCESSES IN ACCORDANCE WITH ANY DEVELOPMENT PLAN, (iii) THE FAILURE BY EITHER PARTY TO DEVOTE THE RESOURCES SPECIFIED IN ANY DEVELOPMENT PLAN, (iv) THE FAILURE BY EITHER PARTY TO COMPLY WITH THE TERMS OF A DEVELOPMENT PLAN, OR (v) ANY EVENT RELATED TO THE CONDUCT OF ANY DEVELOPMENT PLAN. This limitation applies regardless of whether such damages are sought based on breach of contract, negligence, or any other legal theory.

10.2 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one party to the other shall be in writing, addressed to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective: (i) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (ii) if sent by nationally recognized overnight air courier (such as DHL or Federal Express), two (2) business days after mailing; (iii) if sent by facsimile transmission, with a copy mailed on the same day in the manner provided in clauses (i) or (ii) of this Section 10.2, when transmitted and receipt is confirmed by telephone or e-mail; and (iv) if otherwise actually personally delivered, when delivered.

If to Gen-Probe: Gen-Probe Incorporated

10210 Genetic Center Drive
San Diego, California 92121
Attention: President and CEO

With a copy to:

Gen-Probe Incorporated
10210 Genetic Center Drive
San Diego, California 92121
Attention: General Counsel

and

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: Andrew L. Bab

If to PacBio: Pacific Biosciences of California, Inc.

1505 Adams Drive
Menlo Park, CA 94025
Attention: CEO

With a copy to:

Pacific Biosciences of California, Inc.
1505 Adams Drive
Menlo Park, CA 94025
Attention: General Counsel

10.3 Force Majeure. In the event that a party is prevented or delayed from fulfilling or performing any of its obligations under this Agreement (other than an obligation to pay money) due to the occurrence of causes beyond the reasonable control of such party, including fires, floods, embargoes, wars, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party, then such party's performance shall be excused, and the time for performance shall be extended, for the period of inability or delay due to such occurrence; provided, however, that such party shall have used its Commercially Reasonable Efforts to avoid such inability or delay, and such party shall have given prompt written notice to the other party of such occurrence.

10.4 Assignment.

10.4.1 This Agreement may not be directly or indirectly assigned or otherwise transferred, nor, except as expressly provided hereunder, may any right or obligations hereunder be assigned or transferred by a party (whether voluntarily, by operation of law or otherwise) without the consent of the other party which shall not be unreasonably withheld: provided, however, that, except as otherwise provided in Section 10.5 below, either party may, without such consent, assign or transfer this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its assets related to this Agreement or in the event of its merger, consolidation, other change in control or similar transaction. Any permitted assignee or transferee shall assume all obligations of its assignor or transferor under this Agreement. Any purported assignment or transfer in violation of this Section shall be void.

10.4.2 Assignment by a party of its rights and obligations under this Agreement shall not relieve that party of its obligations under Articles 6 and 7 hereof.

10.5 Change in Control. Each of the parties shall notify the other party as promptly as possible after any effected Change of Control. The party receiving the notice of Change of Control may require the party subject to the Change of Control to provide adequate assurance of performance of the Agreement.

10.6 Severability. Each party hereby acknowledges that it does not intend to violate any public policy, statutory or common laws, rules, regulations, treaty or decision of any government agency or executive body thereof of any country or community or association of countries. Should one or more provisions of this Agreement be or become invalid, the parties shall substitute, by mutual consent, valid provisions for such invalid provisions, which valid provisions in their economic effect are sufficiently similar to the invalid provisions that it can be reasonably assumed that the parties would have entered into this Agreement with such provisions. In case such provisions cannot be agreed upon, the invalidity of one or several provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid provisions are of such essential importance to this Agreement that it is to be reasonably assumed that the parties would not have entered into this Agreement without the invalid provisions.

10.7 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof from and after the Effective Date. All express or implied agreements and understandings, either oral or written heretofore made which are directly related to the subject matter of this Agreement are superceded by this Agreement, except to the extent of rights and obligations pursuant to the Confidentiality Agreement which had accrued as of the Effective Date. The parties acknowledge that they are also party to the Stock Purchase Agreement and that the provisions of that agreement, or differences between that agreement and this Agreement, shall not influence the interpretation of this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by PacBio and Gen-Probe.

10.8 Independent Contractors. It is expressly agreed that Gen-Probe and PacBio shall be independent contractors and that the relationship between the parties shall not constitute a partnership, joint venture or agency. Neither Gen-Probe nor PacBio shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior consent of the party to do so.

10.9 No Solicitation. Each party agrees that for a period beginning on the Effective Date and ending on the close of business on the date two years following the termination or expiration of this Agreement, neither party nor any of its Affiliates shall solicit to employ any officer of the other party or any employee of the other party that is involved in the performance of this Agreement (which shall include research and development employees and members of the Steering Committee), without obtaining the prior written consent of the other party (it being understood that any newspaper or public solicitation not directed specifically to such Person shall not be deemed to be a solicitation for purposes of this provision); provided that this Section 10.9 shall not prohibit a party or such party’s Affiliates from discussing employment opportunities with, or hiring, any officer or employee of the other party involved in the performance of this Agreement who initiates such discussions with such party or such party’s Affiliates.

10.10 Waiver. The waiver by a party of any right hereunder or the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other party whether of a similar nature or otherwise.

10.11 Drafting Party; Interpretation. The provisions of this Agreement, and the documents and instruments referred to in the Agreement, have been prepared, examined, negotiated and revised by each party and their respective lawyers, and no implication shall be drawn and no provision shall be construed against any party by virtue of the purported identity of the drafter of this Agreement, or any portion of this Agreement. The headings contained in this Agreement are for convenience of reference only, shall not be deemed a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement. As used in this Agreement, the words “include” and “including,” and variations of thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” The parties acknowledge that they have been represented by counsel and have had the opportunity to conduct due diligence.

10.12 Third Parties. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party.

10.13 Affiliates. The rights and obligations of each party shall apply to its Affiliates, provided that each party shall be fully responsible for the performance by its Affiliates of such party’s obligations under this Agreement.

10.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PACIFIC BIOSCIENCES OF CALIFORNIA, INC.

By /s/ Hugh Martin
Hugh Martin, PhD.
Chairman and Chief Executive Officer

GEN-PROBE INCORPORATED

By /s/ Eric Tardif
Eric Tardif
Senior Vice President, Corporate Strategy

EXHIBIT LIST

A — Initial Development Plan

B — Initial Appointees to Steering Committee

C — V2 Proof of Concept Criteria

EXHIBIT A
INITIAL DEVELOPMENT PLAN

The parties shall undertake the following activities:

*making available, through the Steering Committee, all data, expertise, technology and know-how reasonably necessary for each party to perform its respective obligations under the Collaboration;

*defining a potential pilot study regarding the evaluation of Gen-Probe's Front-End Sample Preparation technologies combined with PacBio's sequencing Sample Preparation technologies across multiple sample sources, with the goals of streamlining and optimizing Sample Preparation methodologies within the context of current market, regulatory and reimbursement requirements and developing the Products for the Diagnostics market;

*identifying, through the Steering Committee, regulatory and reimbursement requirements for an integrated Sample Preparation and Third Generation Sequencing System;

*identifying the other expected requirements of the Products, including workflow, cost, performance and other requirements, in each case based in part on customer and key opinion leader input; and

*identifying and planning strategies for ensuring clinical adoption of the Products.

EXHIBIT B
INITIAL APPOINTEES TO STEERING COMMITTEE

Gen-Probe Incorporated

1. […***…]

2. […***…]

3. […***…]

Pacific Biosciences, Inc.

1. […***…]

2. […***…]

3. […***…]

***Confidential Treatment Requested

EXHIBIT C
V2 PROOF OF CONCEPT CRITERIA

"V2 Proof of Concept" shall mean PacBio's initial demonstration, currently targeted to be completed in […***…], that the V2 System is […***…], including […***…] and satisfaction of the milestones set forth below:

1. Completion of […***…], including:

a. Successful completion of […***…].

b. Completion of […***…].

c. Completion of the preliminary […***…], which shall outline the future development pathway and identify any significant remaining technical challenges and the proposed resolution of such challenges.

d. Successful completion of tests on […***…] and […***…], demonstrating preliminary feasibility. Such feasibility tests should address at least the following risk items: […***…].

2. Successful completion of the preliminary cost analysis of the […***…] and its manufacture, according to the then-current design of the […***…] and V2 System, demonstrating reasonable technical and commercial efficacy and feasibility of such product for its intended application.

3. Successful completion of the intellectual property portfolio strategy and plan, including […***…].

4. Completion of risk analysis identifying technical and commercial risks and severity, together with a mitigation plan.

5. Completion of feasibility for the V2 System as a whole, including top level architecture.

Exhibit 10.8

Confidential Treatment Requested by Pacific Biosciences of California, Inc.

EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT is effective as of February 1, 2004 ("Effective Date") between Nanofluidics, Inc. ("LICENSEE"), a corporation of the State of Delaware, that has a principal place of business at 31 Dutch Mill Road, Ithaca, New York 14850, and Cornell Research Foundation, Inc. ("FOUNDATION"), a non-profit corporation of the State of New York, having an office at 20 Thornwood Drive, Suite 105, Ithaca, NY 14850. FOUNDATION and LICENSEE (individually "Party" and collectively, "Parties") hereby agree as follows:

ARTICLE 1: INTRODUCTION

1.1 FOUNDATION is a wholly owned subsidiary of Cornell and holds the ownership interests of patents, trademarks, copyrights, and proprietary materials made by Cornell's employees and administers licenses in a manner consistent with the policies of Cornell.

1.2 The Technology outlined in FOUNDATION dockets: […***…] have been invented by employees of Cornell University ("Cornell"), assigned to FOUNDATION, and FOUNDATION has filed for patent protection on such inventions related to Technology

1.3 LICENSEE desires to obtain the right to develop and to commercialize the Technology.

1.4 The work leading to the Technology was supported in part by an agency of the United States Government, and FOUNDATION is obligated to comply with United States OMB Circular A-124 and 37 CFR Part 401. This license is subject to the applicable terms of United States Government regulations concerning Government funded inventions.

1.5 The Parties agree to the terms and conditions hereinbelow in order to develop the Technology for commercial purposes, and utilize them in the public interest.

ARTICLE 2: DEFINITIONS

2.1 "Affiliate" shall mean (1) any corporation or other noncorporate entity owning directly, or indirectly controlling, […***…] of the stock normally entitled to vote for election of directors of LICENSEE; (2) any corporation owned or controlled by LICENSEE through ownership of […***…] of the stock entitled to elect directors or any other entity actually controlled by LICENSEE, (3) any corporate or noncorporate entity under common control with LICENSEE.

2.2 “Applications” shall mean United States Patent Application entitled […***…] serial number […***…] filed […***…], […***…] serial number […***…] filed […***…], […***…] filed […***…] and […***…] serial number […***…] filed […***…] and any other United States patent applications that may be filed on Technology, and any continuations, continuations-in-part, divisions of these applications, and any foreign patent applications that correspond to United States patent applications.

2.3 “Patents” shall mean United States Patent Number […***…] issued […***…], United States Patent Number […***…] issued […***…], United States Patent Number […***…] issued […***…], United States Patent Number […***…] issued […***…], any corresponding foreign patent applications, and any patent that issues on Applications, including any reissues and reexaminations.

2.4 “Exclusive” shall mean that during the term of this Agreement FOUNDATION will not grant commercial rights to Technology to any other party.

2.5 “Field-of-Use” shall mean […***…].

2.6 “Licensed Territory” shall mean all territories in the world where there are pending Applications or unexpired Patents that have not been declared invalid in an unappealed decision by a court having jurisdiction

2.7 “License Year” shall mean each twelve-month period beginning on January 1 and ending on December 31. However, the first License Year (alternatively, License Year 1) shall commence on the Effective Date and end on December 31 of the same calendar year.

2.8 “Products” shall mean any product or service which is covered by claims in Applications or Patents or which are made by a process which is covered by claims in Applications or Patents and any services which is covered by claims in Applications or Patents.

2.9 “Net Sales” shall mean the gross amount received for sales and other dispositions of Products by LICENSEE, and Sublicensees, to an independent third party on an arm’s length basis less (i) all trade, quantity, and cash discounts actually allowed on Products, including discounts or rebates to governmental or managed care organizations; (ii) all credits and allowances actually granted on Products on account of rejection, returns, billing errors, and retroactive price reductions, (iii) charges for freight, insurance and other transport costs related to the delivery of the product; (iv) duties actually paid on Products; and (v) excise, sale and use taxes, and equivalent taxes or charges actually paid on Products.

2.10 “Sublicense” shall mean a rights-granting contract with an independent third party other than an Affiliate in which LICENSEE conveys rights granted to LICENSEE in 4.1 and 4.2 of this Agreement.

2.11 “Sublicensees” shall mean any entity granted a Sublicense by LICENSEE, and acceptable to FOUNDATION, under this Agreement.

2.12 “Technology” shall mean the novel methods, compositions and devices contained in the following FOUNDATION Dockets […***…] which are described in United States Patent Number […***…] issued […***…], United States Patent Number […***…] issued […***…], United States Patent Application Number […***…] filed […***…], United States Patent Application Number […***…] filed […***…], United States Patent Application Number […***…] filed […***…], United States Provisional Patent Application Number […***…] filed […***…], and United States Provisional Patent Application Number […***…] filed […***…] and any other United States patent applications that may be filed on the listed FOUNDATION Dockets, and any other patent applications, continuations, continuations-in-part, divisions of these applications related thereto, and any foreign patent applications that correspond to United States patent applications. FOUNDATION shall use reasonable efforts to assist LICENSEE in accord with any LICENSEE funded sponsored research undertaken at Cornell and separately contracted with Cornell’s Office of Sponsored Programs

2.13 “Valid Claim” shall mean a claim in an issued, unexpired patent or in a pending patent application within the Applications and Patents that (a) has not been finally cancelled, withdrawn, abandoned or rejected by any administrative agency or other body of competent jurisdiction, (b) has not been revoked, held invalid, or declared unpatentable or unenforceable in a decision of a court or other body of competent jurisdiction that is unappealable or unappealed within the time allowed for appeal, (c) has not been rendered unenforceable through disclaimer or otherwise, and (d) is not lost through an interference proceeding.

ARTICLE 3: APPLICATIONS AND PATENTS

3.1 FOUNDATION shall hold title to all Applications and Patents.

3.2 FOUNDATION agrees to use reasonable efforts to file and prosecute Applications and maintain Patents. At any time during the term of this Agreement, LICENSEE may elect in writing to be released from its license in any of the Patents or Applications, in which event LICENSEE shall thereafter have no obligation to reimburse FOUNDATION for any future expenses relating to such Patents or Applications, and FOUNDATION shall have the option at its sole discretion and expense to file, prosecute, maintain and license to a third party such Patents or Applications.

3.3 […***…] for preparation, filing, prosecution and maintenance of Applications and Patents except for those Applications and

Patents for which it has waived its rights, in writing, as described in Section 3.2. Such reimbursable expenses […***…]. Such expenses shall be paid to FOUNDATION by LICENSEE within thirty (30) days of receipt of an invoice therefore unless FOUNDATION has otherwise agreed, in writing. LICENSEE shall […***…] by LICENSEE for reimbursable expenses under this agreement.

3.4 FOUNDATION shall have final authority over selection of patent attorneys and all decisions concerning filing and prosecution of Applications and maintenance of Patents. However, FOUNDATION shall keep LICENSEE informed of its filing, prosecution and maintenance activities, such information to include without limitation copies of all documents related to the filing, prosecution and maintenance of Applications and Patents, and shall give LICENSEE the option to actively participate, including the right to co-counsel, in making major decisions concerning such activities.

ARTICLE 4: LICENSE GRANT AND COMMERCIAL EFFORTS

4.1 Subject to the terms and conditions of this Agreement and to the rights of and obligations to the United States Government as set forth in United States Office of Management & Budget Circular A-124 or 37 CFR Part 401 et seq., FOUNDATION hereby grants and LICENSEE hereby accepts an EXCLUSIVE right to make, use, sell, offer for sale, lease, import, export or otherwise dispose of Products under Applications and Patents in Field-of-Use in Licensed Territory for the term of this Agreement as specified in Section 7.1.

(i) The right of LICENSEE to make Products includes the right to have Products made by contract with third parties within the Licensed Territory. Such contractual arrangements with third parties shall be subject to and conditioned upon appropriate supervision and quality assurance and control of the third party by LICENSEE and the third party shall be bound in writing to respect all rights of FOUNDATION.

4.2 LICENSEE shall also have the right to grant Sublicenses under this Agreement, […***…]. LICENSEE agrees to provide FOUNDATION a copy of any Sublicense granted pursuant to this Article 4. Sublicenses under this Agreement will be considered to be Confidential Information as specified in Section 8.2. Any such Sublicense shall contain provisions that are consistent with all the provisions of this Agreement which are protective of and beneficial to FOUNDATION. FOUNDATION shall have the right to require that said Sublicense be terminated in the event that a Sublicense materially breaches the above provision. LICENSEE shall be responsible to FOUNDATION for the […***…]. LICENSEE shall […***…] of any up-front Sublicense fees, or other up-front consideration, not including (i) payments made in consideration of the LICENSEE'S issuance of equity, or debt securities of the LICENSEE and (ii) payments made to LICENSEE in consideration of or as support for research and development activities. LICENSEE'S obligation to pay FOUNDATION'S share of Sublicense consideration described above shall be considered incurred as of the date on which such Sublicense consideration is received by LICENSEE.

4.3 FOUNDATION and Cornell retain an irrevocable, nonexclusive, and nontransferable right to practice for their own educational and research purposes, the inventions claimed in Applications and Patents and such purposes shall include limited, non-commercial collaboration with other non-profit research institutes as long as it does not adversely affect or compete with the business of LICENSEE as determined by an objective third party acceptable to both parties.

4.4 Nothing in this Agreement shall be construed to give LICENSEE rights in any inventions currently owned or developed in the future by FOUNDATION or Cornell other than those explicitly specified in this Agreement. Nothing in this Agreement shall be construed to give FOUNDATION rights in inventions currently owned or developed in the future by LICENSEE other than those explicitly specified in this Agreement.

4.5 The rights granted by this Agreement are to LICENSEE alone and not to any third parties or to any subsidiary or Affiliate of LICENSEE. However, LICENSEE may transfer this Agreement by way of sale of LICENSEE, through merger, sale of assets and/or sale of stock. LICENSEE shall provide written notice to FOUNDATION of any such transfer.

4.6 LICENSEE shall use reasonable commercial efforts, consistent with sound and reasonable business practices and judgment, to affect commercialization of Products as soon as practicable and to maximize sales thereof. Failure of LICENSEE to meet the diligence milestones of this Section 4.6 shall be a material breach of this Agreement.

(i) In the event that the FOUNDATION identifies any other markets for DNA sequencing in Licensed Territory and/or other Products and/or geographical area markets as significant, LICENSEE shall agree in writing to evaluate the potential for commercialization therein itself or through appropriate Sublicense in a timely manner. If LICENSEE elects not to pursue said commercialization in said market(s) or in FOUNDATION's sole judgment LICENSEE has failed to evaluate such commercialization, then LICENSEE agrees to Sublicense with reasonable commercial terms to a Sublicensee for said market(s) or terminate this LICENSEE'S rights under this Agreement only for said significant Products and/or geographical area markets

(ii) FOUNDATION may terminate this Agreement if LICENSEE has not sold Product for any period of one (1) year after the end of the […***…] License Year.

4.7 Beginning with the first (1st) License Year, within sixty (60) days after the start of each License Year and until LICENSEE markets Products, LICENSEE shall make a written annual report to FOUNDATION covering the preceding License Year, regarding the progress of LICENSEE toward commercial use of Products. Such report shall include, at a minimum, information sufficient to enable FOUNDATION to satisfy reporting requirements of the United States Government and for FOUNDATION to ascertain progress by LICENSEE toward meeting the reasonable commercial efforts of this Article 4. LICENSEE shall provide these reports with the royalty report specified in Article 5. Such report will be considered to be Confidential Information as specified in Section 8.2.

*** Confidential Treatment Requested

4.8 LICENSEE shall not use, nor shall LICENSEE permit Sublicensee to use, the names, trademarks and indicia of FOUNDATION or of Cornell, nor the names of any employee, student or faculty member of FOUNDATION nor of Cornell without prior written approval from FOUNDATION, which will not be unreasonably withheld.

4.9 LICENSEE shall alone have the obligation to ensure that Products it makes, uses, sells, offers for sale, leases, imports, exports, or otherwise disposes of are not defective, that Products satisfy all applicable government regulations and that export of Products satisfies government export requirements.

ARTICLE 5: PAYMENTS, ROYALTIES, REPORTS AND RECORDS

5.1 As consideration for entering into this Agreement, […***…], in the event that LICENSEE […***…] related series of transactions with total proceeds to LICENSEE of at least […***…] (a "Major Financing") and following such Major Financing, FOUNDATION'S "Equity Ownership" of LICENSEE, which includes the shares of LICENSEE'S non-voting Common Stock then held by FOUNDATION (or any shares of LICENSEE'S voting common stock issued upon conversion thereof), is less than […***…] of LICENSEE'S outstanding capital stock (including all outstanding common stock, preferred stock, options or warrants to purchase common or preferred stock, and any options reserved for issuance under any equity incentive plan, hereinafter referred to as "on a fully diluted basis"); then

(a) LICENSEE shall issue to the FOUNDATION, pursuant to a common stock purchase agreement in the form attached hereto as Exhibit B, that number of shares of common stock equal to the number of shares necessary to increase FOUNDATION'S Equity Ownership to […***…] of LICENSEE'S outstanding capital stock, following such Major Financing, on a fully diluted basis. If the Major Financing exceeds […***…], LICENSEE will not issue any shares of common stock to provide an adjustment to FOUNDATION'S Equity Ownership for the amount of the Major Financing in excess of […***…]; and

(b) LICENSEE shall grant to FOUNDATION the same registration and information rights granted to the investors in the Major Financing.

(c) LICENSEE will use its commercially reasonable efforts to cause the common stock issued pursuant to Section 5.1(a) hereof to not be subject to any lock-up periods that may be required in connection with the LICENSEE'S initial public offering.

A Major Financing shall only include the first financing of LICENSEE that meets the […***…] proceeds threshold.

5.2 FOUNDATION hereby consent to any conversion of the non-voting Common Stock held by it to voting Common Stock in connection with the Major Financing.

5.3 FOUNDATION hereby agrees that all previous provisions of, rights granted and covenants made regarding the issuance of the LICENSEE'S capital stock are hereby waived, released and superseded in their entirety by the provisions of this Section 5 and shall have no further force or effect.

5.4 For the license granted hereunder, commencing on the date of the first commercial sale of Product, LICENSEE shall pay or cause to be paid to FOUNDATION a royalty of […***…] on Net Sales of Products on a country by country basis […***…]. In the event that Products incorporate at least one claim described in third party […***…] (each such third-party […***…] being defined as a "Non-Foundation Right") the royalty shall be (i) the amount of Net Sales for the Products incorporating Non-Foundation Rights, (ii) multiplied by […***…], and (iii) […***…]. Such stacking shall become effective on LICENSEE providing reasonable evidence to FOUNDATION that additional Applications or Patents are applicable to the Product. In the event of a disagreement as to the inclusion of any […***…], the Parties agree that an independent neutral party shall be consulted to determine the appropriateness of inclusion of the […***…] such royalty calculation.

5.5 Beginning with the […***…] License Year and in each License Year thereafter, LICENSEE shall pay FOUNDATION a minimum annual royalty for that License Year. Payment shall be due within thirty (30) days of the first day of the License Year and […***…] and the royalty reports required under Section 5.7 should reflect […***…]. None of the minimum annual royalties are refundable or applicable to a succeeding License Year. Such minimum annual royalty payments shall be made according to the following schedule and […***…]:

License Year	Payment Due Date	Min. Royalty Payment
[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]

5.6 Royalties shall be payable only once with respect to the same unit of Products.

5.7 LICENSEE shall provide FOUNDATION with semi-annual written reports, due June 30th and December 31st of each License Year, of all sales, leases or other dispositions of Products by LICENSEE and Sublicensees. In order to minimize LICENSEE time spent on royalty reports, a brief one-page Royalty Report Form is provided in Exhibit A that will satisfy FOUNDATION'S reporting requirements. The report shall be made within thirty (30) days of the end of each semiannual period. FOUNDATION agrees to keep the information in these reports confidential, except as may be necessary to maintain an action against LICENSEE for breach of this Agreement. Royalty payments for sales, leases, and other dispositions of the Products invoiced during a semi-annual period shall accompany the Royalty Report Form for that particular semi-annual period. The Royalty Report Form shall be submitted regardless of whether or not royalties are owed. Payments shall be made in United States dollars, Conversion from foreign currencies,

if any, shall be based upon the conversion rate published in The Wall Street Journal on the last day of the particular semi-annual accounting period (or on the last business day on which The Wall Street Journal is published during said semi-annual period) for which royalties are due. Royalty checks shall be made payable to Cornell Research Foundation and mailed to the address specified in section 13.4.

5.8 LICENSEE shall keep and maintain, and LICENSEE shall require that Sublicensees keep and maintain, any and all records necessary to certify compliance of LICENSEE with the terms of this agreement, including but not limited to accounting general ledgers, Sublicense and distributor agreements, price lists, catalogs, marketing materials, audited financial statements, income tax returns, sales tax returns, inventory records, and shipping documents of Products. Such records shall be open to inspection at reasonable times by a certified public accountant chosen by FOUNDATION and acceptable to LICENSEE, which shall not unreasonably withhold such acceptance. Such inspection shall be made at FOUNDATION'S expense. However, if the results of any audit reveal additional royalties owed to FOUNDATION that differ by more the […***…] percent) from those royalties already paid, LICENSEE shall also reimburse FOUNDATION for the costs of the audit. FOUNDATION agrees to hold such records confidential, except as may be necessary to maintain an action against LICENSEE for breach of this Agreement. The records required by this paragraph shall be maintained and available for inspection for a period of six (6) years following the calendar quarter to which they pertain. This paragraph shall survive termination of this Agreement.

5.9 LICENSEE shall reimburse FOUNDATION for the expenses specified in Section 3.3 within thirty (30) days of written invoice from FOUNDATION. Such invoice shall specify the date the expense was incurred, the purpose of the expense (including, as applicable, a summary of patent attorney services giving rise to the expense), and the Applications or Patents to which the expense relates,

5.10 Payments due under Sections 5.1 and 5.5 shall be considered late if not received by the dates specified in Sections 5.1 and 5.5 respectively, whether invoiced or not. Payments due under Section 5.9, and any other payments due under this Agreement, other than the payments due under Sections 5.1 and 5.5 and royalty payments, shall be considered late if not received within sixty (60) days of the date of invoice. Royalty payments due under Section 5.7 of this Agreement and payment of FOUNDATION'S share of Sublicense consideration shall become late if not paid within sixty (60) days after the end of the semi-annual in which the payment obligation was incurred. Late payments […***…].

5.11 LICENSEE agrees to make a written report to FOUNDATION within ninety (90) days after the expiration of this Agreement pursuant to Section 7.1. LICENSEE shall continue to make reports pursuant to the provisions of this Section 5.7 concerning royalties payable in accordance with Section 5.4 in connection with the sale of Products after expiration of the license, until such time as all such Products produced under the license have been sold or destroyed. Concurrent with the submittal of each post-termination report, LICENSEE shall pay FOUNDATION all applicable royalties.

ARTICLE 6: INFRINGEMENT

6.1 In the event that either party determines that a third party is making, using, selling, offering for sale, or importing a product that may infringe Patents, it will promptly notify the other party in writing. LICENSEE may elect, with the prior written consent of FOUNDATION, to bring suit against such alleged infringer. Such election must be made within thirty (30) days of receipt of said written consent from FOUNDATION. All recoveries in such suit shall belong to LICENSEE except that LICENSEE may elect to grant FOUNDATION the right to elect to pay up to fifty percent (50%) of the litigation costs and receive a percentage of any recovery equal to the percentage of litigation costs paid. If such suit involves claims of infringement of Non-Foundation Rights, FOUNDATION'S right of election to pay litigation costs and corresponding rights in recovery shall be limited to 50% multiplied by the fraction expressed in section 5.4 (iii). FOUNDATION must make such election within thirty (30) days of its receipt of notice that LICENSEE has elected to bring suit. FOUNDATION shall also have the right to choose to be represented by separate counsel in any such suit at its own expense. Such expense for separate counsel shall not be considered as part of "litigation costs" for purposes of determining FOUNDATION'S share of any recovery in accordance with the sentence above. If LICENSEE elects not to bring a suit against the alleged infringer, it shall promptly notify FOUNDATION of that fact and FOUNDATION shall have the right to commence such actions at its own cost and expense, in which case any recoveries shall belong to FOUNDATION. In such suits by FOUNDATION, LICENSEE shall have rights of participation and recovery that are the same as FOUNDATION rights as provided above when LICENSEE elects to sue, except in this case the fraction expressed in section 5.4 (iii) shall not be applied.

6.2 Regardless of which party controls a suit brought against an infringer, both parties shall participate in any settlement discussions and each will be a signatory to any settlement agreement.

ARTICLE 7: TERM AND TERMINATION

7.1 This Agreement shall commence on Effective Date, and shall continue as a Field-of-Use Exclusive license until the last of all Patents has either expired or been invalidated in an unappealed decision by a court having jurisdiction so long as LICENSEE'S covenants under the Agreement are being performed and the LICENSEE is in good standing, and provided this Agreement is not earlier terminated as provided for herein.

7.2 FOUNDATION may terminate this Agreement if LICENSEE:

(i) is in default in payment of license fees, royalties or cost reimbursements or in providing reports;

(ii) is in material breach of any provision of this Agreement;

(iii) provides any false report;

(iv) if LICENSEE does not have Products available for commercial sale prior to […***…];

(v) has not sold Products for any period of one (1) year after the end of the […***…] License Year;

(vi) if LICENSEE fails to provide written notice to FOUNDATION for the transfer of this Agreement upon the sale of LICENSEE in accordance to Section 4.5 or for a Sublicense of this Agreement in accordance with Section 4.2

and LICENSEE fails to remedy any such default, breach, or false report within sixty (60) days after receiving written notice thereof by FOUNDATION.

7.3 LICENSEE may terminate the license granted hereunder at any time upon sixty (60) days notice to FOUNDATION. FOUNDATION agrees that any expenses initiated by FOUNDATION during the sixty (60) day termination period will not be LICENSEE'S financial obligation although all other obligations under this Agreement shall continue to accrue during the sixty (60) day notice period, including the obligation to make any payments due under this Agreement.

7.4 Upon termination of this Agreement for any reason, including the end of term as specified above, all rights and obligations under this Agreement shall terminate, except those that have accrued prior to termination and except as specified in this Agreement.

ARTICLE 8: PUBLICATION AND CONFIDENTIALITY

8.1 It is the policy of FOUNDATION and Cornell to promote and safeguard free and open inquiry by faculty, students and others. To further this policy, FOUNDATION and Cornell shall retain the right to publish information described in Applications and Patents.

8.2 Both parties agree to keep any information identified as confidential by the disclosing party confidential using methods at least as stringent as each party uses to protect its own confidential information, except as may be necessary to maintain an action against LICENSEE for breach of this Agreement or to audit LICENSEE as specified under Section 5.8. "Confidential Information" shall include the progress report required under Section 4.7 and any other information marked confidential or accompanied by correspondence indicating such information is confidential exchanged between the parties hereto. The confidentiality and use obligations set forth above apply to all or any part of the Confidential Information disclosed hereunder except to the extent that:

(a) LICENSEE or FOUNDATION can show by written record that it possessed the information prior to its receipt from the other party;

(b) The information was already available to the public or became so through no fault of the LICENSEE or FOUNDATION;

(c) The information is subsequently disclosed to LICENSEE or FOUNDATION by a third party that has the right to disclose it free of any obligations of confidentiality; or

(d) Five years have elapsed from the expiration of this Agreement.

ARTICLE 9: ARBITRATION AND JUDICIAL REMEDIES

9.1 If a controversy arises under or related to this Agreement, and any disputed claim by either party against the other under this Agreement excluding any dispute relating to patent validity or infringement arising under this Agreement, the parties shall endeavor to resolve such controversy or dispute by mutual, good faith conciliation and mediation and, failing that, may mutually agree to settle the controversy or dispute by arbitration in accordance with the Licensing Agreement Arbitration Rules of the American Arbitration Association.

(i) Upon request by either party, arbitration will be by a third party arbitrator mutually agreed upon in writing by LICENSEE and FOUNDATION within thirty (30) days of such arbitration request. If the parties fail to mutually agree upon said third party arbitrator within the allotted thirty days, then the arbitration will be by a panel of three arbitrators comprising one arbitrator selected by each party within a further thirty (30) day period and a third arbitrator selected by the preceding two arbitrators. If one party fails to select an arbitrator within the allotted thirty day period, then said arbitration panel will consist solely of the arbitrator chosen by the other party.

(ii) The parties shall be entitled to discovery in like manner as if the arbitration were a civil suit in the New York Superior Court. The Arbitrator may limit the scope, time and/or issues involved in discovery.

(iii) Any arbitration shall be held at Ithaca, NY, unless the parties hereto mutually agree in writing to another venue.

9.2 FOUNDATION reserves the right and power to proceed with direct judicial remedies against LICENSEE without conciliation, mediation or arbitration for breach of the royalty payment and sales reporting provisions of this Agreement after giving written notice of such breach to LICENSEE followed by an opportunity period of thirty (30) days in which to cure such breach. In collecting overdue royalty payments and securing compliance with reporting obligations, FOUNDATION may use all judicial remedies available.

ARTICLE 10: INDEMNIFICATION

10.1 LICENSEE agrees to indemnify and hold harmless FOUNDATION and Cornell and their respective trustees, officers, employees, students, and agents against any and all claims for death, illness, personal injury, property damage, damages, expenses, losses and improper business practices arising out of (i) the manufacture, use, sale, or other disposition of Patents or Products by LICENSEE, Sublicensee, or their customers, (ii) a third party's use of a Products purchased, leased, or otherwise acquired from LICENSEE or Sublicensee, (iii) a third party's manufacture or provision of a Products at the request of LICENSEE or Sublicensee.

10.2 FOUNDATION shall not be liable for any indirect, special, consequential, or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract or otherwise. FOUNDATION shall not have any responsibilities or liabilities whatsoever with respect to Products.

10.3 LICENSEE and Sublicensee shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

10.4 LICENSEE agrees to obtain and maintain insurance against liability, damage, destruction and loss comparable to that which is maintained by companies in similar businesses at similar stages in their growth.

10.5 The provisions of this article shall survive termination of this Agreement.

ARTICLE 11: WARRANTIES AND LIMITATIONS

11.1 FOUNDATION and LICENSEE each represent and warrant that they have the right to enter into this Agreement. FOUNDATION warrants that it has the right to convey to LICENSEE the rights granted under this Agreement.

11.2 FOUNDATION warrants that is the owner of Applications and Patents.

11.3 FOUNDATION makes no representation or warranty that Applications will result in issued Patents.

11.4 FOUNDATION makes no representations or warranties concerning the validity or scope of Patents.

11.5 FOUNDATION does not warrant that Products made, used, sold, leased, imported, exported or otherwise disposed of under the license of this Agreement is or will be free from infringement of patents of third parties.

11.6 Nothing herein shall be construed as granting by implication, estoppel, or otherwise any licenses or rights under patents or other rights of FOUNDATION or Cornell or other persons other than Patents, regardless of whether such patents or other rights are dominant or subordinate to any Patents.

11.7 FOUNDATION is under no obligation to furnish any technology or information other than that described and claimed in Applications and Patents.

11.8 Nothing herein shall be construed to grant LICENSEE rights under any applications or patents other than Applications and Patents.

11.9 FOUNDATION does not make any representations, extend any warranties of any kind, express or implied, or assume any responsibility whatever concerning the manufacture, use, or sale, lease or other disposition by LICENSEE or its vendees or transferees of Products.

11.10 Except as expressly set forth in this Agreement, FOUNDATION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF PRODUCTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

ARTICLE 12: MARKING

12.1 Prior to the issuance of patents on the Applications, LICENSEE shall mark, and agrees to require that Sublicensees shall mark, Products (or their containers or labels) made, sold, leased, imported, exported or otherwise disposed of by it under the license granted in this Agreement with the words "Patent Pending," and following the issuance of one or more Patents, with the numbers of Patents.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 Terms in this Agreement which appear capitalized, other than the names of the parties and article headings, have the meanings given in Article 2 and retain those meanings whether used in the singular or plural.

13.2 This Agreement shall be binding upon and be to the benefit of the Parties hereto and their heirs, successors and assignees. However, neither Party shall assign this Agreement, in whole or in part, without the written consent of the other.

13.3 All issues and questions concerning the construction, validity and interpretation of this Agreement and the Schedules and Exhibits hereto shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. In furtherance of the foregoing, the internal law of the State of New York shall control the interpretation and construction of this Agreement (and all Schedules and Exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of such other jurisdiction would ordinarily apply. The parties hereto hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any State court sitting in Tompkins County, State of New York or Federal court sitting in Syracuse, New York over any suit, action or proceeding arising out of or relating to this Agreement and agree that no such suit, action or proceeding shall be brought in any other court, forum or jurisdiction. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

13.4 All notices required or permitted hereunder shall be in writing and be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when delivery is made according to the records of such courier, (b) sent by facsimile, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice by facsimile or personal delivery and delivered after 5:00 p.m., Eastern Daylight Time, shall be deemed received on the next Business Day. A party's address may be changed by written notice to the other parties; provided, however, that no notice of a change of address shall be affected until actual receipt of such notice.

In the case of FOUNDATION:

President
Cornell Research Foundation, Inc.
20 Thornwood Drive, Suite 105
Ithaca, NY 14850

In the case of LICENSEE:

President
Nanofluidics, Inc.
31 Dutch Mill Road
Ithaca, NY 14850

13.5 No term or provision of this Agreement shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.

13.6 This Agreement may not be modified, changed or terminated orally. No change, modification, addition or amendment shall be valid unless in writing and signed by the parties hereto.

13.7 In the event any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

13.8 This Agreement constitutes and contains the entire agreement of the parties respecting its subject matter and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether written or oral, between the parties respecting its subject matter.

IN WITNESS of this Agreement, FOUNDATION and LICENSEE have caused this Agreement to be executed by their duly authorized officers on the dates indicated.

Cornell Research Foundation, Inc.		**Nanofluidics, Inc.**	
By:	/s/ Richard S. Cahoon	By:	/s/ Stephen W. Turner
	Richard S. Cahoon		Stephen W. Turner
Title:	Senior Vice President	Title:	President
Date:	March 2, 2004	Date:	March 2, 2004

EXHIBIT A - ROYALTY REPORT

Report royalty payment information to the Cornell Research Foundation, Inc (CRF) using the report format or facsimile attached to these instructions. This minimal information must be provided in order to correctly record royalty related events required by your license agreement with CRF.

Use a separate report to record royalty information for each license agreement. For each licensee agreement, report royalty sales by CRF docket number, which identifies the technology. List each contributing technology if more than one technology is used to produce a royalty generating process/product. This level of detail permits evaluation of the use of each technology under license with your company.

Submit this information along with appropriate payment to:

Cornell Research Foundation, Inc.
ATTN: Finance and Accounting
20 Thornwood Drive, Suite 105
Ithaca, NY 14850
(607) 257-1081
www.crf.cornell.edu

For your convenience, payments may be made by FEDWIRE or ACH to:

Tompkins Trust Company
The Commons
Ithaca, NY 14851
(607) 273-3210
www.tompkinstrust.com

Account: […***…], ABA: […***…]

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ROYALTY REPORT – [licensee NAME]

LICENSEE NAME: _____ CRF LICENSE NUMBER: _____

REPORTING PERIOD: _____

Individual to contact concerning this information:

Name: _____ Phone # or email ID: _____

For each product/item subject to a royalty payment provision, provide the following information as applicable.

PRODUCT/ITEM: _____

CRF Docket Number	Country	Number of Units/Products Sold	Gross Sales By Country	Net Sales By Country	Royalty Rate	Less Minimum Royalty Payment Made	Net Royalty Payment Made
						Total Payment	

Exhibit 10.9

Confidential Treatment Requested by Pacific Biosciences of California, Inc.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), dated as of September 11, 2006 (the "Effective Date"), is made by and between GE Healthcare Bio-Sciences Corp., with a principal place of business at 800 Centennial Avenue, Piscataway, New Jersey 08855 ("GEHC"), and Pacific Biosciences of California, Inc., with a principal place of business at 1505 Adams Drive, Menlo Park, CA 94025 ("Licensee").

RECITALS

WHEREAS, GEHC is the owner of the patents and/or patent applications set forth on Schedule 1 attached hereto; and

WHEREAS, Licensee desires to license from GEHC, and GEHC desires to license to Licensee, the Licensed Patents on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual premises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

1. DEFINITIONS

1.1. "Affiliate" of a party means any entity that, directly or indirectly, controls, is controlled by or is under common control with such party. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") means: (i) the ownership of fifty percent (50%) or more of the outstanding voting securities of an entity; or (ii) the power, whether by ownership of voting securities, by contract or otherwise, to appoint fifty percent (50%) or more of the members of the governing body of an entity.

1.2. "Confidential Information" shall mean all information of a confidential or secret nature, including without limitation, any financial and scientific data, technical and business information, sales data, information regarding advertising, distribution, marketing or strategic plans, product plans, customer information, business strategies, information regarding costs or profits, formulae, productivity or technological advances, product designs and specifications, development schedules, computer programs and systems, designs, data bases, inventions, engineering techniques and procedures, equipment, materials, test and test quality assurance procedures, research and research projects that, if disclosed in tangible form, is marked as "confidential" at the time of disclosure or, if disclosed orally, is orally identified as confidential or proprietary when disclosed.

1.3. Consumables shall mean a kit as sold as a single unit that includes sequencing reagent components and/or waiveguides.

1.4. "Consumable Kit" shall mean any sequencing reagent and/or waiveguide.

1.5. "Effective Date" shall have the meaning given to it in the first paragraph hereof.

1.6. "Field of Use" shall mean DNA sequencing applications.

1.7. "First Commercialization Date" shall mean the date when a Licensed Product or Licensed Service, as applicable, is first sold to a Third Party.

1.8. “Licensed Patents” shall mean all patents and patent applications listed in Schedule 1, any applications claiming priority to the listed patents or patent applications, including but not limited to continuations, divisions, continuing prosecution applications, reissues and reexams, any foreign counterparts of any of the listed patents or patent applications, and any patents or patent applications that claim priority from any common application from which any of the listed patents and patent applications claim priority.

1.9. “License Fees” shall have the meaning given to it in Section 4.1 hereof.

1.10. “Licensed Products” shall mean any product the manufacture, importation, use, distribution, performance, offer for sale, sale, lease or other transfer of which would but for the license granted herein infringe, directly or indirectly, a valid claim of a Licensed Patent.

1.11. “Licensed Services” shall mean any service (including, but not limited to, funded research, collaboration service, fee-for-service or laboratory service), which would but for the license granted herein infringe, directly or indirectly, a valid claim of a Licensed Patent.

1.12. “Minimum Annual Royalty” shall have the meaning given to it in Section 4.3 hereof.

1.13. “Net Sales” shall mean Net Sales of Licensed Products and/or Net Sales of Licensed Services, as applicable.

1.14. “Net Sales of Licensed Products” shall mean the invoice price of all sales of Licensed Products sold during the applicable period (i) by Licensee to end users, (ii) by Licensee to Permitted Distributors and/or (iii) by Permitted Distributors to end users, in each case, less the following amounts: (A) regular trade and quantity discounts actually taken; (B) government rebates actually taken; (C) actual returns of Licensed Products for which no replacement Licensed Products are provided; (D) taxes and duties directly imposed against the amount invoiced and actually paid by Licensee and (E) charges for packaging, handling and shipping separately stated on the invoice but before deduction of any other items.

1.15. “Net Sales of Licensed Services” shall mean either: (i) the invoice price of Licensed Services provided by Licensee, less the following amounts: (A) support costs, including, but not limited to, full-time equivalent (“FTE”) support, warranty support and service support; (B) regular trade and quantity discounts actually taken; (C) government rebates actually taken; (D) taxes and duties directly imposed against the amount invoiced and actually paid by Licensee and (E) charges for packaging, handling and shipping separately stated on the invoice but before deduction of any other items, or (ii) if Consumables or Consumable Kits that are Licensed Products are ordinarily sold, catalogued or invoiced separately from Licensed Services by Licensee, then Net Sales of Licensed Services shall be defined as the ordinary selling, catalogue or invoice price of such Consumables or Consumable Kits that are used by Licensee in the provision of such Licensed Services, less the deductions set forth in the foregoing clause (i).

1.16. “Net Sales Royalties” shall have the meaning given to it in Section 4.2 hereof.

1.17. “Permitted Distributor” shall mean any distributor of Licensed Products whose engagement has been approved by GEHC in accordance with Section 5.1 hereof.

1.18. “Royalties” shall mean, collectively, the Net Sales Royalties and the Minimum Annual Royalty.

1.19. “Term” shall have the meaning given to it in Section 9.1 hereof.

1.20. “Territory” shall mean the world.

1.21. “Third Party” shall mean any person or entity, other than Licensee, GEHC or their respective Affiliates, including, without limitation, any end user of Licensed Products.

2. LICENSE

2.1. License and Restrictions

2.1.1 During the Term and subject to the terms hereof, GEHC hereby grants to Licensee, and Licensee hereby accepts from GEHC, a non-exclusive, non-transferable license (without the right to sub-license except as to Permitted Distributors in compliance with Section 5 of this Agreement) under the Licensed Patents in the Territory to (i) make, have made, import, use, distribute, offer to sell and sell Licensed Products and (ii) perform Licensed Services, in each case, solely to end users all within the Field of Use. Notwithstanding anything to the contrary, GEHC reserves the right to practice the Licensed Patents for itself, and to grant further licenses, assign or otherwise transfer the Licensed Patents to others for any purpose whatsoever, provided that any such assignment or transfer does not affect the rights granted to Licensee hereunder.

2.1.2 Licensee will ensure that all sales of Licensed Products to end users, whether directly by Licensee or by one or more Permitted Distributors, shall be expressly conditional upon such end user's acceptance of the terms and conditions set forth on Exhibit A attached hereto, including, but not limited to, the restrictions on re-sale.

2.2. Compliance with Law. Licensee shall, and shall use its reasonable best efforts to cause any Permitted Distributor and/or any third-party manufacturer to, comply with all applicable laws, rules and regulations issued by the country of origin, the U.S. Government, the United Nations or other similar international organization in connection with (i) the making, having made, importing, use, distribution, sale of and/or offer to sell any Licensed Product and (ii) the performance of Licensed Services.

3. INTELLECTUAL PROPERTY

3.1.1. Any improvement to the Licensed Patents conceived during the Term of this Agreement, which improvement cannot be practiced absent the license granted hereunder (hereafter "Improvement"), whether patentable or not, conceived solely by one party shall be solely owned by such party with all rights appurtenant thereto; […***…].

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4. LICENSE FEES; ROYALTIES

4.1. License Fees: In consideration of the rights granted to it under this Agreement, Licensee shall pay the following license fees (collectively, "License Fees") to GEHC:

4.1.1. […***…] payable on the Effective Date;

4.1.2. […***…] payable upon the First Commercialization Date.

4.2. Net Sales Royalties. In consideration of the rights granted to it under this Agreement, Licensee shall pay the following royalties (collectively, "Net Sales Royalties") to GEHC:

4.2.1. ***Licensed Products Royalty:***

4.2.1.1. […***…] of Net Sales of Licensed Products that are Consumables and/or Consumable Kits sold by Licensee directly to end users.

4.2.1.2. For sales by one or more Permitted Distributors, the lesser of (a) […***…] of Net Sales of Licensed Products that are Consumables and/or Consumable Kits sold by Licensee to such Permitted Distributor(s) and (b) […***…] of Net Sales of Licensed Products that are Consumables and/or Consumable Kits sold by such Permitted Distributor(s) to end users.

4.2.2. ***Licensed Services Royalty:*** […***…] of Net Sales of Licensed Services.

4.3. Minimum Annual Royalty: In consideration of the rights granted to it under this Agreement, Licensee shall pay to GEHC a minimum annual royalty equal to […***…] ("Minimum Annual Royalty") commencing upon the earlier to occur of (a) the […***…] and (ii) the […***…] anniversary of the Effective Date. The Minimum Annual Royalty shall be fully creditable against Licensed Product Royalties due for any 12 month period beginning upon the date required for such Minimum Annual Royalty Payment.

4.4. Payments. Net Sales Royalties shall be paid on Net Sales accruing during each calendar quarter within thirty (30) days following the end of such calendar quarter. The Minimum Annual Royalty shall be paid on each anniversary of its commencement date pursuant to Section 4.3 above. All payments hereunder shall be made by wire transfer of immediately available funds to an account specified in writing by GEHC. Except by termination of this Agreement under Section 9 of this Agreement, and notwithstanding the pendency of any infringement (or other) claim or action by or against Licensee, Licensee shall have no right to terminate or suspend (or escrow) payment of any amounts required to be paid to GEHC hereunder.

4.5. Royalty Reports. Concurrently with each payment of Net Sales Royalties, Licensee shall deliver to GEHC a report setting forth in reasonable detail (a) Licensee's total revenue in the Field of Use during the applicable calendar quarter; (b) a calculation of the Net Sales during such calendar quarter and (c) a calculation of the Net Sales Royalties for such calendar quarter.

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4.6. Minimum Revenue. Licensee hereby acknowledges that the financial terms set forth in this Agreement are based on the understanding that no later than the […***…] anniversary of the First Commercialization Date, the total revenue generated by sales of Licensed Products that are Consumables and/or Consumable Kits in the Field of Use will equal at least […***…] of the total revenue generated by Licensee in the Field of Use at such date. Licensee hereby agrees that if the total revenue generated by sales of Licensed Products that are Consumables and/or Consumable Kits in the Field of Use equals less than […***…] of the total revenue generated by Licensee in the Field of Use on the […***…] anniversary of the First Commercialization Date or at any time thereafter during the Term, the parties shall in good faith negotiate an equitable adjustment to the financial terms of this Agreement commensurate with such revenue shortfall.

4.7. Taxes. GEHC shall bear the taxes to be levied on the income of GEHC arising under this Agreement. Licensee shall bear the taxes to be levied on the income of Licensee arising under this Agreement. Withholding or other taxes (if any) assessed on GEHC in connection with the payment of Royalties and other consideration due hereunder and which Licensee is required by law to deduct and withhold when making payments, shall be paid by Licensee to the competent authority on behalf of GEHC. The original of the official government receipt evidencing payment of such taxes by Licensee on GEHC's behalf shall be delivered by Licensee to GEHC not later than five (5) working days after the date of payment, together with supporting documentation identifying the Royalties to which such taxes relate. Upon receipt of such government receipts, the sums so paid by Licensee shall be credited by GEHC in partial discharge of Licensee's obligation for the payment of such Royalties.

4.8. Records. During the Term and for a period of […***…] thereafter, Licensee shall keep accurate records of all Net Sales in sufficient detail to enable GEHC to verify the Royalties payable thereon and Licensee's compliance with the minimum revenue requirement set forth in Section 4.6 hereof.

4.9. Audit. Upon reasonable advance written notice from GEHC, Licensee shall provide access to its relevant books and records (including, without limitation, sales records), at Licensee's facilities, to an auditor appointed by GEHC and reasonably acceptable to Licensee to verify Licensee's compliance with the terms of this Agreement, including, without limitation, the minimum revenue requirement set forth in Section 4.6 hereof. If an audit reveals a violation by Licensee of the terms of this Agreement, Licensee will immediately and at its sole cost and expense, take all requisite actions to remedy such violation. If any audit reveals an underpayment of Royalties in excess of […***…] percent […***…] during the period being audited, Licensee shall pay within thirty (30) days of the audit results (a) the full costs of such audit plus (b) interest on such Royalties at the rate of […***…].

5. PERMITTED DISTRIBUTORS; THIRD-PARTY MANUFACTURERS; ADDITIONAL LICENSES

5.1. Permitted Distributors. In the event Licensee intends to engage one or more distributors to import, distribute and/or sell Licensed Products, it shall give prompt written notice of such intention to GEHC and provide GEHC with an opportunity to negotiate in good faith with Licensee to provide such distribution services, which opportunity shall extend for no less than thirty (30) days from the date of GEHC's receipt of such written notice. If Licensee and GEHC fail to reach agreement in regard to the provision of such distribution services within such 30-day period, then Licensee may engage a third-party distributor to provide such distribution services; provided, however, that (a) the engagement of such third-party distributor shall be subject to GEHC's express prior written approval, which approval shall not be unreasonably withheld; it being acknowledged and agreed that in

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the event that GEHC wishes to withhold consent, GEHC shall provide Licensee with an objective, commercially reasonable basis for such withheld consent within thirty (30) days of such written notice from Licensee; (b) the engagement of such third-party distributor shall be conditioned upon such distributor having agreed in writing to be bound by the terms and conditions of this Agreement and (c) Licensee shall remain liable for the payment of all royalties on Net Sales made by such distributor in accordance with Section 4.2.1.2, hereof. Each such third-party distributor engaged by Licensee in compliance with this Section 5.1 shall hereinafter be referred to as a "Permitted Distributor."

5.2. Third-Party Manufacturer. In the event Licensee intends to engage one or more manufacturers to make Licensed Products, it shall give prompt written notice of such intention to GEHC and provide GEHC with an opportunity to negotiate in good faith with Licensee to provide such manufacturing services, which opportunity shall extend for no less than thirty (30) days from the date of GEHC's receipt of such written notice. Subject to the foregoing sentence, nothing in this section shall be construed as restricting Licensee's rights to negotiate, agree or contract with any third party the right to manufacture Licensed Products for Licensee at any time.

5.3. Additional Licenses. Upon Licensee's written request, Licensor shall negotiate in good faith the terms of a license to any technology or intellectual property owned or licensed by Licensor which is necessary for Licensee to practice the license granted herein; provided, however, that Licensor's obligation to so negotiate shall be limited to the extent expressly permitted by the agreements (if any) to which such technology or intellectual property is subject.

6. ACKNOWLEDGEMENT OF PATENTS AND TRADEMARKS

6.1. Patents. Any and all packaging, insert sheets and/or promotional literature accompanying or referencing Licensed Products shall include the following statement: "This product or portions thereof is manufactured and sold under license from GE Healthcare under patents [**NOTE: FILL IN PATENT NUMBERS]** and other pending and foreign patent applications."

6.2. Trademarks. GEHC may from time to time require Licensee to affix, at Licensee's expense, certain of GEHC's trade names and/or trademarks on Licensed Products (including packaging, insert sheets and/or promotional literature accompanying or referencing such Licensed Products), in which case GEHC shall provide written instructions to Licensee (i) identifying the trade names and/or trademarks to be so affixed; (ii) identifying which Licensed Products shall carry such trade names and/or trademarks and (iii) setting forth guidelines for the use of such trade names and/or trademarks, provided that, consistent with the foregoing that matters relating to size and positioning of marks shall be subject to Licensee's reasonable marketing requirements.

6.3. Ownership and Use of Trademarks. Licensee acknowledges and agrees that:

6.3.1. GEHC is the owner of all GEHC trademarks and trade names appearing on packaging, insert sheets and promotional literature used in relation to Licensed Products pursuant to Section 6.1 above;

6.3.2. Licensee may only use such GEHC trademarks and trade names for the purpose and during the Term in accordance with Section 6.2 above;

6.3.3. Any rights Licensee may acquire in such GEHC trademarks and trade names pursuant to Licensee's use of such trademarks and tradenames under this Agreement shall be assigned to GEHC absolutely; and

6.3.4. Licensee shall not do or omit to do anything whereby the goodwill and reputation of such GEHC trademarks and trade names is reasonably likely to be prejudiced or damaged. Nothing in this section 6.3.4 shall preclude either party from exercising its legal rights under this Agreement or otherwise.

7. INDEMNIFICATION AND INSURANCE

7.1. Licensee Indemnification. Licensee hereby agrees to indemnify, save, defend and hold GEHC and its Affiliates, and each of their respective directors, officers, employees and agents, harmless from and against any and all claims, suits, actions, demands, liabilities, expenses and/or losses, including reasonable attorneys' fees and expenses, arising out of or relating to (i) any act or omission by Licensee, any of its Affiliates or any Permitted Distributor, or any of their respective directors, officers, employees and agents; (ii) claims (including, without limitation, claims of infringement or alleged infringement, death, personal injury, illness or property damage) arising out of Licensee's exploitation of the licenses and rights granted under this Agreement or otherwise arising out of the use of any Licensed Patent; or (iii) Licensee's or any end user's use or disposition of Licensed Products and/or Licensed Services.

7.2. Insurance. Licensee shall procure and maintain in full force and effect during the Term valid and collectible insurance policies in connection with its activities and indemnification obligations as contemplated hereby, which policies shall provide for the types and amounts of coverage as set forth in Schedule 2 attached hereto. Licensee shall notify GEHC in writing at least thirty (30) days prior to any modification to such insurance coverage. Upon GEHC's request, Licensee shall deliver to GEHC a certificate of coverage or other written evidence reasonably satisfactory to GEHC of such insurance coverage.

8. CONFIDENTIALITY

8.1. During the Term and for a period of five (5) years thereafter, each of Licensee and GEHC (each, a "Recipient") agrees not to disclose to any third party any Confidential Information disclosed to it by the other party (each, a "Disclosing Party") and not to use such Confidential Information other than for the purpose of this Agreement.

8.2. The undertakings of non-disclosure and non-use in this Section 8 shall not apply to information which:

8.2.1. at the time of disclosure or subsequently is published or otherwise generally available to the public other than through any act or omission on the part of the Recipient;

8.2.2. was in the possession of the Recipient at the time of disclosure;

8.2.3. was acquired from a third party who has the lawful right to make such disclosure;

8.2.4. is independently developed by the Recipient without reference to the materials comprising the Confidential Information disclosed under this Agreement; or

8.2.5. the Recipient notifies the Disclosing Party is required to be disclosed by the Recipient pursuant to a legally enforceable order, direction or other regulation but any disclosure shall be only so far as necessary to give effect thereto.

9. TERM AND TERMINATION

9.1. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate on the earlier to occur of (a) the date when none of the Licensed Patents remains in force in the Territory and (b) the date when this Agreement is terminated in accordance with the terms hereof.

9.2. Termination by Licensee. Licensee may terminate this Agreement at any time by providing GEHC written notice of such termination at least 90 days in advance of an effective date of such termination. Notwithstanding termination under this Section 9.2, Licensee shall be obligated to make payments for any amounts accruing up to the effective date of such termination.

9.3. Termination for Breach or other Event of Default. In the event of a breach by either party, the other party may terminate this Agreement by giving such party notice of such breach. The party receiving such notice shall have thirty (30) days from the date of receipt thereof to cure such breach. If such breach is not cured within such thirty (30) day period, then the non-breaching party shall have the right to terminate this Agreement effective as of the end of such period.

9.4. Termination for Minimum Revenue Shortfall: In the event the parties are unable to negotiate an equitable adjustment to the financial terms of this Agreement pursuant to Section 4.6 hereof within […***…] of commencing such negotiations, GEHC shall have the right to terminate this Agreement upon written notice to Licensee.

9.5. Change of Control.

9.5.1. Licensee shall deliver to GEHC advance written notice of any proposed Change of Control Event (as defined below) accompanied by a list of all Licensed Patents (if any) under which Licensee at the time of such notice (a) makes, has made, imports, uses, distributes, offers to sell and/or sells any Licensed Products or (b) has an ongoing and active development program at the proof of concept or prototype stage (clauses (i) and (ii) collectively, the "Utilized Patents"). Failure to give advance written notice of a Change of Control Event to GEHC shall constitute a breach of this Agreement by Licensee.

9.5.2. For purposes of this Agreement, the term "Change of Control Event" shall mean any transaction or series of related transactions pursuant to which (a) a Third Party becomes the beneficial owner of fifty percent (50%) or more of the total voting power of all classes of voting stock or securities of Licensee then outstanding; (b) Licensee consolidates with or merges into another entity, or another entity consolidates with or merges into Licensee, as a result of which fifty percent (50%) or more of the total voting power of all classes of voting stock or securities of Licensee then outstanding is acquired by a Third Party; or (c) Licensee conveys, transfers, leases or sells all or substantially all of the assets of Licensee to which this Agreement relates to a Third Party.

9.5.3. Upon the effective date of such Change of Control Event:

9.5.3.1. Licensee shall pay to GEHC an amount equal to […***…] in consideration of such assignment; and

9.5.3.2. Subject to receipt by GEHC of the fee set forth in Section 9.5.3.1 above, this Agreement shall (a) be assigned by operation of law to such Third Party with respect to all Utilized Patents; (b) automatically terminate and be of no further force and effect with respect to all Licensed Patents other than Utilized Patents and (c) be amended by the parties to delete all Licensed Patents other than Utilized Patents from Schedule 1 attached hereto.

*** Confidential Treatment Requested

9.6. Termination upon Bankruptcy or Insolvency. If Licensee becomes bankrupt or insolvent, or if the business of Licensee is placed in the hands of a receiver or trustee, whether by voluntary act or otherwise, this Agreement shall immediately and automatically terminate.

9.7. Effect of Termination. Upon termination or expiration of this Agreement, Licensee shall have no further license or rights under this Agreement with respect to the Licensed Patents and shall, and shall use its reasonable efforts to cause any Permitted Distributors to, immediately cease to (a) make, have made, import, use, distribute, sell or offer to sell Licensed Products and (b) perform or have performed any Licensed Services. Each party shall promptly return to the other party or destroy any and all Confidential Information or other proprietary information of such other party upon termination or expiration of this Agreement. Expiration or termination of this Agreement will not relieve either party from any obligations which have accrued prior to such expiration or termination. Notwithstanding anything to the contrary, Sections 3 (Intellectual Property), 4.8 (Records), 4.9 (Audit), 7 (Indemnification and Insurance), 8 (Confidentiality), 10 (Disclaimer and Limitation of Liability), and 11 (Miscellaneous), and any other provision of this Agreement that by its nature should survive, shall survive the expiration or termination of this Agreement.

10. DISCLAIMER AND LIMITATION OF LIABILITY

10.1. Disclaimer. EXCEPT FOR THE IMPLIED WARRANTY OF TITLE, THIS AGREEMENT PROVIDES NO OTHER WARRANTIES (STATUTORY OR IMPLIED), INCLUDING WITHOUT LIMITATION, AS TO LICENSED PRODUCT QUALITY, CONDITION, DESCRIPTION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY GEHC. GEHC HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY REGARDING RESULTS OBTAINED THROUGH THE USE OF THE LICENSED PRODUCTS, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS.

10.2. Limitation of Liability. Notwithstanding anything to the contrary herein contained, GEHC's liability for damages for any cause related to or arising out of this Agreement, shall not exceed the aggregate amount of the License Fees and Royalties actually paid by Licensee to GEHC hereunder.

10.3. Waiver of Consequential Damages. Notwithstanding anything to the contrary herein contained, GEHC shall not be liable for any indirect, consequential, special or punitive damages of any kind from any cause arising out of this Agreement, including without limitation, due to loss of profits, loss of goodwill or business interruption.

11. MISCELLANEOUS

11.1. Independent Entities. Neither party has any ownership interest in the other, and the relationship between the parties, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party may assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

11.2. Assignment. Except to the extent provided for in Section 9.5 hereof, Licensee may not assign this Agreement without GEHC's prior written consent. This Agreement shall be freely assignable by GEHC. Any assignment or any attempted assignment in breach of this Section shall be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

11.3. Section Headings. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

11.4. Non-Waiver of Rights. The failure of either party to enforce at any time for any period any provision hereof shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. Remedies provided herein are cumulative and not exclusive of any remedies provided at law.

11.5. Invalid Provisions. In the event that any one or more of the provisions (or any part thereof) contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument. Any term or provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, to the extent the economic benefits conferred by this Agreement to both parties remain substantially unimpaired, not affect the validity, legality or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

11.6. Entire Agreement. This Agreement, together with all Schedules and Exhibits attached hereto, constitutes the final, complete and exclusive agreement and understanding between GEHC and Licensee relating to the subject matter hereof and supersedes all prior and contemporaneous agreements oral or written. To the extent that there are any conflicts between this Agreement and any Schedules or Exhibits hereto, this Agreement will prevail.

11.7. Notices. All notices and other communications hereunder shall be in writing. All notices hereunder shall be delivered personally, or sent by national overnight delivery service or postage pre-paid registered or certified U.S. mail, and shall be deemed given: when delivered, if by personal delivery or overnight delivery service; or if so sent by U.S. mail, three (3) business days after deposit in the mail, and shall be addressed:

If to GEHC:

800 Centennial Avenue
Piscataway, NJ 08855
Attention: Legal Department

If to Licensee:

Pacific Biosciences of California, Inc.
Attn: General Counsel
1505 Adams Drive
Menlo Park, CA 94025

or to such other place as either party may designate by written notice to the other in accordance with the terms hereof.

11.8. Governing Law. This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. Any controversies or claims arising from or relating to this Agreement shall be adjudicated exclusively by a federal or state court whose territorial jurisdiction encompasses the State of New York. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, RELATING TO, OR ARISING OUT OF THIS AGREEMENT. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11.9. Publicity. Except as may be required by law or regulation (including any applicable stock exchange regulation), no press releases or public disclosure, either written or oral, regarding the execution of this Agreement or the content hereof, shall be made by either party hereto (or its Affiliates or representatives) without the prior knowledge and written consent of other party hereto, which consent shall not be unreasonably withheld.

11.10. Amendment. No amendment or modification of the terms of this Agreement shall be binding upon either party unless reduced in writing and signed by an authorized representative of the party to be bound.

11.11. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be considered one and the same agreement

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

GE Healthcare Bio-Sciences Corp.	Pacific Biosciences of California, Inc.
By : /s/ Eric Roman	By : /s/ Hugh Martin
Title : GM Genomic Sciences	Title : CEO
Date : September 6, 2006	Date : September 8, 2006

SCHEDULE 1

LICENSED PATENTS

[...***...]

*** Confidential Treatment Requested

SCHEDULE 2

INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance in an amount not less than $1 million per occurrence/annual aggregate bodily injury/property damage combined.
2. As of the First Commercialization Date, Product Liability Insurance in an amount not less than $2 million per occurrence/annual aggregate bodily injury/property damage combined.
3. All Risk Property Insurance covering the full replacement value of Licensee’s property.
4. Workers Compensation Insurance - statutory limits.

EXHIBIT A

END USER TERMS AND CONDITIONS

Acceptance. These terms and conditions shall govern the purchase, use, transfer and acceptance of the products described in the purchase order, quotation or invoice, which products are sold and distributed by Pacific Biosciences of California, Inc.to the buyer/transferee of such products (the "End User"). The transfer/sale of products to the End User is expressly conditional upon End User's acceptance of these terms and conditions.

Restrictions on Use. End Users are specifically not authorized to and are forbidden from reselling, transferring or distributing any products either as a stand alone product or as a component of another product. The right to use the products does not, in and of itself, include or carry any right of the End User to any GE Healthcare Bio-Sciences Corp.'s technology or intellectual property other than expressly provided herein. End Users may not use sequence(s) in an attempt to reverse engineer parameters of any of GE Healthcare Bio-Sciences Corp. proprietary products or services.

DISCLAIMER OF WARRANTIES. GE HEALTHCARE BIO-SCIENCES CORP. PROVIDES NO WARRANTIES TO END USER (STATUTORY OR IMPLIED), INCLUDING WITHOUT LIMITATION, AS TO PRODUCT QUALITY, CONDITION, DESCRIPTION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. GE HEALTHCARE BIO-SCIENCES CORP. HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY REGARDING RESULTS OBTAINED THROUGH THE USE OF THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS.

Exclusion of Liability. GE Healthcare Bio-Sciences Corp. and its affiliates shall have no liability to an End User, including, without limitation, for any loss of use or profits, business interruption or any consequential, incidental, special or other indirect damages of any kind, regardless of how caused and regardless of whether an action in contract, tort, strict product liability or otherwise.