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5. Term and Termination. (a) This Agreement shall continue until terminated. (b) You may terminate this Agreement at any time by destroying all copies of the Software Products, including the associated storage media and Documentation, and erasing all copies of the Software Products in both temporary and permanent storage on the System. (c) Affymetrix may terminate this Agreement immediately upon the breach by you of any term hereof. (d) Upon termination, you shall immediately cease all use of the Software Products and return or destroy all copies of the Software Products and all portions thereof and so certify the same to Affymetrix. Termination is not an exclusive remedy and all other remedies will be available to Affymetrix whether or not the Agreement is terminated.

6. Limited Warranty. (a) Subject to the conditions and limitations on liability stated herein, Affymetrix warrants, for your benefit alone, for a period of ninety (90) days from the date of commencement of this Agreement (“**Warranty Period**”) that (i) the associated storage media on which the Software reside will be free from defects in material and workmanship, and

(ii) the Software shall operate substantially in accordance with the Documentation. (b) The foregoing warranty shall not apply with respect to (i) Software Products that are damaged or modified; (ii) Software Products that are not the then-current version; (iii) problems caused by your negligence, a hardware malfunction or other causes beyond the control of Affymetrix; or (iv) Software Products installed in an operating environment or in a hardware environment not strictly complying with specifications set forth in the Documentation.

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8. Limited Remedy. Any claim submitted under this warranty must be submitted in writing together with the media to Affymetrix within the Warranty Period. Affymetrix's sole and exclusive liability (and your sole and exclusive remedy) under the warranties set forth in Section 6 shall be to repair or replace the Software Products or provide you with a prorated refund, as solely determined by Affymetrix. ANY LIABILITY OF AFFYMETRIX WITH RESPECT TO THE SOFTWARE PRODUCTS OR THE PERFORMANCE THEREOF OR DEFECTS THEREIN UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO THE REMEDIES IN THIS SECTION 8.

9. Disclaimers. THE WARRANTIES SET FORTH IN SECTION 6 ARE EXCLUSIVE AND IN LIEU OF, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF

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10. Limitation on Kinds of Damages. IN NO EVENT WILL AFFYMETRIX OR ITS DISTRIBUTOR BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR (A) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, INTERRUPTION OF BUSINESS OR USE, OR LOSS, INACCURACY OR CORRUPTION OF DATA, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, HOWEVER ARISING, (B) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL; (C) AND/OR FOR ANY SIMILAR CLAIM AGAINST YOU BY ANY OTHER PARTY, EVEN IF AFFYMETRIX OR ITS DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Limitation on Amount of Damages. THE LIABILITY OF AFFYMETRIX AND ITS DISTRIBUTOR (IF APPLICABLE) SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY YOU AND RECEIVED BY AFFYMETRIX OR ITS DISTRIBUTOR FOR YOUR USE OF THE SOFTWARE PRODUCTS. YOU ACKNOWLEDGE AND AGREE THAT THE RISKS OF LOSS HEREUNDER ARE REFLECTED IN THE PRICE OF THE SOFTWARE PRODUCTS, AND THAT THESE TERMS WOULD HAVE BEEN DIFFERENT IF THERE HAD BEEN A DIFFERENT ALLOCATION OF RISK.

12. Compliance with law. You shall not receive, download, ship, transfer or otherwise export or re-export the Software Products or any underlying information or technology (or direct product thereof) except in full compliance with all United States and other applicable laws and regulations, including, but not limited to, the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "**Export Laws**"). In addition, if the Software Products are identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen of, or otherwise located within, an embargoed nation, and that you are not otherwise prohibited under the Export Laws from receiving the Software Products. All rights to use the Software Products are granted on condition that such rights are forfeited if you fail to comply with the Export Laws or the terms of this Agreement.

13. Survival. Except for the License, except for the phrase "but only a limited right of use which is revocable in accordance with the terms of this Agreement" in Section 3(c), except for Section 4(b), except for Sections 5(a), (b) and (c), except for Section 6(a), and except as otherwise expressly provided herein, the terms of the Agreement shall survive termination.

14. Governing Law. This Agreement shall be governed and interpreted in all respects by the laws of the United States of America and the State of California as such laws are applied to agreements entered into and to be performed entirely within California between California residents, without regard to conflicts of laws provisions thereof. The parties agree that the

United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. You irrevocably submit to the nonexclusive personal and subject matter jurisdiction of the state and federal courts located in Santa Clara County, California. Notwithstanding the foregoing, Affymetrix may apply to any court of competent jurisdiction for temporary or preliminary injunctive relief.

15. Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by a court of competent jurisdiction, such unenforceability or invalidity shall not render this Agreement unenforceable, or invalid as a whole, and, in such event, any such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or intended provision within the limits of applicable law or applicable court decisions.

16. U.S. Government End Users. If you are an agency, department, or other entity of the United States government ("**Government**"), the use, duplication, reproduction, release, modification, disclosure or transfer of this product, or of any related documentation of any kind, including technical data, is restricted in accordance with Federal Acquisition Regulation ("**FAR**") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("**DFARS**") 227.7202 for military agencies. The Software Products are commercial computer software and commercial computer software documentation. The use of the Software Products by the Government is further restricted in accordance with the terms of this Agreement. The contractor/manufacturer is Affymetrix Inc., 3380 Central Expressway, Santa Clara, CA 95051.

17. Miscellaneous. (a) You agree that (i) a material breach of this Agreement adversely affecting Affymetrix's proprietary rights in the Software Products or (ii) a breach of confidentiality provisions in this Agreement, would

cause irreparable injury to Affymetrix for which monetary damages would not be an adequate remedy and that the Affymetrix shall be entitled to equitable relief (including, without limitation, injunctions) in addition to any remedies it may have hereunder or at law. (b) The License and the Agreement are not assignable or transferable by you without the prior written consent of Affymetrix; any attempt to do so shall be void. However, Affymetrix may transfer or assign any of its rights or obligations under this Agreement without your consent. (c) No failure to exercise, and no delay in exercising, on the part of either you or Affymetrix, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. (d) The prevailing party in any action to enforce this Agreement shall be entitled to recover costs and expenses, including, without limitation, attorneys' fees. (e) YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE AMONG THE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY YOU IN CONNECTION WITH THE SOFTWARE PRODUCTS AND IN YOUR DECISION TO ENTER INTO THIS AGREEMENT. (f) This Agreement represents the entire agreement concerning the Software Products between you and Affymetrix, and it supersedes any prior proposal, representation, or understanding between you and Affymetrix. (g) Any waivers or amendments shall be effective only if made in writing, clearly understood by you and Affymetrix to be an amendment or waiver and signed by representatives authorized to bind you and Affymetrix respectively.