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Use of Site. Agilent grants you a non-exclusive license to use this Site solely for your personal, non-commercial, research use. You may not modify, reproduce, publicly display, distribute, or transfer to unauthorized third parties any materials from this Site (i) for commercial distribution including without limitation, commercial manufacturing of microarrays or libraries of RNA based oligonucleotides; (ii) for populating commercial database(s); (iii) for use in commercial websites or other commercial repositories; (iv) for use in diagnostic procedures; and (v) as not otherwise permitted. You may not derive or attempt to derive the designs or structure of all or any portion of the Site, software or technology contained within, underlying or provided through the Site by reverse engineering, disassembling, deconstructing, decompiling, or any other means, except as permitted by law. You agree that this limited license to use the Site does not grant you any other right or license, by estoppels, implication or otherwise, under the intellectual property rights of Agilent or any third party. Without restricting the previous sentence, nothing herein shall be construed as a right or license to use, make, have made, sell, offer to sell, distribute, lease, or import, Agilent microarrays or related products or services.

Biological Content. Agilent will maintain security procedures with respect to access and maintenance of the Site to prevent the unauthorized disclosure of the files that you submit to the Site containing references to oligonucleotide sequences provided for the purpose of manufacturing a microarray or libraries of RNA based oligonucleotides ("Biological Content"). By using this Site, you authorize and grant Agilent a limited, non-exclusive, royalty-free, perpetual, world-wide license to reproduce, transmit, disclose, display and use your Biological Content solely for the purpose of enabling you to use the Site, processing your requests and transactions, policing sequences for indications of unauthorized use, and maintaining and improving the Site. Notwithstanding the foregoing, Agilent may disclose information to the extent (i) it is required to do so by law; (ii) necessary to protect and defend the legal rights of Agilent; or (iii) required in order to comply with a judicial proceeding, court order, or government inquiry.

Safeguards. You acknowledge that security safeguards are capable of circumvention with respect to the internet and Agilent cannot guaranty that Biological Content or other data will not be accessed by unauthorized persons overcoming such safeguards. You agree that Agilent does not operate or control the internet and acknowledge that viruses, worms or other undesirable data or software or unauthorized users such as hackers may attempt to obtain information from the Site. Agilent shall not be responsible for such activities and you are solely responsible for the security and integrity of your information and systems.

Non-Biological Content. Other than Biological Content and personally identifiable data covered by Agilent's privacy policy, Agilent will have no confidentiality obligations with respect to information that you transmit or post to this Site ("Communications"). Agilent and its designees will be free to copy, disclose, distribute, incorporate and otherwise use the Communications for reasonable business purposes.

Publications (written or oral). Agilent supports publication of your results in accordance with academic publication standards in the field of gene-based research in industry-recognized, peer-reviewed, scientific publications or presentations. You are permitted to publish probe sequences that you downloaded from use of this Site so long as you acknowledge your use of this Site in such publication in accordance with academic standards.

Publications (web-based) and Software Accessibility. You may post the results of your queries to, or downloads from, the Site in connection with posting the results of your research experiments on a non-commercial, not-for-profit Web site, or include them within any non-commercial, not-for-profit analysis software application (e.g. "freeware"), openly accessible to the public at no charge. With such publication, you must post an acknowledgment of your use of the Site and you may include a link to the Site. You also must require that users of any such software application(s) agree to terms and conditions that are no less restrictive than these Terms concerning the use of this Site. When publicly disclosing probe sequence(s) on any such Web site or software application, you agree to include the following disclaimer:

WARNING: While publicly available, some uses of the information contained here may be subject to third party intellectual property rights, policies and/or restrictions. Information possibly subject to such rights or restrictions includes but is not limited to: (i) naturally occurring DNA, RNA, and protein sequence(s), or partial sequence(s), (ii) full or partial oligonucleotide sequences and (iii) alien (i.e., non-natural) sequence(s). Despite the presence of such information in public sources, you may be prohibited from using or downloading this information for certain purposes, such as manufacturing or for populating commercial databases, websites, software or other commercial repositories. It is solely your responsibility to obtain any necessary rights, licenses and/or consents which may govern your intended use or re-use for the information you retrieve here.

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Indemnification. You agree to defend, indemnify and hold harmless Agilent, its officers, directors, shareholders, employees, successors, agents and assigns ("Agilent Indemnitees") from any and all claims, losses, damages, liabilities, costs and expenses incurred by Agilent Indemnitees (including reasonable attorneys fees) as a result of any claim, complaint, suit, proceeding, cause of action, judgment or adjudication related to or arising from your (i) use of the Site and the Microarray Product(s) as defined below; (ii) violation of any third party intellectual property rights, or (iii) breach of any of these Terms.

Copies; Updates. Printing a copy of these Terms and retaining a copy for your future reference is recommended. Agilent may revise these Terms at any time, and by your continued use of the Site, you agree to be bound by future revisions to these Terms. It is your responsibility to periodically visit the "eArray Terms of Use" to review and print the most current version.

TERMS COVERING PURCHASE OF AGILENT MICROARRAY PRODUCTS ORDERED THROUGH AGILENT'S eARRAY SITE

The following Terms and Conditions of Sale of Microarray Products ("Microarray Terms") govern the sale of Microarray Products by Agilent Technologies, Inc., and its subsidiaries ("Agilent") ordered by you ("Customer") through Agilent's eArray site.

1. DEFINITIONS

a) "Affiliate" means any Entity controlled by, controlling or under common control with a Party hereto, and will include without limitation any company more than fifty percent (50%) of whose voting stock or participating profit interest is owned or controlled, directly or indirectly, by a Party, and any company that owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock of a Party.

- b) "Applicable Trade Term" means the term defined in Incoterms 2000, agreed by the Parties and documented in the quotation.
- c) "Biological Content" shall have the meaning ascribed to it above.
- d) "Microarray Product(s)" means , Custom Microarray(s), Oligo Libraries, and other product (s) that are manufactured or configured to meet Customer requirements through the use of Agilent's eArray site, sold hereunder.
- e) "Custom Microarray(s)" means the In Situ Microarray(s) printed by Agilent to contain content that Customer requests through the use of Agilent's eArray site or otherwise.
- f) "Delivery" means the date when Agilent places the Microarray Product(s) at Customer's or Customer's Representative's disposal at the address specified in Customer's purchase order in accordance with the Applicable Trade Term.
- g) "In Situ Microarray(s)" means nucleic acid microarrays fabricated by Agilent in which oligonucleotides or oligonucleotide analogs are synthesized from individual nucleotides or nucleotide analogs on a substrate, to be used as probes in research or development activities.

2. ORDERS FOR MICROARRAY PRODUCTS

- a) These Microarray Terms provides the definitive and overriding terms under which Customer may determine when and in what configuration Customer will order from Agilent Microarray Products through use of Agilent's eArray site. Customer will order Microarray Products by signing and delivering a purchase order for the prices set out in an Agilent-furnished quotation or later amendments thereto. The terms and conditions of these Terms will prevail over the terms and conditions of any such purchase order.
- b) Title, risk of loss and damage to Microarray Products will pass to Customer at the designated address specified in Customer's purchase order in accordance with the Applicable Trade Term. If special packing or shipping is agreed upon, such additional charges will be billed separately to Customer.
- c) Customer's purchase order will specify Microarray Products to be purchased and delivered in the quantities, at the times and for the prices quoted.
- d) Unless otherwise indicated, prices include shipping and handling charges to the address specified in accordance with the Applicable Trade Term. Prices are valid for the period indicated on the quotation.
- e) All orders are subject to acceptance by Agilent. Cancellation of orders or rescheduling shipment for Microarray Products will be subject to Agilent's approval, which approval will not be unreasonably withheld. Product returns will also be subject to Agilent's approval and return/refurbishment charges.
- f) Agilent will make reasonable efforts to meet Customer's Delivery and shipment requirements. If Agilent is unable to meet Customer's Delivery and shipment requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.
- g) Payment is due thirty (30) days from Agilent's invoice date. Payment terms are subject to Agilent credit approval. Agilent may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant. Agilent may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other Agilent agreement if, after ten (10) days written notice, the failure has not been cured.

3. RESTRICTIONS

a) Customer has the right to use Microarray Products in accordance herewith for generating or deriving data and for analysis of the same for internal use only. Microarray Products provided herein are not approved for use in diagnostic procedures and Customer (i) acknowledges that the Microarray Products provided herein are not approved for use in diagnostic procedures and (ii) is responsible for obtaining any necessary regulatory approvals. Customer agrees that if it elects to use Microarray Products for a purpose that would subject Customer or any Microarray Product to the jurisdiction of regulatory laws or other applicable law, if any, Customer shall be solely responsible for obtaining any required approvals and otherwise ensuring that its use of the Microarray Product complies with such laws. Customer is not permitted to use any Microarray Products in any manner not expressly authorized by these Terms. Furthermore, Customer will NOT: (i) divert Microarray Products labeled Research Use Only products for purposes other than Research Use Only; rent, sell, assign, lease, share, sublicense or otherwise transfer the Microarray Products or any portion thereof; (ii) derive or attempt to derive the microarray designs or structure of all or any portion of the products by reverse engineering, disassembly, decompilation or any other means; (iii) remove (strip) the oligonucleotides from any In Situ Microarray; (iv) use In Situ Microarray(s) or any part thereof as template in any DNA or RNA in vitro or in vivo synthesis or assembly reaction including but not limited to a linear or exponential amplification reaction or gene assembly; (v) use In Situ Microarray(s) in more than one hybridization reaction; or (vi) file patent applications based on the Agilent products, excluding Biological Content, without the express written consent of Agilent. Nothing herein will be construed to restrict Customer's rights to use any results of or discoveries made in the performance of research conducted using the Microarray Products. Customers may only purchase Oligo Libraries through Agilent's Collaborative Technology Program (CTP) which may permit ordering from Agilent's eArray Program. Such eArray customers shall be governed both by these eArray Program Terms and Conditions and the CTP terms and conditions, however where the CTP terms of the CTP Agreement contradict the eArray Terms and Conditions, the CTP contradicting terms shall control.

b) Agilent owns, has rights to or controls all intellectual property rights, including copyrights, patents, trade secrets, trademarks, service marks, trade names and the like in the Microarray Products to the extent excluding Biological Content. Agilent agrees that Biological Content will be segregated and isolated from Agilent's own probe and microarray design efforts. Notwithstanding anything to the contrary, any oligonucleotide, nucleotide sequence or probe(s) that is manufactured/obtained/designed by Agilent shall not be considered by Customer as proprietary to it, or as Biological Content, so long as Agilent did not access Biological Content files.

4. **TAXES.** Prices exclude any legally applicable sales, value added or similar tax which will be payable by Customer in addition to the purchase price, if applicable. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

5. **WARRANTIES AND ACKNOWLEDGEMENTS**

a) Agilent hereby warrants to Customer the functionality of Microarray Products as articles of manufacture (workmanship) during the period expiring ninety (90) days after Delivery to Customer ("Warranty Period"). Warranty claims not made in a written form and subsequently received by Agilent within the applicable warranty period identified in the immediately preceding sentence will be deemed waived.

b) The warranties above are solely for the benefit of Customer, and Customer will have no authority to extend such warranties to any other Affiliate or Entity without Agilent's prior written consent.

c) If Agilent receives notice of defects or non-conformance during the Warranty Period, Agilent will replace the affected product. If Agilent is unable, within a 30 day period after receipt of notice of defects to replace the affected product, Customer will be entitled to a refund of the purchase price.

d) Notwithstanding Section 5a) above, the warranty provisions will not apply to, and Agilent will not be responsible for, any defects caused by or resulting from: (i) improper installation or use of the Microarray Products by Customer, its employees or agents, (ii) failure by Customer or its

employees or agents to observe any instructions of Agilent or its representatives, (iii) the negligent acts or omissions of Customer or its employees or agents, (iv) unauthorized alterations, adjustments or modifications by Customer, its employees or agents, to any of the Microarray Products, (v) failure or malfunctioning of software, hardware, or other equipment or facilities not delivered or licensed by Agilent, or (vi) abuse or misuse of the Microarray Products, or any damage thereto after the date of Delivery to Customer. All biological validation activities associated with use of Custom Microarrays are the responsibility of Customer.

e) Agilent's liability with respect to a breach of warranties will be limited to the express warranty and related remedy provisions set forth in and limited by Section 5. Except for any claims it may have under the express terms of Section 6a) above, Customer waives any and all claims that it may have against Agilent, its licensors or suppliers arising out of the performance or nonperformance of the Microarray Products. Furthermore, Agilent shall not be responsible for use of the Microarray Products for any failure by Customer to comply with applicable foreign, federal, state or local laws or regulations, or failure by Customer to use audit controls or back-up and security procedures. Agilent will not be responsible for any failure by Customer to use due care in the use and validation of the results produced by the Microarray Products.

f) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH AND LIMITED IN SECTION 5, AGILENT EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. LIABILITY AND ACTIONS

a) To the extent that limitation of liability is permitted by law, Agilent's liability to Customer is limited to US \$1,000,000, except that Agilent has no obligation to Customer for warranty claims beyond that which is provided in Section 5a) above. The limitation set forth in the foregoing sentence will not apply to damages for bodily injury or death.

b) The remedies in these Microarray Terms are Customer's sole and exclusive remedies. No action, regardless of form, arising out of any of the transactions contemplated by these Terms may be brought by Customer more than one (1) year after the date on which such cause of action first accrued.

c) IN NO EVENT WILL EITHER PARTY BE LIABLE WHATSOEVER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR CLAIMS FOR LOST PROFITS OR BUSINESS OPPORTUNITIES ATTRIBUTABLE TO AN INFRINGEMENT OR ALLEGED INFRINGEMENT.

7. MISCELLANEOUS

a) Agilent will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.

b) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.

d) Customer who exports, re-exports, transfers or imports Microarray Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable U.S. and other laws and regulations, and for obtaining required export and import authorizations. Agilent may suspend performance if Customer is in violation of applicable laws or regulations.

e) Disputes arising in connection with these Terms will be governed by the laws of the State of California.

f) Provisions herein which by their nature extend beyond the termination of any sale Microarray Products will remain in effect until fulfilled.

g) Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.

h) To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

i) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Microarray Terms.

j) Microarray Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Agilent shall not be liable for any damages resulting from such usage.

k) Agilent will store and use Customer's personal data in accordance with Agilent's Privacy Statement, available at [Agilent's Privacy Statement](#). Agilent will not sell, rent or lease Customer's personal data to others.

l) These Terms constitute the entire agreement between Agilent and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase of Microarray Products will constitute Customer's acceptance of the Microarray Terms, which may not be changed except by an amendment signed by an authorized representative of each party.

Date September 2010

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