



## SMRT Link Cloud Services Agreement

This SMRT Link Cloud Services Agreement (this "Agreement") is a binding contract between you ("Customer," "you," or "your") and Pacific Biosciences of California, Inc. ("PacBio," "we," or "us"). This Agreement governs your access to and use of the Cloud Services. The Agreement constitutes the complete, exclusive, and entire agreement between PacBio and Customer with respect to Customer's use of the Cloud Services. PacBio's offer to provide Cloud Services is expressly limited to the terms of this Agreement.

THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE "I ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING THE CLOUD SERVICES (THE "EFFECTIVE DATE"). BY CLICKING ON THE "I ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING THE CLOUD SERVICES YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU AND YOUR ORGANIZATION ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, PLEASE SELECT THE "I DECLINE" BUTTON BELOW AND DO NOT ACCESS OR USE THE CLOUD SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE CLOUD SERVICES.

### 1. DEFINITIONS

"**Authorized User**" means Customer and Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Cloud Services under the rights granted to Customer pursuant to this Agreement. "**Cloud Services**" means PacBio's SMRT Link Cloud Services, as made available by PacBio from time to time. "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Cloud Services. "**Documentation**" means the PacBio documentation accompanying the Cloud Services, including user manuals and guides and similar documentation in effect as of the date the Service is provided (including as published on a PacBio documentation website). "**Law**" means all applicable laws, regulations, and governmental policies. "**PacBio IP**" means the Cloud Services, the Documentation, and all intellectual property relating thereto. For the avoidance of doubt, PacBio IP includes Aggregated Statistics and any information, data, or other content derived from PacBio's monitoring of Customer's access to or use of the Cloud Services but does not include Customer Data. "**Third-Party Goods**" means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Cloud Services.

### 2. ACCESS AND USE

2.1 **Provision of Access.** Subject to, and contingent upon, Customer's compliance with all of the terms and conditions of this Agreement, PacBio hereby grants Customer a personal, revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Cloud Services during the Term solely for your internal business operations by Authorized Users in accordance with the in accordance with the Documentation.

2.2 **Documentation License.** Subject to, and contingent upon, Customer's compliance with all of the terms and conditions of this Agreement, PacBio hereby grants Customer a personal, non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Term solely for your internal business purposes in connection with use of the Cloud Services.

2.3 **Downloadable Software.** Use of the Cloud Services may require or include use of downloadable software. All software is licensed, not sold, and, subject to this Agreement, Customer is granted a non-exclusive, non-transferable, personal, non-sublicensable license to install and use the software, solely in accordance with the Documentation. This license will automatically terminate upon Customer's failure to comply with this Agreement. Software may be subject to additional terms and conditions, as contained in an end user license agreement or similar documentation. To the extent third-party code is included in software and any term or condition of a third-party license applicable to such third-party code directly conflicts with the terms and conditions set forth herein, the applicable term(s) or condition(s) of that third-party license will be applicable only to that third-party code and only to the extent necessary to resolve the conflict.

2.4 **Use Restrictions.** You shall not, and shall not permit any Authorized Users to, use the Cloud Services, any software component of the Cloud Services, or Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Cloud Services, any software component of the Cloud Services, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Cloud Services or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Cloud Services, in whole or in part; (iv) remove any proprietary notices from the Cloud Services or Documentation; or (v) use the Cloud Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

2.5 **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, PacBio may monitor Customer's use of the Cloud Services and collect and compile data and information related to Customer's use of the Cloud Services to be used by PacBio in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Cloud Services ("**Aggregated Statistics**"). As between PacBio and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by PacBio. You acknowledge that PacBio may compile Aggregated Statistics based on Customer Data input into the Cloud Services. You agree that PacBio may (i) make Aggregated Statistics publicly available in compliance with applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable Law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

2.6 **Reservation of Rights.** PacBio reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party, any intellectual property rights or other right, title, or interest in or to the PacBio IP. Customer is solely responsible for obtaining permission to use any third-party intellectual property rights that are necessary for Customer's use of the Cloud Services outside the express scope of the Documentation, including Customer's particular methods of preparing samples and libraries and using data generated using the Cloud Services.

2.7 **Suspension.** Notwithstanding anything to the contrary in this Agreement, PacBio may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Cloud Services if: (i) PacBio reasonably determines that (A) there is a threat or attack on any of the PacBio IP; (B) Customer's or any other Authorized User's use of the Cloud Services or PacBio IP disrupts or poses a security risk to the PacBio IP or to any other customer or vendor of PacBio; (C) Customer or any other Authorized User is using the Cloud Services or PacBio IP for fraudulent or illegal activities; (D) subject to applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) PacBio's provision of the Cloud Services to Customer or any other Authorized User is prohibited by applicable Law; (ii) any vendor of PacBio has suspended or terminated PacBio's access to or use of any third-party services or products required to enable Customer to access the Cloud Services (any such suspension described in subclause (i) or (ii)), a "**Service Suspension**". PacBio shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Cloud Services following any Service Suspension. PacBio shall use commercially reasonable efforts to resume providing access to the Cloud Services as soon as reasonably possible after the event giving rise to the Cloud Services Suspension is cured. PacBio will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

2.8 **Regulatory Compliance.** Customer and its Authorized Users must comply with Law. The Cloud Services are labeled "**FOR RESEARCH USE ONLY.**" The Cloud Services have not been approved, cleared, licensed, or otherwise approved by the U.S. Food and Drug Administration or any other regulatory entity in any jurisdiction for any specific intended use, whether clinical, diagnostic, or otherwise (collectively, "**Approvals**"). No claim, representation, or warranty is made or intended by PacBio that the Cloud Services are suitable or have been validated for clinical or diagnostic use. Customer is solely responsible for obtaining any required Approvals. The Cloud Services are not intended to receive or have access to protected health information (as that term is defined the Health Insurance Portability and Accountability Act) or other sensitive health information and are not designed to comply with HIPAA or other similar requirements. Customer is responsible for ensuring that the repositories to which it directs the Cloud Services to store data meet the Customer's needs and regulatory requirements.

### 4. WARRANTY

4.1 **Limited Warranty.** Subject to this Agreement, PacBio warrants, only to Customer, that it will render the Cloud Services in a professional and workmanlike manner during the Term. As PacBio's sole responsibility and Customer's exclusive remedy in the event of any material failure to meet such standard, PacBio will make a commercially reasonable effort, commensurate with the severity of the nonconformity, to correct any substantial nonconformity. PacBio does not warrant that any particular nonconformity will be corrected, or a workaround provided, within any particular time frame.

4.2 **Exceptions.** The foregoing warranties will not apply to and will be void to the extent that the Cloud Services: (a) are subject to improper or abnormal use, abuse, neglect, negligence, or accident, including failure to properly perform routine maintenance; (b) are used in an environment other than that intended or recommended by PacBio; (c) are used in a manner contrary to this Agreement or the Documentation. These warranties are not transferable and any attempt to do so will be void. PacBio neither assumes, nor authorizes any other person to assume for it, any other obligations or liabilities in connection with the Cloud Services. PacBio does not make any warranties with respect to Third-Party Goods.

**THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH IN SECTION 4 ABOVE ARE IN LIEU OF, AND PACBIO HEREBY DISCLAIMS, ALL OTHER REMEDIES AND WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF THE CLOUD SERVICES (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF**



INACCURATE, INVALID, OR INCOMPLETE RESULTS), IN EACH CASE HOWEVER ARISING, INCLUDING WITHOUT LIMITATION FROM A COURSE OF PERFORMANCE, DEALING, USAGE OF TRADE, OR OTHERWISE.

5. **LIMITATION OF LIABILITY.** PACBIO'S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND CUSTOMER'S USE OF CLOUD SERVICES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE) WILL IN ALL CASES BE LIMITED TO \$100,000. IN NO EVENT WILL PACBIO BE LIABLE FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, WARRANTY, PURSUANT TO ANY STATUTE, OR ON ANY OTHER BASIS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF THE CLOUD SERVICES WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT PACBIO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, OR DOWNTIME, OR FOR LOSS OF REVENUE OR PROFITS. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### 6. INDEMNITY

6.1 **Indemnification of Customer.** Subject to the remainder of this Section and Section 6.2 below, PacBio will defend Customer against any third-party claim, proceeding, or action ("**Claim**") to the extent the Claim alleges that the Cloud Services, as delivered to Customer by PacBio, when used in accordance with this Agreement and the Documentation, directly infringes any valid and enforceable intellectual property right. PacBio will pay all damages awarded, and settlements approved in writing by an authorized representative of PacBio, in connection therewith, provided that (a) Customer provides to PacBio written notice of the Claim within thirty (30) days of receipt by Customer of such Claim, or such earlier time as required to avoid prejudice to PacBio or its ability to defend such Claim, (b) Customer allows PacBio to control the defense and settlement of the Claim, and (c) Customer provides to PacBio reasonable assistance in connection therewith, at no charge to PacBio. Customer may employ counsel at its own expense to assist it with respect to any such Claim, provided that this will not obligate PacBio or its counsel to consult with or advise such Customer counsel, nor affect PacBio's control of the defense and settlement of the Claim. However, PacBio will have no liability or obligation for Claims resulting from (a) modification of Cloud Services other than by PacBio or its authorized service provider, (b) combination of the Cloud Services with any item or method not supplied or specifically recommended in writing by PacBio, or use of Cloud Services outside the express scope of the Documentation, including Customer's particular methods of preparing samples and libraries and analyzing and using data, (c) use of the Cloud Services other than in accordance with the Documentation and this Agreement, (d) use of the Cloud Services for clinical, diagnostic, other non-research uses, or (e) compliance with Customer's instructions or specifications to the extent such instructions or specifications materially differ from the Cloud Services that PacBio makes generally available to its customers (collectively, "**Excluded Causes**").

6.2 **Remedy.** In the event there is a Claim, or PacBio believes a Claim is likely, alleging intellectual property infringement with respect to the Cloud Services, PacBio will be entitled, without obligation to do so, at its option and expense, to (a) modify the Cloud Services so that they are no longer infringing, (b) obtain a license with respect to the applicable intellectual property rights, or (c) cease providing access to the Cloud Services. PacBio will have no liability or obligation with respect to any alleged infringement occurring after the date PacBio makes any such remedy available to Customer. Notwithstanding anything to the contrary, Section 6.1 and this Section 6.2 state PacBio's sole liability and obligation, and Customer's exclusive remedy, arising out of any actual or alleged intellectual property infringement of any kind, or any actual or alleged breach of any representation or warranty (statutory, express or implied) regarding noninfringement, anywhere in the world.

6.3 **Indemnification of PacBio.** Customer will defend PacBio and its affiliates against any Claim to the extent the Claim arises from or in connection with any Excluded Cause. Customer will pay all damages awarded, and settlements approved by Customer, in connection therewith, provided that (a) PacBio provides to Customer written notice of the Claim within thirty (30) days of receipt by PacBio of such Claim, or such earlier time as required to avoid prejudice to Customer or its ability to defend such Claim, (b) PacBio allows Customer to control the defense and settlement of the Claim, and (c) PacBio provides to Customer reasonable assistance in connection therewith, at no charge to Customer. PacBio may employ counsel at its own expense to assist it with respect to any such Claim, provided that this will not obligate Customer or its counsel to consult with or advise such PacBio counsel, nor affect Customer's control of the defense and settlement of the Claim. If Customer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, this section will apply only to the maximum extent permitted by Law. This section will not apply if Customer is an agency of the U.S. Government; in such case, Customer's liability will be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*

7. **TERM AND TERMINATION.** The term of this Agreement begins on the Effective Date and continues until terminated. Either Party may terminate this Agreement and Customer's access to the Cloud Services for any reason by giving 30 days advance written notice of termination to the other Party. Either Party may terminate this Agreement and Customer's access to the Cloud Services immediately by giving written notice of termination to Customer upon the occurrence of any of the following events: (a) the other Party defaults in the performance of any material requirement or obligation of these terms or any other agreement between PacBio and Customer; (b) the other Party becomes the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay its debts when due, a receiver is appointed for a substantial part of its assets, or an action is taken toward the liquidation or winding up of its business. Upon any termination of this Agreement, Customer shall immediately discontinue use of the Cloud Services and the PacBio IP.

#### 8. MISCELLANEOUS

8.1 **Remedies for Breach.** In addition to any remedies specified elsewhere in this Agreement and any remedies available to PacBio under law or in equity, in the event Customer breaches this Agreement, PacBio may: (a) cease performance under this Agreement or other agreements, including without limitation, cease further shipments of products, or (b) suspend or terminate the rights granted to Customer pursuant to Section 2.

8.2 **Feedback.** Customer grants to PacBio a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use and commercialize in any manner suggestions or feedback provided by Customer to PacBio (or its authorized distributor) related to the Cloud Services.

8.3 **Governing Law and Venue.** This Agreement and any disputes arising out of or relating to this Agreement (including its formation or termination) or the Cloud Services ("**Disputes**") will be governed by and interpreted in accordance with the laws of the State of California, U.S.A. (provided, however, that if Customer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, the law of such state will govern), excluding in all cases choice of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. If Customer is located within the U.S., any Disputes may be brought in the state courts located in Santa Clara County, California or the U.S. District Court for the Northern District of California, and each party consents to the personal and non-exclusive jurisdiction and venue of these courts. If Customer is located outside the U.S., any Disputes will be resolved by final and binding arbitration under the rules and auspices of the International Centre for Dispute Resolution in Santa Clara County, California, in English language proceedings whereby either party can request a written opinion from the arbitrator(s) appointed in accordance with the rules, which will award legal fees (including reasonable attorneys' fees) to the party winning the proceedings, provided however, that either party may seek injunctive relief (including preliminary and permanent injunctive relief) before any court of competent jurisdiction. This Agreement will apply to the maximum extent permissible under Law. Nothing in this Agreement excludes, restricts, or modifies any right, remedy, guarantee, warranty, or other term or condition, to any extent not permissible under Law.

8.4 **U.S. Government.** If Customer is an agency, employee, or representative of the U.S. Government, Customer agrees that the Cloud Services are "commercial items" as defined in the U.S. Federal Acquisition Regulations ("**FAR**"), and the Software is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. US Government Rights. Accordingly, if you are an agency of the US Government or any contractor thereof, you receive only those rights with respect to the Cloud Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.

8.5 **General.** The headings in this Agreement are for reference only and will not affect the meaning of this Agreement. This Agreement embodies the final and complete understanding of the parties with respect to the subject matter hereof, superseding all prior oral or written communications between them, and neither party will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. Each party acknowledges that it has not entered into this Agreement in reliance on any statement or representation not expressly set out herein. No oral explanation or oral information by either party hereto will alter the meaning of this Agreement. If any section, paragraph, provision or clause or any portion thereof in this Agreement is found or held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement will be valid and enforceable and the parties will negotiate, in good faith, a substitute, valid, and enforceable provision which most nearly effects the parties' intent in entering into this Agreement. This Agreement has been made and is made solely for the benefit of PacBio and Customer and their respective permitted successors and assigns (and in the case of PacBio, its affiliates). Any actions or rights that may be performed or exercised by PacBio may be performed or exercised by PacBio itself or by any of its affiliates, or its or their subcontractors or agents. Nothing in this Agreement is intended to (a) confer any rights or remedies on any persons or entity other than the parties to this Agreement and their respective permitted successors and assigns (and in the case of PacBio, its affiliates); or (b) relieve or discharge the obligation or liability of any third party. Neither party will be liable to the other party for any failure or delay in the performance of any of its obligations under this Agreement for the period and to the extent such failure or delay is caused by civil unrest, threat of or actual acts of terrorism or war, embargoes, governmental actions, acts of God, earthquakes, floods, storms, fires, supplier delay, accidents, explosions, epidemics, quarantine, or other contingencies beyond the reasonable control of the applicable party. The affected party will notify the other party as soon as practicable of any anticipated delay due to such event.

8.6 **Export Regulation.** The Cloud Services may utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer may not, directly or indirectly, export, re-export, or release the Cloud Services or the software or technology included in the Cloud Services to, or make the Cloud Services or the software or technology included in the Cloud Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. Customer must comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise using or making the Cloud Services or the software or technology included in the Cloud Services available outside the US.



8.7 Notices and Modification. PacBio may provide notices under this Agreement via email or within the Cloud Services. PacBio may modify this Agreement from time to time, and modified terms will become effective on posting. You will be notified of modifications through notifications, posts on our websites, or direct email communication from us. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Cloud Services after the effective date of the modifications will be deemed acceptance of the modified terms.

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