



VIZGEN, INC.

PURCHASE AND LICENSE TERMS AND CONDITIONS

These Purchase and License Terms and Conditions (these “**Terms**”) set forth the terms and conditions for the sale and/or license by Vizgen, Inc. (“**Vizgen**”) of Products and Services to a Customer.

1. **DEFINITIONS**

1.1 “**Consumables**” means the reagents and other consumable materials identified in the applicable Quote or Order.

1.2 “**Customer**” means the person or entity identified in a Quote or Order as purchasing or licensing Products or Services.

1.3 “**Equipment**” means the Vizgen instruments and other hardware identified in the applicable Quote or Order.

1.4 “**Equipment Warranty Period**” has the meaning set forth in Section 8.1.

1.5 “**EULA**” has the meaning set forth in Section 7.

1.6 “**Extended Service Plan**” means the Equipment post-warranty preventative maintenance and repair service identified in the applicable Quote or Order.

1.7 “**Order**” means any Customer document presented to Vizgen for the purchase or license, as applicable, of any Products or Services, including, but not limited to, a purchase order, confirming document or other document or form used by Customer.

1.8 “**Products**” means, collectively, the Consumables, Equipment, Software, and/or Extended Service Plan identified in the applicable Quote or Order.

1.9 “**Quote**” a Vizgen document, attached to or referencing these Terms, presented to Customer that indicates the price, quantity, and item number or description of any Products, Services, Software, or Extended Service Plan.

1.10 “**Services**” means the installation, training, technical support, repair, recertification, qualification and other services identified in the applicable Quote or Order. For purposes of the Extended Service Plan, Services means the provision of preventative maintenance, replacement parts, labor and travel for onsite repairs, application support via telephone and email, Equipment Software updates. The exact Services included in Customer’s Extended Service Plan will be detailed in the applicable Quote or Order.

1.11 “**Software**” means the executable code version of Vizgen’s proprietary software products and third party software licensed to Vizgen identified in the applicable Quote or Order.

1.12 “**Taxes**” has the meaning set forth in Section 5.

1.13 “**Unusual Circumstance**” means, with regard to a Product, any (a) abuse, misuse, accident, alteration (other than by Vizgen) or neglect, (b) unauthorized maintenance, repair or installation, (c) movement or relocation of such Product without Vizgen’s prior written consent and participation, or (d) exposure to any condition or operating environment beyond the recommended physical, power or functional constraints.

2. **ORDER PLACEMENT.** In ordering Products or Services, Customer may issue to Vizgen one or more Orders. All Orders must reference the applicable Quote and these Terms and provide sufficient detail to allow Vizgen to fulfill the applicable Order. These Terms exclusively govern the purchase or license, as applicable, of all Products and Services identified in the applicable Order, and Vizgen hereby objects to and expressly rejects any conflicting or additional terms and conditions in Customer’s Order. All Orders are subject to acceptance by Vizgen and will be binding on Vizgen only upon such acceptance or upon Vizgen’s fulfillment of the Order, whichever occurs first. Upon acceptance by Vizgen, an Order cannot be cancelled or modified without Vizgen’s prior written consent in each instance. Fulfillment of an Order does not constitute acceptance of any of Customer’s conflicting or additional terms

and conditions and does not serve to modify these Terms.

3. **DELIVERY AND INSTALLATION.** Delivery of Products to destinations within the United States is US FOB shipping point, and for international shipments is DDP (Incoterms 2020), whereupon title in the Equipment and Consumables and risk of loss of the Products will pass to Customer. Customer will be responsible for all freight, handling and insurance charges, which will be itemized separately in Vizgen's invoice. Vizgen (or its authorized service provider) will install the Products at the Customer location referenced in the applicable Order. Customer will, at its expense, prepare the location for installation (including ensuring electrical power is available) in accordance with Vizgen's specifications prior to delivery and will allow Vizgen (or its authorized service provider) access to such location and provide Vizgen with such other facilities necessary for installation. These installation services are available during normal business hours and will be scheduled at a mutually acceptable time. If the installation site has not been prepared in accordance with Vizgen's specifications, thus requiring Vizgen (or its authorized service provider) to have to return at a later date to re-perform the installation, then Vizgen reserves the right to charge Customer its reasonable incurred expenses to re-perform such installation. Vizgen will use commercially reasonable efforts to meet the dates scheduled for delivery and installation of Products, but such dates are estimates only and Vizgen will not be deemed in breach of these Terms solely as a result of failure to meet such dates. Vizgen retains the right in its sole discretion to allocate available supply of Products among its customers.

4. **PRICES AND PAYMENT.** Customer will pay for Products and Services net thirty (30) days from the date of Vizgen's invoice. Past-due amounts will be subject to a late payment charge of the lesser of one and one-half percent (1.5%) per month or the highest interest rate allowed by applicable law. Customer hereby grants Vizgen a purchase money security interest in the Equipment and Consumables, and in any substitutions thereto or proceeds thereof, to secure payment in full of the acquisition price. Customer will keep all pricing or other non-public information provided by Vizgen to Customer confidential and will not disclose it to any third party.

5. **TAXES.** The prices quoted by Vizgen do not include any sales, use, value-added, registration, excise, withholding and similar taxes, however designated, levied or based on amounts payable to Vizgen, exclusive of taxes based on Vizgen's net income (collectively, "Taxes") and Customer will pay all such Taxes. If Customer claims an exemption from Taxes, Customer must provide written proof, in a form reasonably acceptable to Vizgen, supporting such exemption.

6. **USE OF PRODUCTS.**

6.1 **Research Use Only.** Customer acknowledges that, notwithstanding the sale of the Equipment and the Consumables to Customer, (a) the Products and Services are intended for Research Use Only, and not for use in diagnostic or treatment procedures or for any other use, (b) Products may be used for research purposes only, and (c) Products may not be (i) resold, licensed, traded or bartered, or (ii) used to sell or provide services or support in connection with Products for diagnostic purposes, without Vizgen's prior written consent in each instance. No equipment, software or materials provided, used or to be used pursuant to these Terms has been reviewed or approved by the United States Food and Drug Administration. Further, and without limiting the generality of the foregoing, if Customer is located outside of the United States, Customer acknowledges that Vizgen makes no representation, warranty or covenant that the offering, sale or use of the Products has been approved or otherwise cleared for use by Customer's jurisdiction's governmental authorities. The Products do not constitute and will not result in data or a test or a kit for the purpose of diagnosing, treating or preventing disease or medical condition and any outcome of use of the Products is explicitly not to be used as or in connection with medical advice regardless of the source.

6.2 **Other Limitations.** Notwithstanding the sale of the Equipment and the Consumables to Customer, (a) Customer's use of the Consumables is limited (i) to use with the Equipment and Software, and (ii) by any license terms that accompany such Consumables, (b) Customer's use of the Equipment and Software is limited (i) to use with the Consumables, and (ii) by license terms that accompany the Software, and (c) Customer shall not (i) modify, reverse-engineer, disassemble or design around the Equipment or the Consumables, or (ii) alter, remove, obscure, erase, deface, or hide from view any copyright, trademark, or other proprietary rights notice contained in or on, or incorporated into, the Equipment or the Consumables.

7. **SOFTWARE.** The Software is licensed, and not sold, to Customer in accordance with the terms of the Vizgen End-User License Agreement (the "EULA") presented to Customer when it first uses such Software. The terms of each such EULA are incorporated into these Terms by this reference but, in the event of any conflict between these Terms

and any EULA, the terms of the applicable EULA will control with regard to the applicable Software.

8. **WARRANTIES; DISCLAIMERS**

8.1 **Equipment**. For a period of one (1) year following installation of a piece of Equipment or until the fifteen (15) month anniversary of delivery of such Equipment in accordance with Section 3, whichever is earlier (the "Equipment Warranty Period"), Vizgen warrants that such Equipment will conform in all material respects with the published specifications for such Equipment when used (a) in accordance with Vizgen's recommendations and instructions, including such recommendations and instruction regarding maintenance, and (b) for research purposes only. Customer's sole and exclusive remedy and the entire liability of Vizgen will be the repair or replacement, at Vizgen's option, of any non-conforming Equipment or part thereof, at no additional charge. Vizgen (or its authorized service provider) may satisfy these obligations through preventative or remedial maintenance, the installation of field engineering changes, or otherwise, and Vizgen's obligation to provide such repair or replacement is conditioned on Customer allowing Vizgen (or its authorized service provider) access to the affected Equipment and providing Vizgen with such other facilities necessary for such repair or replacement. The unexpired term of the Equipment Warranty Period applicable to the original Equipment will apply to the repaired or replaced Equipment or parts; except that, if such remaining Equipment Warranty Period is less than sixty (60) days, the warranty period for any spare parts provided by Vizgen will be sixty (60) days. Any Equipment warranty claim must be reported to Vizgen within seventy-two (72) hours of discovery with an adequate description of the problem encountered and contact details.

8.2 **Consumables**. From delivery of a Consumable in accordance with Section 3 until the later of (a) three (3) months following such delivery, or (b) the expiration date for the applicable Consumable as stated on the Consumable container, Vizgen warrants that such Consumables will conform in all material respects with the published specifications for such Consumables when used (a) in accordance with Vizgen's recommendations and instructions, including such recommendations and instruction regarding storage, (b) solely in conjunction with the Equipment, and (c) for research purposes only as provided in **Section 6**. Customer's sole and exclusive remedy and the entire liability of Vizgen will be the replacement of any non-conforming Consumables at no additional charge.

8.3 **Software**: The Software is subject to the warranties set forth in the applicable EULA.

8.4 **Services**. Vizgen's performance of Services will be conducted in a workmanlike manner, using generally accepted industry standards. Customer's sole and exclusive remedy and the entire liability of Vizgen will be the re-performance of any Services not performed in such manner. Any warranty claim must be made within thirty (30) days after the completion of the applicable Services. Replacement parts are warranted for a period of ninety (90) days from installation.

8.5 **Remote Access**. As a condition of Vizgen's providing the warranties, Customer will provide Vizgen with access via the Internet to Customer's installed Products to allow Vizgen to monitor, update, trouble-shoot and/or repair such Products remotely and to permit the Products to automatically provide information regarding the performance of such Products to Vizgen. Vizgen's requirements for such connection will be provided prior to installation. The information collected by Vizgen will only include information relating to the performance of the Products and will not include any experimental results arising from Customer's use of the Products. Vizgen may (a) use such information and such access to provide support or repair for such Products as required of Vizgen under these Terms, and (b) aggregate such information with similar information obtained from other Vizgen customers and use such aggregated information internally at Vizgen to monitor the performance of and improve the Products or to develop new products.

8.6 **Restrictions**. The warranties run only to the original purchaser or licensor, as applicable, of the Products and are not transferable, and (b) do not apply and will be void if (i) the applicable Product has been exposed to an Unusual Circumstance, (ii) the problems are due to third party hardware or software, or (iii) Vizgen is not granted access to the Product, together with use of appropriate facilities, in accordance with this Section. Further, the warranty does not apply to any third-party products, but (A) Vizgen will use commercially reasonable efforts to extend any warranties provided by the manufacturer of such Equipment to Customer, (B) Customer may exercise any rights it may have under any such third-party warranty with the manufacturer of the applicable products, and (C) Vizgen will have no liability to Customer under any such third-party warranty.

8.7 **DISCLAIMER OF WARRANTIES**. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, (a) ALL PRODUCTS

AND SERVICES ARE PROVIDED “AS-IS”, (b) VIZGEN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, CONDITIONS AND REPRESENTATIONS, RELATING TO THE PRODUCTS AND SERVICES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, AND (C) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VIZGEN DOES NOT WARRANT THAT ANY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THESE TERMS WILL: (i) MEET CUSTOMER’S REQUIREMENTS, (ii) BE ACCURATE OR ERROR FREE, (iii) OPERATE IN A MANNER THAT IS UNINTERRUPTED OR ERROR FREE, OR (iv) THAT ANY ERRORS CAN BE CORRECTED.

9. **DOCUMENTATION.** Vizgen will provide Customer with documentation (online or in such other format as Vizgen determines) for the Products, for Customer’s internal use in connection with the Products. Customer will keep documentation with the Products and not allow any unauthorized access to, copying of, or the creation of derivative works from, the documentation.

10. **PATENT AND COPYRIGHT INFRINGEMENT**

10.1 **Indemnification.** Subject to the limitations set forth in this Section, Vizgen will defend, or at its option, settle any claim or action against Customer and hold Customer harmless from any and all liabilities, damages, expenses, settlements and costs (including reasonable attorneys’ fees) finally awarded against Customer, arising from or occurring as a result of any third party claim or action alleging that the Products infringe any United States patent or copyright.

(a) **Procedure.** Vizgen’s obligation to indemnify Customer under this Section will be subject to Customer: promptly notifying Vizgen in writing within ten (10) days of first learning of the claim or action giving rise to the indemnity; providing Vizgen with sole and exclusive control over the defense and/or settlement of such action or claim; and providing Vizgen with proper and full information and reasonable assistance to defend and/or settle any such claim or action. Vizgen will not be responsible for indemnifying Customer with respect to costs incurred, or amounts paid in any settlement, unless Vizgen approved such costs or settlements in advance.

10.2 **Exceptions.** Vizgen will have no liability under this Section for any claim or action where such claim or action results from (a) combination, operation or use of the Products with other hardware or software not provided by Vizgen; (b) modification of the Products unless such modification was made or authorized by Vizgen; (c) compliance with Customer’s designs, specifications or instructions; or (d) Customer’s use of the Products in any manner inconsistent with these Terms or any document provided by Vizgen. Notwithstanding anything to the contrary, Vizgen will not be liable for any claim based on Customer’s use of the Products after Vizgen has informed Customer of modifications of the Products required to avoid such claims and offered to implement those modifications if such claim would have been avoided by implementation of Vizgen’s suggestions.

10.2 **Infringement Remedies.** If the Products become or are likely to become the subject of an infringement claim or action, Vizgen may at its sole option: (a) procure, at no cost to Customer, the right to continue using the Products; (b) replace or modify the Products to render them non-infringing; or (iii) if, in Vizgen’s reasonable opinion, neither (a) nor (b) of this Section are commercially feasible, immediately terminate Vizgen’s obligations (and Customer’s rights) under these Terms with regard to such Products, and, if Customer returns such Products to Vizgen, refund to Customer the price originally paid by Customer to Vizgen for such Products as depreciated or amortized by an equal annual amount over five (5) years.

10.3 **Exclusive Remedy.** THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF VIZGEN AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS OR COPYRIGHTS, BY THE PRODUCTS.

11. **LIMITATION OF LIABILITY**

11.1 **No Consequential Damages.** EXCEPT FOR LIABILITY ARISING FROM CUSTOMER’S FAILURE TO KEEP ANY PRICING OR OTHER NON-PUBLIC VIZGEN INFORMATION CONFIDENTIAL OR CUSTOMER’S BREACH OF SECTION 6 OR ANY EULA, IN NO EVENT WILL EITHER PARTY OR ITS SUPPLIERS OR CONTRACTORS BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR

OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 **Limitation.** WITH THE EXCEPTION OF AN INDEMNIFICATION CLAIM BROUGHT PURSUANT TO **SECTION 10**, OR DAMAGES FOR DEATH OR BODILY INJURY TO THE EXTENT SOLELY CAUSED BY VIZGEN'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF VIZGEN AND ITS SUPPLIERS AND CONTRACTORS ARISING OUT OF OR RELATED TO THESE TERMS WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO VIZGEN FOR THE PRODUCTS AND SERVICES PURCHASED OR LICENSED UNDER THE APPLICABLE ORDER GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

11.3 **Application.** The limitations set forth in this **Section 11** will apply notwithstanding any failure of essential purpose of any limited remedy. Any claim arising out of or in connection with these Terms may not be commenced more than one (1) year after the occurrence of the events giving rise to such claim.

12. **TERMINATION**

12.1 **Termination By Vizgen.** Vizgen will have the right to terminate these Terms, including Customer's licenses to the Software granted herein, without liability, if Customer (a) fails to cure a payment default under these Terms within seven (7) days after Vizgen's default notice to Customer, (b) fails to comply with any other term or condition of these Terms within thirty (30) days of receiving a notice from Vizgen to cure such failure, or (c) becomes insolvent or takes any action to wind-up, liquidate or otherwise cease doing business.

12.2 **Effect of Termination.** Upon termination of these Terms (a) the license granted under the EULA will automatically terminate and Customer will immediately cease to use all copies of the Software and either destroy or return all copies thereof, at Vizgen's option, and (b) Vizgen's obligations under any Extended Service Plan will automatically lapse.

12.3 **Survival.** The provisions of **Sections 1, 4** (with respect to any payment obligations that accrued prior to the effective date of termination), **5, 6, 7, 8, 9, 10, 11, 12,** and **13** will survive any termination of these Terms.

13. **GENERAL PROVISIONS**

13.1 **Independent Contractors.** The relationship of Vizgen to Customer is that of independent contractors and neither party has any authority to obligate or bind the other party by contract or otherwise.

13.2 **Governing Law.** These Terms will be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to any conflict of laws principles that would result in the application of the laws of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods will not apply.

13.3 **Entire Agreement.** These Terms, including the applicable Quote and the documents incorporated by reference into these Terms, and the applicable Order constitute the entire agreement of the parties with respect to their subject matter, supersede all prior agreements and communications, written or oral, between the parties with respect to such subject matter and represent the complete integration of the parties' agreement. Notwithstanding the foregoing, if an Order with conflicting or additional terms or conditions is determined by a court of competent jurisdiction to be part of the agreement between the parties with respect to their subject matter, then the parties' agreement shall consist of the following documents in accordance with the following order of priority dictating any conflict among them: (1) the applicable Quote, (2) these Terms, (3) those terms and conditions of the applicable Order that are consistent with the Quote and these Terms, and (4) any other conflicting or additional terms and conditions contained in or incorporated by reference into the Order. If any provision of these Terms is held to be invalid, illegal or unenforceable, the remaining provisions will not be affected or impaired. These Terms may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy accruing to Vizgen upon any breach or default of Customer will impair that right or remedy, or be construed to be a waiver of any breach or default.

13.4 **Assignment.** Neither party may assign these Terms without the prior written consent of the other party and any such attempted assignment will be void; provided, however, that Vizgen may assign its rights and obligations under these Terms to an entity that acquires all or substantially all of its business or assets relating to these Terms whether by sale, merger, operation of law or otherwise. Subject to the foregoing, these Terms will be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

13.5 **Notices.** Any notice under these Terms must be in writing and is deemed given upon receipt if mailed first class,

postage prepaid or delivered by overnight express or other delivery service, to the receiving party at the address listed in the applicable Order.

13.6 **Force Majeure**. Except for the obligation to pay monies due and owing, neither party will be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics, or delays of common carriers. The obligations and rights of the excused party will be extended on a day to day basis for the time period equal to the period of the excusable delay.

13.7 **Export Control**. Customer hereby acknowledges that the Products supplied by Vizgen hereunder are subject to export controls under the laws and regulations of the United States. Customer will comply with such laws and regulations and agrees not to export, re-export or transfer Products without first obtaining all required U.S. Government authorizations or licenses. Vizgen and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents.

13.8 **No Strict Construction; Headings; Interpretation**. These Terms will not be strictly construed against either party. The Section headings are included solely for convenience of reference and will not control or affect the meaning or interpretation of any of the provisions of these Terms. The words "include," "includes" and "including" when used in these Terms are deemed to be followed by the phrase "but not limited to".