

## ATTACHMENT 1 TO BELL BIOSYSTEMS, INC. QUOTATION

### Bell Biosystems, Inc. TERMS AND CONDITIONS

**1. Agreement.** The sale by Bell Biosystems, Inc. (“**Bell Bio**”) of the Bell Biosystems, Inc. products (“**Goods**”) and services (“**Services**”) specified in the Bell Bio quotation to which these Terms and Conditions are attached (“**Quotation**”) to the customer named in the Quotation (“**Customer**”) is governed exclusively by the following (collectively, the “**Agreement**”):

(a) the Quotation;

(b) these Bell Biosystems, Inc. Terms and Conditions (“**Terms and Conditions**”); and

(c) if the Goods covered by the Quotation include Bell Bio's research use only (RUO) reagents for use in the manufacture of Customer's RUO products (“**Bell Bio OEM Reagents**”), the Authorized Customer Product Addendum attached to the Quotation as Attachment 2 (the “**Addendum**”).

The Quotation constitutes an offer and is expressly limited to the terms and conditions of the Agreement. By accepting delivery of any of the Goods or performance of any of the Services specified in the Quotation, Customer accepts the terms and conditions of the Agreement. The Agreement constitutes the entire understanding of the parties pertaining to the sale by Bell Bio to Customer of Goods and/or the performance by Bell Bio of Services, and any prior understandings, agreements and representations, oral or written, are superseded by the Agreement. Any terms or conditions in any purchase order, acknowledgment, confirmation or other document provided by Customer to Bell Bio that are different from or in addition to those set forth in the Agreement are expressly objected to and rejected by Bell Bio and shall be of no effect, even if signed and returned, and even if Bell Bio delivers the Goods or performs the Services ordered by Customer.

**2. Prices.** Except as otherwise expressly stated in the Quotation, all prices are subject to change without prior notice.

**3. Purchase Orders.** All purchase orders are non-cancelable. Purchase orders must be submitted in accordance with Bell Bio's then-current ordering procedures and must include all information required by Bell Bio. The current ordering procedures and order information requirements may be obtained from Bell Bio. Bell Bio reserves the right to reject any purchase order submitted by Customer for any reason. Bell Bio will be deemed to have accepted a purchase order only upon Bell Bio's delivery of an order acknowledgement or confirmation to Customer or, in the absence of such acknowledgment or confirmation, upon Bell Bio's delivery to Customer of the Goods and/or the results of performance of the Services (as applicable) specified in such purchase order. Any terms or conditions in any purchase order, invoice, acknowledgment, confirmation or other document provided by either party to the other party that are different from or in addition to those set forth in the Agreement are expressly objected to and rejected by Bell Bio and shall be of no effect, even if signed and returned, and even if Bell Bio delivers the Goods or performs the Services ordered by Customer.

**4. Payment.** Bell Bio shall issue written invoices to the Customer for the price of Goods and Services ordered by the Customer. Prices quoted by Bell Bio for Goods and Services do not include sales, excise, use or other taxes, value-added or similar taxes, customs duties, imposts or other assessments of any kind, and Customer shall bear and be solely responsible for payment of any and all such taxes, duties or other assessments. If Bell Bio has the legal obligation to collect any such taxes, duties or other assessments, the appropriate amount shall be added to Bell Bio's invoice to the Customer and paid by the Customer. If, for whatever reason, Bell Bio does not collect any such amount from the Customer and Bell Bio becomes liable to pay any such taxes, duties or other assessments or any penalties related thereto, Customer shall promptly pay such amounts directly to the appropriate governmental authority or, if Bell Bio is required to pay or has paid such amounts, shall pay such amounts to Bell Bio. All invoiced amounts for Goods or Services hereunder shall be paid net 30 days from the date of invoice or earlier if so noted in the Quotation. All payments due hereunder shall be made in U.S. dollars. Any check or remittance received from or for the account of Customer may be accepted and applied by Bell Bio against any indebtedness owing by Customer, without prejudice to, or the discharge of, the remainder of any such indebtedness, and regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying any check or remittance. Bell Bio reserves the right to assess a late fee equal to 2% per month or, if lower, the maximum amount permitted by applicable law, on all amounts not paid when due, calculated on a daily basis beginning with the first day following the invoice due date, without prejudice to any other remedies that may be available to Bell Bio. Shipment shall at all times be subject to the approval of Bell Bio's credit department. Bell Bio may at any time and in its sole discretion limit or cancel the credit of Customer as to time and amount, and, as a consequence, may demand payment in cash before delivery of any unfilled portion of any outstanding purchase order and may demand assurance of Customer's due performance. In the event of bankruptcy or insolvency of Customer or in the event any proceeding is brought by or against Customer under any bankruptcy or insolvency laws or their equivalent, Bell Bio may cancel any order then outstanding without liability to Customer.

**5. Shipment.**

(a) Bell Bio shall package and ship Goods in accordance with Bell Bio's SOPs and any applicable specifications for such Goods to the delivery address specified in the applicable purchase order. Unless the Customer specifies a particular carrier in its shipping instructions under a purchase order, Bell Bio shall ship Goods using a carrier designated by Bell Bio. All shipments shall be FCA (Incoterms 2010) Bell Bio's facility. Customer shall be responsible for insuring all shipments of Goods upon Bell Bio's delivery thereof to the carrier at Bell Bio's facility. All shipments will be subject to the standard terms and conditions of the designated carrier, and Bell Bio shall have no liability to the Customer for any loss, damage or delay in a shipment attributable to the designated carrier or to events occurring during shipment. All freight, handling, insurance, duties, taxes and shipping expense will be borne by Purchaser.

Bell Bio may make delivery in installments and may render a separate invoice for each installment. Customer shall pay all invoices for shipping charges upon receipt. Customer shall give written notice to Bell Bio of discrepancies between type or quantity of the Goods ordered and that of the Goods delivered within 10 business days after delivery of the Goods to Customer. In the absence of such notice, Customer shall be deemed to have accepted the Goods. All returns of Goods must be made freight prepaid by the Customer and will not be accepted without a return goods authorization (RGA) of Bell Bio. The Goods must be returned in their original packaging and, except in the case of Goods not conforming to the limited warranty set forth in Section 7(a), in resalable condition. Special orders, Magnelle Labeling Kits, Magnelle Labeling Reagents or non-stocked items may not be returned unless defective. Discontinued Goods may not be returned.

(b) For shipments to Canada, Bell Bio will provide necessary shipping documents to the importer of record or Customer's designated customs broker for clearance with the Canadian Border and Security Administration (CBSA). Bell Bio will not be responsible for replacing items if the importer or customs broker does not release temperature sensitive products in a timely manner. If Customer does not provide Bell Bio with Customer's current broker and shipping account designee at the time of ordering, Bell Bio will ship products through Bell Bio's designated broker. GST and shipping/brokerage fees will be charged totaling 12% of the total order amount.

**6. Authorized Use of Goods.** Except as expressly set forth in Section 10 in the case of Bell Bio OEM Reagents, the purchase of Goods only conveys to Customer the non-transferable right to use the quantity of Goods purchased solely for Customer's internal research purposes and in compliance with any applicable intended use statement, limited use statement or limited label license specific to such Goods. Except as expressly set forth in Section 10, no right to resell the Goods, or any portion of them (including as components of other products), is conveyed.

## **7. Limited Warranty.**

(a) Subject to the limitations set forth below in this Section 7 and in Section 8, Bell Bio warrants only that the Goods or the deliverables from the Services will substantially conform to Bell Bio's published specifications for such Goods and deliverables in effect at the time of order acceptance.

(b) Promptly upon receipt of Goods or Service deliverables hereunder, Customer shall examine such Goods or deliverables for any defect or damage, including non-conformity to the warranty set forth in Section 7(a). All claims, including without limitation for non-conforming Goods or Service deliverables, shortage or any other cause whatsoever, shall be deemed waived unless made in writing and received by Bell Bio within 10 business days after Customer's receipt of the Goods or Service deliverables. Customer's failure to give notice of any claim within such period shall be deemed an irrevocable and unconditional waiver of such claim.

(c) As Bell Bio's sole liability, and Customer's sole and exclusive remedy, for the failure of Goods or Service deliverables provided under the Agreement to conform to the warranty set forth in Section 7(a), Bell Bio shall, at Bell Bio's option: (i) as applicable, replace such non-conforming Goods and/or re-perform the Services that resulted in such non-conforming deliverables at no additional cost to Customer within a reasonable period of time; or (ii) refund the price paid by Customer for such non-conforming Goods or the Services that resulted in such non-conforming deliverables.

(d) THE LIMITED WARRANTY IN SECTION 7(a) ABOVE IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY GRANTED IN SECTION 7(a) ABOVE, BELL BIO HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO GOODS DELIVERED AND SERVICES PERFORMED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICES.

## **8. Limitation of Liability.**

(a) CUSTOMER ACKNOWLEDGES AND AGREES THAT THE AMOUNTS WHICH BELL BIO IS CHARGING HEREUNDER DO NOT INCLUDE ANY CONSIDERATION FOR BELL BIO'S ASSUMPTION OF THE RISK OF INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH USE OF THE GOODS OR SERVICES BY CUSTOMER. ACCORDINGLY, CUSTOMER AGREES THAT BELL BIO SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, FOR PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS OR OTHER ECONOMIC LOSS, ARISING IN CONNECTION WITH CUSTOMER'S USE OF OR INABILITY TO USE THE GOODS OR SERVICES. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE AND INDEPENDENT OF ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREUNDER.

(b) In no event shall Bell Bio's aggregate liability to Customer arising out of or relating to the Agreement exceed the total amounts paid by Customer to Bell Bio for Goods supplied and Services performed hereunder during the preceding 12-month period. Bell Bio shall have no liability whatsoever to Customer or its affiliates arising out of or in connection with (i) Customer's use or exploitation of any Goods supplied hereunder, (ii) Customer's use or exploitation of, or reliance upon, the results or other deliverables of any Services performed hereunder, or (iii) the research, development, manufacture, use, handling, storage, sale, distribution or other disposition of any Authorized Customer Product (defined below) by or on behalf of Purchaser, any of its affiliates or any of its or their respective third party distributors or marketing partners. The parties acknowledge that the limitations set forth in this Section 8 and in Section 7(c) are integral to the prices charged under the Agreement and that, were Bell Bio to assume any further liability other than as set forth in the Agreement, such prices would of necessity be substantially higher.

(c) Without limiting the generality of Sections 8(a) and 8(b), Bell Bio shall not be liable for any damage or loss caused by the improper or unapproved use of the Goods. The Goods are for research use only and are not to be used for human diagnostic or therapeutic purposes unless expressly approved for such purposes by the Food and Drug Administration in the U.S. or the appropriate regulatory agency in other countries. In the United States, Magnelle® Reagents are available for use only under an approved Investigational New Drug (IND) application or Investigational Device Exemption (IDE). Without limitation to the generality of the foregoing, Customer shall handle and use the Goods in accordance with good laboratory practice and in compliance with all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies.

**9. Indemnification.** Customer hereby agrees to save, defend, indemnify, and hold harmless Bell Bio, its affiliates and its and their respective officers, directors, employees, consultants, and agents (each, a **“Bell Bio Indemnitee”**) from and against any and all losses, damages, liabilities, expenses, and costs, including reasonable legal expense and attorneys’ fees (collectively, **“Losses”**), to which any Bell Bio Indemnitee may become subject as a result of any claim, demand, action, or other proceeding by any third party to the extent such Losses arise directly or indirectly out of: (a) Customer’s use, handling or exploitation of any Goods supplied hereunder; (b) Customer’s use or exploitation of, or reliance upon, any Service deliverables or other results of the Services performed hereunder; or (c) the use, manufacture, handling, storage, sale, marketing, promotion, distribution or other disposition by or on behalf of Customer, or any of its affiliates or third party distributors or marketing partners, of any Authorized Customer Product.

**10. BELL BIO OEM Reagents.** The terms and conditions of this Section 10 shall apply only if and to the extent that the Goods covered by the Quotation include Bell Bio OEM Reagents. For purposes hereof, **“Authorized Customer Product”** shall mean any of Customer’s research use only (RUO) products described in the Addendum that (i) contains or incorporates, is labeled with or is packaged together with, any Bell Bio OEM Reagent supplied hereunder, (ii) is offered and sold for a single purchase price, and (iii) is labeled and marketed for research use only. For clarity, **“Authorized Customer Products”** exclude any Bell Bio OEM Reagent offered or sold by or on behalf of Customer on a stand-alone basis.

(a) **Authorized Use of Bell Bio OEM Reagents.** Customer shall use all Bell Bio OEM Reagents supplied under the Agreement solely for the purposes of (i) manufacture, sale and distribution by or on behalf of Customer of Authorized Customer Products (specifically excluding manufacture of any Bell Bio OEM Reagent) and (ii) Customer’s internal research use (collectively, the **“Authorized Purposes”**). For the avoidance of doubt, Customer is prohibited from selling, reselling, transferring or distributing, and hereby covenants not to sell, resell, transfer or distribute, any Bell Bio OEM Reagent except as part of an Authorized Customer Product. Without limiting the generality of the foregoing, Customer covenants, on behalf of itself and its affiliates: (A) not to use any Bell Bio OEM Reagent supplied hereunder for any purpose other than the Authorized Purposes; (B) not to modify or create derivatives of any Bell Bio OEM Reagent, not to attempt to reverse engineer, deconstruct or in any way determine the structure or composition of any Bell Bio OEM Reagent, and not to make or have made any Bell Bio OEM Reagent; (C) not to sell, resell, transfer or distribute any Bell Bio OEM Reagent supplied hereunder as a stand-alone product, whether in the form supplied by Bell Bio or as repackaged by or on behalf of Customer; (D) not to use, label, sell, market or distribute any Bell Bio OEM Reagent or Authorized Customer Product for testing in or treatment of humans, or for the prediction, diagnosis or monitoring of a disease or measurable state in humans, or for making any decision regarding the treatment of any human subject; and (E) not to cause or permit any third party to engage in any of the activities described in the preceding clauses (A) through (D). Customer hereby agrees to use, and to require its affiliates and any of their respective third party contractors (including, without limitation, any third party distributor, marketing partner, manufacturer or other service provider) to use, the Bell Bio OEM Reagents in compliance with all applicable laws, rules and regulations, including, but not limited to, any laws, rules or regulations relating to the research, testing, production, storage, transportation, export, packaging, labeling or other authorized use of the Bell Bio OEM Reagents or Authorized Customer Products. As between the parties, Customer shall be solely responsible, for the manufacture of Authorized Customer Products (other than the manufacture of the Bell Bio OEM Reagent included therein), and for the commercialization of Authorized Customer Products, including, without limitation, the sale, marketing, distribution and support of Authorized Customer Products.

(b) **Insurance.** Customer, at its own expense, shall procure and maintain, during the period for which Authorized Customer Products are offered for sale and for one (1) year thereafter, product liability insurance and commercial general liability insurance in amounts consistent with sound business practice of companies engaged in the development and commercialization of research products and commercially reasonable in light of the nature of the Authorized Customer Products. It is understood that such insurance shall not be construed to create a limit of Customer’s liability with respect to its indemnification obligations. Customer shall provide Bell Bio with written evidence of such insurance upon request.

(c) **Additional Disclaimer.** Without limiting the generality of Section 7(d), Customer acknowledges and agrees that Bell Bio does not make, and that Bell Bio hereby disclaims, any representation or warranty: (i) as to the safety or usefulness for any purpose of any Bell Bio OEM Reagent, including, without limitation, the usefulness of any Bell Bio OEM Reagent as part of an Authorized Customer Product; or (ii) that Customer will be able to market, sell or otherwise exploit any Authorized Customer Product.

## **11. Miscellaneous.**

(a) Customer shall maintain in confidence, shall not disclose to any third party, and shall not use for any purpose not expressly contemplated by the Agreement, any and all non-public, confidential or proprietary information of Bell Bio regarding any Goods or Services, including but not limited to specifications, samples, designs, plans, drawings, documents, data, and any information regarding pricing, discounts or rebates, that is disclosed by Bell Bio to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as **“confidential.”** Upon request, Customer shall promptly return all documents and other materials embodying any such information received from Bell Bio (except to the extent embodied in Goods or Service deliverables delivered to, and purchased and paid for by, Customer). Bell Bio shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that Customer can

demonstrate by competent evidence is: (i) in the public domain; (ii) known to Customer at the time of disclosure; or (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

**(b)** Customer acknowledges that: (i) all right, title, and interest in and to all patents, copyrights, trademarks, trade secrets, and all other intellectual property and proprietary rights (collectively, "**IP**") subsisting in or related to the Goods and Service deliverables belong solely to Bell Bio; (ii) no transfer of any ownership interest in, or title to, any such IP is made to Customer; (iii) no license or other right under such IP is granted by Bell Bio to Customer, except for the right to use the Goods and Service deliverables in compliance with all applicable terms and conditions of the Agreement; and (iv) except to the extent expressly provided in Section 10 in the case of Bell Bio OEM Reagents, such right to use the Goods and Service deliverables explicitly does not include the right to modify, enhance, or improve the Goods or Service deliverables or to transfer the Goods or Service deliverables to any third party. Any and all comments, feedback, or suggestions from the Customer related to the Goods and Services, in written or oral form, shall be the sole and exclusive property of Bell Bio.

**(c)** Bell Bio and Customer intend and agree that all software provided hereunder (whether on a stand-alone basis or as incorporated in any Goods) is being licensed and not sold to Customer; and that the words "purchase," "sell," or similar or derivative words when used in relation to any such software are understood and agreed to mean "license." Notwithstanding anything to the contrary contained in the Agreement, Bell Bio or its licensor(s), as the case may be, retains ownership of and all rights, title and interest in and to the software. Customer shall use all software provided hereunder in accordance with the related documentation provided by Bell Bio with such software (or with the Goods incorporating such software). Bell Bio shall be considered the sole owner of the software and related documentation provided hereunder and any copies thereof, and of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Customer agrees not to sell, transfer, license, loan, or otherwise make available to third parties any software or related documentation provided hereunder. Customer shall not modify, enhance, or otherwise change or supplement any software provided hereunder. The source code for the software will not be disclosed to the Customer, and Customer shall not disassemble, decompile, or reverse engineer any software supplied hereunder.

**(d)** Notices and other communications required or contemplated by the Agreement shall only be effective if delivered in writing to the party for whom intended at its address set forth in the Quotation (or at such other address as such party may designate by written notice to the other party), either by (i) personal delivery, (ii) postage prepaid, return receipt requested, registered or certified mail, (iii) nationally recognized, overnight courier, such as Federal Express or UPS, or (iv) facsimile with a confirmation copy sent simultaneously by any of the other methods described above. Notice by registered or certified mail shall be effective on the date officially recorded as delivered to the intended recipient by return receipt or equivalent, and in the absence of such record of delivery, the effective date shall be presumed to have been the fifth (5th) business day after deposit in the mail. Notices delivered in person or sent by courier shall be effective on the date of personal delivery. Notices delivered by facsimile shall be deemed to be effective on second (2nd) business day from the verifiable date of successful transmission to the intended recipient party's published facsimile number .

**(e)** Except for the obligation to make payment when due, each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control including but not limited to Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, acts of terrorism, accident, destruction, or other casualty, any lack or failure of transportation facilities, any lack or failure of supply of raw materials, any strike or labor disturbance, or any other event similar to those enumerated above. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the party has not caused such event(s) to occur.

**(f)** No rights or obligations hereunder may be assigned by Customer without the prior written consent of Bell Bio, and any attempted assignment or delegation without such consent shall be void.

**(g)** The Agreement is made in, and shall be governed by and construed in accordance with the laws of, the State of California applicable to contracts entered into and performed in California, without regard to its conflicts of laws rules. The United Nations Convention on Agreements for the International Sale of Goods shall not apply to the Agreement.

**(h)** If the Goods or Services are to be used in the performance of a U.S. Government contract or subcontract, Customer shall notify Bell Bio of the U.S. Government contract number and furnish Bell Bio with copies of all applicable U.S. Government procurement regulations. Customer agrees to hold Bell Bio harmless from all losses, claims and expenses (including attorney's fees, expenses and court costs) in connection with any actual or asserted violation of such procurement regulations where Customer has failed to notify Bell Bio of their applicability in the manner provided in this Section.

**(i)** The failure by either party to exercise any of its rights under the Agreement on one occasion shall not be deemed a waiver of such right or any other right on that or any other occasion.

**(j)** If any provision of the Agreement is determined to be invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability, and the balance of the Agreement shall be interpreted as if such provision were so excluded.