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10. Governing Law. This Agreement shall be governed and interpreted in all respects by the laws of the United States of America and the State of California as such laws are applied to agreements entered into and to be performed entirely within California between California residents, without regard to conflicts of laws provisions thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. You irrevocably submit to the nonexclusive personal and subject matter jurisdiction of the state and federal courts located in Santa Clara County, California. Notwithstanding the foregoing, Affymetrix may apply to any court of competent jurisdiction for temporary or preliminary injunctive relief.

11. Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by a court of

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

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

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