

EQUIPMENT RENTAL AGREEMENT

This Lease, dated as of December 22, 2010, is made and entered into by and between: Sequoia Scientific, Inc., a Washington corporation ("Sequoia") and MBARI ("Lessee").

1. **Lease.** Sequoia hereby leases to Lessee, and Lessee hereby leases from Sequoia the following equipment (the "Equipment") subject to and in accordance with the terms, conditions and other provisions of this Lease:

<u>Description</u>	<u>Value</u>	<u>Serial Number</u>
LISST-HOLO	\$25,000.00	TBD

2. **Delivery.** Sequoia will deliver the Equipment to Lessee FOB Sequoia's Bellevue facility in King County, Washington. Upon Lessee's request, Sequoia will ship the Equipment to a destination specified by Lessee. Lessee will pay or reimburse Sequoia for all shipping costs (including, but not limited to, carrier charges, premiums for freight insurance, inspection fees and other costs incurred to ship the Equipment from Sequoia's facility to the shipping destination). Lessee will be responsible for pursuing any claims against the carrier arising out of any loss or damage during shipment. Lessee's acceptance of delivery will conclusively establish that, upon commencement of the Term, the Equipment is in good working order and acceptable to lessee.

3. **Location.** Lessee will keep Sequoia informed of the location of the equipment. Lessee will not move the equipment to a location across national boundaries without the prior written consent of Sequoia. Sequoia will have the right to inspect and test the Equipment at all reasonable times. Lessee will provide Sequoia access to the premises where the Equipment is located for any such inspection and testing.

4. **Term.** The term of this Lease (the "Term") will commence upon the date that the Equipment is delivered and will end upon the first of the following to occur:

- a) Lessee's exercise of the option to purchase the Equipment pursuant to paragraph 9;
- b) Lessee receives written notice of termination under paragraph 16 for Lessee's default;
- c) Lessee returns the Equipment to Sequoia; or
- d) such other date as Sequoia and Lessee may agree upon in writing as the end of the term.

Lessee will surrender the Equipment to Sequoia promptly upon termination of the Term, together with a 2-page (max) article about the results that Sequoia may use at will on its website and for general LISST-HOLO marketing purposes. Paragraphs 10, 11.1, 11.2, 11.3, 11.4, 12, 13, 14, and 15 will survive termination of the Term.

5. **Rent.** Lessee will pay Sequoia a monthly rental fee for the Equipment equal to \$350 for the first 6 weeks and \$1250 per week thereafter. Such payments will be made in advance on the first day of each month during the Term without deduction, offset, prior notice or demand, in lawful money of the United States, at 2700 Richards Road, Suite 107, Bellevue, WA 98005, or at such other place as Sequoia may from time to time designate in writing. The monthly rental fee does not include any sales, use, property or other taxes. Lessee will pay or reimburse any such taxes imposed on the Equipment or the rental payments payable hereunder other than taxes based on Sequoia's income. Any amount not paid when due will bear interest at the rate of one and one-half (1-1/2%) per month, computed daily and compounded on the first day of each month, from the date due until the date paid.

6. **Maintenance.** Lessee will: keep the Equipment in good condition and state of repair; use reasonable efforts to protect the equipment from damage and deterioration; provide or arrange for all maintenance and repairs of the Equipment at its expense after consultation with Sequoia; and keep the Equipment insured against loss, damage or casualty up to the full replacement value of the Equipment. Lessee will return the Equipment to Sequoia at the end of the Term in the same condition as it was in when it was delivered to Lessee pursuant to this Lease, reasonable wear and tear expected. Lessee will promptly notify Sequoia in the event of any damage to, destruction of or malfunction of the Equipment. Lessee will not permit anyone other than Sequoia to repair the Equipment unless such third party has been approved in advance by Sequoia, which approval will not be unreasonably withheld.

7. **Alterations.** Lessee will not make any alterations, additions or improvements to the Equipment without the prior written consent of Sequoia. Any alteration, addition or improvement to the Equipment will: be made at the sole cost

and expense of Lessee; become the property of Sequoia when made; and be surrendered to Sequoia with the Equipment at the end of the Term. Sequoia reserves the right to require restoration of the equipment to its original pre-alteration state.

8. Title and Risk of Loss. Title to the Equipment will remain at all times with Sequoia. Lessee will not remove from the Equipment any plaque, label or other notice of Sequoia's title and other interests in the Equipment. Lessee will keep the Equipment free from all liens, security interests and encumbrances. Lessee assumes all risk of loss, damage or casualty to the Equipment from the date of delivery of the Equipment to Lessee until the Equipment is returned to Sequoia.

9. Purchase Option. Lessee may, at its option, purchase the Equipment at a purchase price equal to the list price less 85% of the sum total of lease payments made, if purchased within 90 days of the beginning of the lease. Lessee may exercise such option by giving Sequoia written notice thereof at any time during the Term, together with payment of the purchase price. Upon Lessee's request after such exercise, Sequoia will deliver to Lessee a bill of sale transferring good and marketable title of the Equipment to Lessee.

10. Release and Indemnity. Lessee releases and will defend, indemnify and hold harmless Sequoia from any and all claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) that may be incurred in connection with any bodily injury or property damage related to the possession or use of the Equipment during the Term.

11. Limited Warranties and Remedies.

11.1 Sequoia warrants that upon delivery by Sequoia (a) the Equipment will be free from defects in materials and workmanship, (b) the Equipment will perform substantially in accordance with Sequoia's applicable specifications, and (c) any Equipment (or components or parts thereof) that are manufactured by Sequoia do not infringe any U.S. patent or copyright.

11.2 If the Equipment does not comply with the warranties set forth in 11.1 (a) and 11.1 (b) above, Sequoia will, at its option, either (a) repair the Equipment or (b) replace the Equipment; provided that Lessee gives Sequoia written notice of non-compliance within the Term of this Agreement including any extensions thereof (as the same may be extended by mutual consent or for repaired or replacement Equipment as provided for herein, the "Warranty Period"). If Lessee does not give Sequoia such written notice within the Warranty Period, then such warranties will be satisfied in full. As to any Equipment repaired or replaced by Sequoia, the Warranty Period will end upon the end of the Term of this Agreement or 30 days after Sequoia's delivery of the repaired or replacement Equipment, whichever is the later. The warranty will not apply if the Equipment is damaged or malfunctions as a result of any willful act or negligence of Lessee (including without limitation, damage to the Equipment due to use of parts or supplies not sold by Sequoia or due to repair by someone other than Sequoia).

11.3 If any Equipment does not comply with the warranty set forth in (11.1c) above, Sequoia will defend and indemnify Lessee against any third party claim asserted in any proceeding against Lessee based on this non-compliance; provided Lessee gives Sequoia prompt written notice of the claim and Sequoia has exclusive control over the defense and settlement of the claim, Lessee provides such assistance as Sequoia may request in connection with the defense and settlement of the claim (in which event Sequoia will reimburse the reasonable out-of-pocket costs incurred by Lessee to provide such assistance), Lessee does not settle the claim without the prior written consent of Sequoia and, upon Sequoia's request, Lessee returns the non-complying Equipment to Sequoia for modification, replacement, or a refund of the current monthly rental fee, less a reasonable allowance for Lessee's use prior to return.

11.4 THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND LESSEE HEREBY WAIVES, RELEASES AND DISCLAIMS ALL OTHER RIGHTS AND REMEDIES OF LESSEE AND ALL OTHER WARRANTIES AND LIABILITIES OF SEQUOIA, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED, ANY (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) CLAIM IN TORT, WHETHER OR NOT ARISING IN WHOLE OR IN PART FROM SEQUOIA'S NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY; AND (D) CLAIM OF INFRINGEMENT

12. LIMITATIONS OF LIABILITY. SEQUOIA WILL NOT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY AND STRICT LIABILITY) OR OTHERWISE TO LESSEE FOR COVER OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ITS PERFORMANCE OR NON PERFORMANCE OF THIS LEASE OF THE USE OF, INABILITY

TO USE OR RESULTS OF USE OF THE EQUIPMENT. SEQUOIA'S LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE, AND NOTWITHSTANDING ANY NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) WITH REGARD TO THE EQUIPMENT OR OTHERWISE IN CONNECTION WITH THIS LEASE WILL IN NO EVENT EXCEED THE RENTAL FEES PAID BY LESSEE TO SEQUOIA UNDER THIS LEASE.

13. Software. The Equipment may include or be delivered with certain computer programs, databases or other software that is proprietary to Sequoia. Sequoia hereby grants to Lessee a nonexclusive license to use such software solely for the purpose of operating the equipment. Lessee will not: use any such software for any purpose conflicting with Sequoia's interest, modify, adapt, translate or create derivative works based on any such software; or disassemble, decompile or reverse engineer any such software. No title to or ownership of any software or intellectual property rights are transferred to Lessee.

14. U.S. Government Restricted Rights Notice. All software, data, technical information and written materials provided by Sequoia are provided with restricted rights. Use, duplication or disclosure by the U.S. government is subject to restrictions as set forth in paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at C.R.F. Article 252.227-7013 or in subparagraph (c)(2) of the Commercial Computer Software-Restricted Rights clause at 48 C.R.F. Article 52.227-19, as applicable. Portions of these items may be unpublished. Sequoia reserves all rights under applicable copyright laws.

15. Waiver of Subrogation. To the extent permitted by their respective insurance policies, Sequoia and Lessee each waive all rights of subrogation against the other with regard to any claim, liability, damage, cost or expense incurred in connection with the use or possession of the Equipment during the Term.

16. Default. If Lessee defaults in the payment of the monthly rental fee under paragraph 5 or the performance of any other obligation under this Lease, and such default is not cured within fifteen (15) days after Lessee's receipt of written notice from Sequoia of such default, Sequoia may terminate this Lease by giving Lessee written notice thereof. Upon termination, Sequoia may enter the premises where the Equipment is located and take possession of and remove the Equipment. The rights and remedies of Sequoia set forth in this Lease are in addition to and do not in any way limit any other rights and remedies afforded to Sequoia by law or otherwise.

17. Assignment. Lessee will not sublease all or any part of the Equipment, nor assign all or any part of its rights or interests in this Lease, without the prior written consent of Sequoia. Subject to the foregoing restriction on subleasing and assignments by Lessee, this Lease will be fully binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns and legal representatives.

18. Nonwaiver. The failure of Sequoia to insist upon or enforce strict performance by Lessee of any of the provisions of this Lease, or to exercise any rights or remedies under this Lease, will not be construed as a waiver or relinquishment to any extent of Sequoia's right to assert or rely upon any such provisions, rights or remedies in that or any other instances; rather the same will remain in full force and effect.

19. Governing Law; Attorneys' Fees. This Lease will be governed by the laws of the State of Washington. Lessee will pay to Sequoia all costs and expenses, including reasonable attorney's fees and fees of collection agencies, incurred by Sequoia in exercising any of its rights or remedies under this Lease or in enforcing any of the terms or provisions of this Lease whether or not suit is brought.

Lessor: Sequoia Scientific, Inc.

Lessee: MBARI

By: Ole Mikkelsen



Title: Sales & Marketing Manager

By:



C. MIKKELSEN PRUVO

Title:

CFO

Date Signed: 12/22/2010

Date Signed:

12/22/10