

# **Bioinformatics Recharge Unit Standard Terms and Conditions**

*Last updated October 17, 2016*

These Terms and Conditions apply to the Services performed by the Bioinformatics Recharge Unit of The University of North Carolina at Charlotte, a body corporate and politic under the laws of the State of North Carolina, located at 9201 University City Boulevard, Charlotte, North Carolina 28223-0001 (“University”), for another person or entity (“Client”). These Terms and Conditions are a binding agreement (“Agreement”) between the University and Client.

## **1. Services to be Performed by University**

University will perform the agreed upon tasks, responsibilities, schedule and deliverables (jointly referred to herein as “Services”) set forth in the Statement of Work, which is fully incorporated herein. University will use reasonable efforts to provide these Services during the term of this Agreement.

## **2. Term of the Agreement**

This Agreement is effective as of the Effective Date of the Statement of Work and terminates upon acceptance by Client of the final report or service to be performed as set forth in Section 1 of this Agreement (“Final Service”). University will notify Client in writing that it is providing the Final Service pursuant to the Services section of this Agreement. Client must promptly inspect the Services provided by University and must notify University within thirty (30) days of the receipt of the Final Service of any claim that the Services provided by University fail to meet the specifications set forth in this Agreement. Client must state any claim of failure to meet specifications with adequate specificity for University to identify both the Services that Client alleges have been unsatisfactorily provided and the section of the Agreement pursuant to which those Services were to be provided, as well as a description of how the Services provided materially fail to meet the obligations of the referenced Agreement section. Upon such notification, University may either correct the alleged problem within thirty (30) days or dispute the allegation pursuant to Section 10. Unless Client provides the notification required by this Section, the Services will be deemed accepted by Client and payment pursuant to Sections 3 and 4 will be required.

This Agreement may also be terminated at will by either party by providing thirty (30) days prior written notice; provided, however, that terminating the Agreement will not relieve Client of any obligations accrued prior to, or payments owed at, the time of termination. The following sections of this Agreement survive termination: Sections 4, 5, 10, 11, 12, 15, 17, 19, and 20.

## **3. Fees**

The amount to be paid by the Client for the Services to be provided pursuant to this Agreement (“Fee”) is set forth in the Statement of Work.

## **4. Payment**

Client must pay University according to the Payment Schedule in the Statement of Work or within thirty (30) days of the date of invoice from University to Client. Any payments of Client required hereunder bear interest from the time due until paid at the maximum rate permitted by law.

## **5. State and Federal Taxes**

Client must pay all applicable taxes related to the performance of Services under this Agreement. Such taxes will either be included in the Fee pursuant to Section 3 above, or be itemized on an invoice pursuant to Section 4 above, depending upon the Fee structure as agreed upon by the parties.

## **6. Requirements**

Client agrees that the requirements and specifications for the Services are complete and fully set forth in the Statement of Work. Changes to any specifications of the Services will necessitate a change order and may result in additional charges.

## **7. University Rights to Determine Methods**

University has the right to control and determine the methods and means of performing the Services.

## **8. Other Clients**

University retains the right to perform services for other clients and nothing set forth in this Agreement will be deemed a limitation of such right.

## **9. Use of Names and Trademarks**

No party may use the other party's name or marks for publicity or advertising, and neither party may disseminate to the public a reference to the other party without the prior written consent of said party.

## **10. Disputes**

If a dispute arises, the disputing party must notify the other party of such dispute in writing and with sufficient particularity to fully identify the dispute. If the dispute has resulted from a breach of this Agreement by the other party, such notification must state the alleged breach and the provision of this Agreement which is allegedly breached. The other party will then have thirty (30) days from the date of the notification to correct the breach or the cause of the dispute.

If a dispute arises and is not resolved in the manner above, the parties will try in good faith to resolve the dispute by mediation conducted by a mediator to be mutually selected. The parties will share the costs of the mediator equally. Each party will cooperate fully, fairly and in good faith with the mediator and with each other and will attempt to reach a compromise to the dispute.

## **11. Disclaimer of Warranties and Limitation of Liability**

CLIENT ACKNOWLEDGES THAT THE SERVICES RENDERED BY UNIVERSITY AND ANY INTELLECTUAL PROPERTY GENERATED BY THIS AGREEMENT ARE NOT WARRANTED FOR ANY APPLICATION OR END PRODUCT PERFORMANCE. CLIENT WILL NOT SOLELY RELY ON THE SERVICES PERFORMED BY UNIVERSITY. FURTHER, CLIENT AGREES THAT IT WILL NOTIFY ANY OTHER INDIVIDUAL OR ENTITY THAT THE SERVICES PERFORMED, RESULTS OBTAINED, AND ANY INTELLECTUAL PROPERTY GENERATED BY THE AGREEMENT ARE NOT EXPRESSLY WARRANTED AND THE UNIVERSITY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT SHOULD DETERMINE INDEPENDENTLY WHETHER RESULTS OBTAINED HEREUNDER AND ANY INTELLECTUAL PROPERTY GENERATED BY THE AGREEMENT IS SUITABLE FOR THE PARTICULAR USE INTENDED BY CLIENT. CLIENT AGREES THAT UNIVERSITY'S LIABILITY WILL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE FEES ACTUALLY PAID BY CLIENT UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM FOR PAYMENT BY CLIENT IS MADE UNDER A THEORY OF CONTRACT OR TORT.

## **12. Publications**

University has the right to publish any of the results of the Services performed, including any analytical methods developed by University. University may not publish, without Client's written approval, Client's proprietary information so long as such information (a) is marked by Client as "Confidential" or "Proprietary" at the time that it is first provided to University, (b) is received by University solely as a result of this Agreement, and (c) is not otherwise available to University. With the exclusion of any analytical methods developed by University in performance of the Services (regardless of where such analytical methods are listed or identified in this Agreement and specifically regardless of whether designated as deliverable in the Statement of Work), the deliverables specified in the Statement of Work is be considered Client's proprietary information, provided, however, that University shall be entitled to retain copies thereof in confidence to ensure compliance with legal, regulatory, and academic standards.

## **13. No Agency**

Each party to this Agreement is an independent contractor and may not act as the agent, employee, or servant of the other party. Accordingly, University's personnel (including employees, students, or agents) will not be considered the employees or agents of Client, and Client's personnel (including employees or agents) will not be considered the employees or agents of University.

## **14. Assignment**

This Agreement is not assignable in whole or in part.

## **15. Right to Intellectual Property**

Except as otherwise specified in Section 12 herein, rights to any and all intellectual property created under this Agreement, including but not limited to analytical methods developed by University in performance of the Services, are the sole property of the University.

## **16. Notices**

All notices herein provided to be given, or which may be given, by either party to the other, will be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed according to the Statement of Work, or by hand delivery, or by fax to the fax number on the Statement of Work, or by email to the address also indicated in the Statement of Work.

## **17. Jurisdiction, Venue and Choice of Law**

Any action based upon or arising out of this Agreement must be before a North Carolina court of competent jurisdiction in either the County of Mecklenburg or the County of Wake. This Agreement will be interpreted and governed by the internal laws of the State of North Carolina.

## **18. Portable Document Format (PDF)**

Facsimile copies or Adobe Portable Document Format (PDF) copies of the signed Statement of Work sent by email shall be considered for all purposes as originals.

## **19. Waiver**

The failure of either party to assert a right under this Agreement or to insist upon compliance with any term or condition of this Agreement does not constitute a waiver of that right. Any failure of a party to comply with any condition of this Agreement may only be waived in writing by the other party.

## **20. Severability**

If any court determines that any provision of this Agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this

Agreement invalid or unenforceable and such provision will be modified, amended or limited only to the extent necessary to render it valid and enforceable.

## **21. Merger**

This Agreement, along with the applicable Statement of Work, is the entire agreement and understanding between the parties hereto as to the subject matter hereof and supersedes all other prior, contemporaneous or subsequent written or oral communications, including terms and conditions of any purchase order or other documents. This Agreement will not be subject to any change or modifications except by execution of a written instrument signed by the parties hereto or by express written intent to modify the terms in a Statement of Work for a particular project.

## **22. CLIENT DATA (Section 22 only applicable if indicated in the Statement of Work):**

Should Client provide electronic data sets (“Client Data”) to University for analysis as part of the Services to be performed under this Agreement, such Client Data shall be considered Client’s proprietary information provided that the Client Data meets the requirements set forth in Section 12 herein. University may not use Client Data for any purpose other than the provision of Services. Upon completion of the Services, University shall return or destroy all copies of Client Data, provided that (a) University shall be entitled to retain one copy of Client Data solely for purposes of demonstrating compliance with this Agreement and (b) back-up copies of Client Data made in the normal course of data protection performed by the University may continue in University’s possession until such back-up copies are overwritten, destroyed, or discarded in the normal course of University’s data protection activities.