



NEW YORK GENOME CENTER GENOMICS SERVICES TERMS AND CONDITIONS

1. Introduction

New York Genome Center, Inc. ("NYGC") is a 501(c)(3) nonprofit research organization whose mission includes:

- (a) Providing sequencing and bioinformatics services to the academic and scientific communities;
- (b) Conducting academic research to advance the development of new diagnostics, therapies, and therapeutics to treat human disease; and
- (c) Developing innovative bioinformatics capabilities based on NYGC's research and sequencing activities.

In furtherance of NYGC's mission, NYGC has prepared the attached quotation ("Quote") that sets forth the genomics and other services ("Services") to be provided to the entity or individual identified in the Quote ("Purchaser") under the terms and conditions contained herein ("Terms and Conditions").

Purchaser's acceptance of any Quote is subject to and expressly limited by these Terms and Conditions, and Purchaser's submission of Purchaser Materials (as defined herein) to NYGC and/or acceptance of the Services shall be deemed agreement to these Terms and Conditions.

These Terms and Conditions cannot be waived, modified or supplemented without the prior, express written consent of a duly authorized representative of NYGC. While NYGC may accept purchase orders from Purchaser for administrative convenience at its discretion, Purchaser understands and agrees that the terms of any such purchase orders that purport to replace, modify or supplement the terms of these Terms and Conditions shall have no effect.

2. Services

2.1. NYGC will use reasonable efforts to perform the Services described in the Quote pursuant to the specifications set forth therein and subject to these Terms and Conditions. NYGC reserves the right to choose at its discretion from available technologies and protocols in the performance of the Services without notice to Purchaser. Purchaser understands that the Results (as defined below) generated from the Services are to be used FOR RESEARCH PURPOSES ONLY, and represents and warrants that it will not use the Results or any other deliverables from NYGC to make clinical diagnoses or treatment decisions.

2.2. Following performance of the Services, NYGC will make available sequencing and/or analysis data generated in the course of performing the Services (the "Results") to Purchaser through NYGC's delivery system. Unless otherwise provided in the Quote, NYGC is under no obligation to store Purchaser's data after delivery.

3. Payments

Purchaser agrees to pay NYGC for the Services in accordance with the Quote. For Services covering a period of more than one month, NYGC may submit invoices on a monthly basis for the portion of the Services performed in that time period. NYGC will also invoice Purchaser for arrays or other specialty or custom consumables purchased on behalf of Purchaser. In addition to the price for the Services quoted or invoiced, Purchaser is responsible for paying any tax, duty, custom or other fee of any nature, other than taxes on

NYGC's income, imposed on the Services by any federal, state, local or foreign government authority. Unless set forth otherwise in the Quote, NYGC invoices are due and payable within thirty (30) days of receipt by Purchaser. Payment shall be deemed late if not received within such time and shall be subject to interest equal to 1% percent per month (12% per year) or the maximum legal rate, whichever is less, of the amount due. All payments shall be made in U.S. dollars. In the event that any payment is more than thirty (30) days late, NYGC has the right to suspend performance of the Services until all overdue payments are made current.

4. Purchaser Representations and Warranties

4.1. Purchaser represents and warrants that

- (i) all biological material, other materials, and information provided to NYGC (collectively, "Purchaser Materials") are or will be properly collected, labeled, handled, stored, packaged, and shipped in accordance with all applicable foreign, domestic, federal, state and local laws and regulations, including but not limited to import and export control laws and regulations as described in Sections 4.2 and 4.5 herein ("Applicable Law"), and
- (ii) Purchaser has secured all informed consents, authorizations, approvals and permissions necessary and legally required by Applicable Law for NYGC's performance of the activities contemplated by this Agreement, including but not limited to the institutional review board approval requirements contained in New York Civil Rights Law § 79-L ("NYS Genetic Testing Law") as well as the requirements of all other privacy and genetic testing laws of the jurisdictions applicable to NYGC, Purchaser and any individuals whose samples are part of Purchaser Materials, and
- (iii) all Purchaser Materials will be anonymized or de-identified to the standard set forth at 45 C.F.R. § 164.514(b)(2) or any successor regulation thereto by Purchaser prior to submission to NYGC and Purchaser will not release the key to any coded Purchaser Materials to NYGC under any circumstances, and
- (iv) any Purchaser Materials that it provides to NYGC will not infringe the Intellectual Property Rights (as defined in Section 6.1) of any third party, and
- (v) it will not violate any Applicable Law by providing Purchaser Materials to NYGC to obtain the Services, including the use of the Results by Purchaser. Purchaser is responsible for notifying NYGC as soon as practicable after Purchaser becomes aware of the breach of any warranty or representation under this Paragraph 4.1.

4.2. NYGC and Purchaser are subject to applicable United States import and export laws and regulations, including but not limited to (i) the Export Administration Regulations administered by the United States Department of Commerce through the Bureau of Industry and Security, (ii) International Traffic in Arms Regulations administered through the United States Department of State, and (iii) the United States Department of the Treasury Office of Foreign Asset Control ("OFAC") economic and trade sanctions regulations. Without limiting the generality of the foregoing, Purchaser will not import or export Purchaser Materials from or through any OFAC-sanctioned countries without first complying with OFAC regulations. Purchaser is solely responsible for United States Customs' clearance and all compliance associated with the importation of any Purchaser Materials into the United States, including, but not limited to, creating, maintaining, submitting, and filing with U.S. Customs and Border Protection, and

any other relevant federal, state and local agencies, all required information and documentation related to the importation of Purchaser Materials; obtaining all required permits or licenses; complying with country-of-origin marking requirements; complying with all applicable recordkeeping requirements; payment of all applicable taxes, duties, fees, and costs; and payment of any and all fines and penalties in the event of noncompliance with applicable laws, regulations, practices, and other requirements. Purchaser is also solely responsible for complying with other countries' export control and shipping regulations, as applicable. Purchaser shall use its best efforts not to provide export-controlled materials or information to NYGC in connection with the Services hereunder and shall promptly notify NYGC if it discovers that it has provided export-controlled materials.

- 4.3. Purchaser agrees to indemnify NYGC for any fees or costs, including attorneys' fees and costs, incurred by NYGC in defending NYGC against any claims related to Purchaser's failure to comply with any import or export compliance or NYS Genetic Testing Law or other privacy and genetic testing law requirements.
- 4.4. Purchaser represents and warrants that it has good title to all Purchaser Materials, free of any security interest or other lien or encumbrance. Title and risk of loss shall remain with Purchaser at all times and shall not transfer to NYGC.
- 4.5. Purchaser is responsible for arranging shipment of Purchaser Materials to NYGC and is solely responsible for ensuring compliance with all shipping related regulations. Unless otherwise included as part of the Quote, Purchaser shall bear and be responsible for paying all expenses, fees and costs incurred for shipment of Purchaser Materials to NYGC.

5. Quality Terms

- 5.1. Purchaser understands and agrees that it is responsible for notifying NYGC of any special handling request. All Purchaser Materials must be accompanied by a Sample Submission Form ("SSF"), which, together with the Quote, confirms the Services to be provided and contains a detailed inventory of Purchaser Materials submitted for processing. NYGC will test the quality and quantity of all samples submitted as Purchaser Materials. Purchaser will be notified if Purchaser Materials do not pass NYGC's quality metrics and Purchaser must advise NYGC whether or not to continue processing Purchaser Materials at Purchaser's risk ("At Risk Services").
- 5.2. If Purchaser elects to replace deficient Purchaser Materials, Purchaser will be responsible for charges incurred in processing of the replacement material.
- 5.3. In the event a third-party consumable used in the Services fails, NYGC will make a reasonable effort to obtain a replacement consumable to re-perform the analysis. If Purchaser Material has been rendered unusable by the failure of a third-party consumable, or NYGC cannot obtain a replacement consumable, Purchaser acknowledges and agrees that NYGC bears no responsibility for the re-performance of the test or loss of material.
- 5.4. Purchaser acknowledges that NYGC cannot assure the success or quality of Results from At Risk Services and agrees to remain fully responsible for all project fees as specified in writing regardless of the Results produced by At Risk Services. At Risk Services will only be performed by NYGC after Purchaser acknowledges and agrees in writing to accept the Results of the At Risk Services "as is".

6. Intellectual Property

- 6.1. The term “Intellectual Property Rights” means any form of intellectual property rights or protections, including without limitation i) patents and patent applications, and any reissue, reexamination, division, continuation or continuation-in-part application thereof, ii) trademarks or trade dress, iii) trade secret and equivalent rights, and iv) copyrights, mask works, and other authors’ rights, whether or not protected by copyright or as a mask work.
- 6.2. Except as expressly provided in Section 6.3, all Purchaser Materials and unmodified derivatives and modifications thereof, all Results, and all Intellectual Property Rights contained therein (collectively, “Purchaser IP”), are the sole property of Purchaser.
- 6.3. Notwithstanding the foregoing, NYGC retains sole and exclusive ownership of all Intellectual Property Rights in discoveries, inventions, technical know-how, data, designs, methods, processes, documentation and specifications created by or on behalf of NYGC i) prior to commencement of the Services, or ii) after the date thereof, but not in the performance of the Services (collectively, “NYGC Background IP”). NYGC also retains sole and exclusive ownership of all improvements, modifications or enhancements to NYGC’s systems, software, applications, methods, or processes that may be developed, discovered or reduced to practice by NYGC in carrying out the Services (collectively, “NYGC Improvement IP.”) NYGC may use NYGC Improvement IP for all purposes, including without limitation, sublicensing NYGC Improvement IP to third parties and publishing NYGC Improvement IP, provided that any such publication does not disclose any of the Purchaser’s Confidential Information.

7. Confidentiality

- 7.1. “Purchaser Confidential Information” means all information relating to Purchaser’s Materials, Results, and Purchaser IP other than NYGC Improvement IP, as well as all information disclosed by or on behalf of Purchaser to NYGC in connection with the Services that is identified as confidential at the time of initial disclosure. NYGC will not use any Purchaser Confidential Information or Purchaser Materials for any purpose other than performing the Services, without Purchaser’s prior written consent, and will not disclose such Purchaser Confidential Information to any third party without Purchaser’s prior written consent, except where such disclosure is necessary to provide the Services in question. Notwithstanding the foregoing, in furtherance of NYGC’s non-profit mission, NYGC may use the Results for its own current and future quality assurance and methods developments purposes, provided that NYGC does not disclose such Results to any third party.
- 7.2. “NYGC Confidential Information” means all information relating to NYGC Background and Improvement IP, prices, and price schedules, as well as all information disclosed by or on behalf of NYGC to Purchaser in connection with the Services that is identified as confidential at the time of initial disclosure. Purchaser will not use or disclose to any third party any NYGC Confidential Information without NYGC’s prior written consent.

7.3. The above obligations of confidentiality and limited use shall not apply to any information that the party receiving such information under this agreement ("Receiving Party") can show (a) was already known to the Receiving Party without restriction on disclosure prior to the time of first disclosure; (b) at the time of disclosure is in the public domain; or after the date of the disclosure, lawfully becomes a part of the public domain other than through breach of this Agreement by the Receiving Party; (c) is received without obligations of confidentiality from a third party having a legal right to disclose the same; (d) is independently developed by the Receiving Party by individuals without access to such information; or (e) is required to be disclosed by the Receiving Party pursuant to a legally enforceable order, direction or other regulation ("Order"), provided however, that the Receiving Party promptly notifies the party that disclosed such information in advance of such disclosure (to the extent permitted by applicable law), and discloses only that information necessary to comply with said Order.

8. Compliance with Laws

In carrying out the purpose of this Agreement, each of NYGC and Purchaser agrees that its activities will be conducted in compliance with all Applicable Laws.

9. Disclaimer of Warranty; Limitation on Liability

Other than as expressly set forth in these Terms and Conditions, NYGC makes no representations, warranties or guarantees regarding the Services or Results provided by NYGC to Purchaser, or the use of the Results by Purchaser. NYGC DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NYGC SHALL NOT BE LIABLE TO PURCHASER, ITS AFFILIATES, SUCCESSORS, ASSIGNS OR ANY THIRD PARTY WITH RESPECT TO CLAIMS ON ACCOUNT OF OR ARISING FROM THE MANUFACTURE, USE OR SALE OR ANY PRODUCTS OR OTHER MATERIAL OR ITEM DERIVED FROM THE SERVICES OR RESULTS. IN NO EVENT WILL NYGC BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF SAMPLES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR PROPERTY DAMAGE SUSTAINED BY CUSTOMER FROM THE USE OF, OR INABILITY TO USE, ANY SAMPLES OR RESULTS, EVEN IF NYGC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS TO ANY NYGC LIABILITY NOT SUBJECT TO THE FOREGOING, NYGC'S MAXIMUM LIABILITY WILL NOT EXCEED THE AGGREGATE AMOUNT PAID UNDER THE QUOTE BY PURCHASER TO NYGC FOR THE SERVICES IN QUESTION.

10. Force Majeure

NYGC will not be liable for lost or destroyed Purchaser Materials, delay or non-performance of any of its obligations hereunder or its performance of the Services to the extent that such performance is prevented, prohibited or delayed, or such loss or destruction of Purchaser Materials is caused, by any circumstance or reasons beyond NYGC's control including without limitation, labor disputes, fire, flood, natural disaster, war, blockade, military operations, riot, civil commotion, plant breakdown, power outage, computer or other equipment failure or non-delivery or delays in delivery by any other suppliers of goods or services utilized in the performance of services under this Agreement, provided that NYGC completes the Services within a reasonable time after such circumstances are resolved.

11. Acknowledgment

Purchaser will offer to acknowledge NYGC's role in providing the Services in any presentations or publications utilizing the Results. Any such acknowledgment or use of NYGC's name must be approved in advance and in writing by NYGC. If Purchaser is acquiring the Services as part of an academic research project or initiative, Purchaser agrees to inform NYGC in writing if Purchaser Materials or the Services are subject to any restrictions on publication that prevent Purchaser from classifying the Results as "fundamental research" as such term is defined in National Security Decision Directive 189 or other applicable law.

12. Termination

- 12.1. The Services may be terminated by Purchaser at any time upon NYGC's receipt of written notification from Purchaser, however Purchaser remains responsible for any costs incurred by NYGC in connection with the Services including any Services NYGC has in process under the Quote at the time of notification of termination as well as any consumable that was specially ordered for the Services.
- 12.2. The Services may be terminated by NYGC (a) upon thirty (30) days prior written notice to Purchaser if Purchaser fails to pay amounts due to NYGC or (b) immediately if Purchaser breaches any of the Terms and Conditions or other Purchaser obligations outlined in the Quote. Termination shall become effective at the end of the thirty (30) day period in (a) above unless Purchaser has cured any such breach or default prior to the expiration of such thirty (30) day period.
- 12.3. The parties acknowledge that Sections 3, 4, 6, 7, 9, 11, and 14 shall survive termination of these Terms and Conditions.

13. Notices

All notices shall be effective upon receipt. All notices to Purchaser shall be made by overnight commercial courier to Purchaser's address set forth in the Quote. All notices to NYGC regarding the Services shall be made by overnight commercial courier, addressed as follows:

New York Genome Center
101 Avenue of the Americas, 7th Floor
New York, New York 10013
Attn: Office of General Counsel
Phone: 646-977-7000
E-mail: OGC@NYGenome.org

14. Miscellaneous

- 14.1. Purchaser agrees to these Terms and Conditions by signing and returning the Quote, by submitting Purchaser Materials to NYGC, and/or by accepting the Services. These Terms and Conditions and the Quote (including any attachments thereto) represent the entire agreement of the parties. While NYGC may accept purchase orders from Purchaser for administrative convenience at its discretion, Purchaser understands and agrees that the terms of any such purchase orders or related documents that purport to replace, modify, or supplement these Terms and Conditions shall have no effect. No change or modification of these Terms and Conditions or the Quote shall be effective unless it is in writing and signed by a duly authorized representative of both NYGC and Purchaser.

- 14.2. Should Purchaser wish to pursue a research collaboration with NYGC using the Results, Purchaser and NYGC shall work together in good faith to negotiate and enter into new terms and conditions that shall govern such collaborative research.
- 14.3. Purchaser will not use NYGC's name, or the name of any NYGC director, officer, employee, faculty member, trainee or consultant in advertising or publicity releases without NYGC's prior written consent.
- 14.4. NYGC is an independent entity and nothing in the Terms and Conditions or the Quote shall be construed to create a partnership, joint venture or employment relationship between the parties.
- 14.5. If any provision of the Terms and Conditions shall be determined to be invalid or unenforceable, such determination shall not affect the validity of the other provisions of the Terms and Conditions.
- 14.6. Waiver by either party or the failure by either party to claim a breach of any provision of the Terms and Conditions shall not be deemed to constitute a waiver or estoppel with respect to any subsequent breach of any provision of the Terms and Conditions.
- 14.7. These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its choice of law provisions.
