

## COOPERGENOMICS, INC. STANDARD TERMS AND CONDITIONS FOR GENOMICS SERVICES

### 1. BACKGROUND; APPLICABILITY.

(a) **Background.** CooperGenomics, Inc., a Delaware corporation (“**CooperGenomics**”), provides genetic testing services (“**Services**”) through its own licensed clinical laboratories and those operated by its affiliates (“**Labs**”) to medical practices (each, a “**Customer**,” and, together with CooperGenomics, the “**Parties**”) that order those services for their patients.

(b) **Applicability.** These Standard Terms and Conditions for Genomics Services (“**T&Cs**”) apply to, and are incorporated into and form an integral part of, a Service Level Agreement (“**SLA**”) between, CooperGenomics, on the one hand, and a Customer, on the other hand, that explicitly incorporates these T&Cs. These T&Cs are not otherwise applicable to CooperGenomics’s, or any other Lab’s, provision of services or goods to any individual or entity. This “**Agreement**” means these T&Cs together with the SLA that incorporates them. “**Tests**” means the tests that CooperGenomics offers to the Customer under the SLA. The sites at which the Labs perform the Tests are called the “**Lab Sites**.”

### 2. PROVIDER-PATIENT RELATIONSHIP; PROVISION OF INFORMATION.

(a) **Provider-Patient Relationship.** The Customer shall have a provider-patient relationship with each patient referred for the Services and be solely responsible for all clinical diagnosis and treatment of those patients, including determining those patients that may benefit from the Services.

(b) **Collection of Information from Patients.** In addition to the information contained in CooperGenomics’s approved and required Test Requisition Form (“**TRF**”) and Patient Consent Form (“**Consent Form**”), which the Customer shall collect in accordance with the SLA, the Customer shall also provide all other documentation and information required or requested by CooperGenomics for CooperGenomics to perform the Services. The Customer acknowledges that CooperGenomics has no obligation to process samples without a properly completed TRF and Consent Form or without any other documentation required or requested by CooperGenomics. CooperGenomics shall provide the Customer with reasonable notice of any incomplete or missing documentation and an opportunity to correct or provide that documentation. The Customer shall collect from its patients and provide to CooperGenomics, or allow CooperGenomics to directly contact the Customer’s patients to obtain, any information that is not included or not correctly provided in the TRF and Consent Form.

(c) **CooperGenomics Informational Materials.** CooperGenomics shall, at the Customer’s request, provide reasonable print and digital informational materials relating to the Services for the Customer’s patients and respond reasonably to the Customer’s questions related to the Services, in each case as determined by CooperGenomics. CooperGenomics may in its discretion, but is not obligated to, make those materials available in languages other than English.

### 3. PORTAL.

CooperGenomics maintains, for some Tests and Lab Sites determined by CooperGenomics in its discretion, a cloud-based portal in which sample information is stored (the “**CooperGenomics Portal**”) to allow the Customer to manage, track, and download patient results. CooperGenomics shall provide the Customer access to the CooperGenomics Portal to the extent that it is available and relevant for the Tests that the Customer’s patients are utilizing and the Lab Sites at which those Tests are performed. The Customer shall comply with the instructions that CooperGenomics may provide from time to time for use of the Portal and shall use the Portal only for its intended purpose of Test-related communications between the Customer and CooperGenomics. The Customer shall, and

shall cause its personnel to, strictly limit access to the Portal to Personnel who need that access in the course of treating relevant patients, including by securing access to login credentials. The Customer's access to the Portal shall be subject to the Customer's compliance with this [Section 3](#).

#### 4. TESTING KITS.

- (a) **Cost.** CooperGenomics shall, only to the extent provided in the SLA, supply kits for collecting samples for CooperGenomics to test ("**Testing Kits**") to the Customer's location that the Customer specifies in writing to CooperGenomics or such other location as the Parties may mutually agree upon in writing (the "**Customer Site**").
- (b) **Disclaimer.** CooperGenomics shall not be responsible for any failure to supply Testing Kits, including any failure related to the importation of the Testing Kits into the jurisdiction in which the Customer Site is located.

#### 5. COMPLIANCE MATTERS.

(a) **CooperGenomics Compliance.**

(i) CooperGenomics represents and warrants that as of the effective date of the SLA (the "**Effective Date**") (A) the Labs maintain all laboratory licenses, permits, certifications and accreditations (each, a "**Certification**") that are required under applicable law and regulation ("**Law**") to perform the Services in each jurisdiction in which a Lab Site is located (collectively, the "**CooperGenomics Jurisdictions**") and (B) the Labs' performance of the Services complies in all material respects with applicable Law in the CooperGenomics Jurisdictions. The Labs shall during the Term perform the Services in accordance with applicable Law in the CooperGenomics Jurisdictions.

(ii) The Customer shall notify CooperGenomics in writing if the Customer believes that (A) the Labs lack a Certification that is required under applicable Law, including Law of the jurisdiction in which the Customer is located (the "**Customer Jurisdiction**"), to perform Services on samples collected from patients in the Customer Jurisdiction (any Certification that is so required, a "**Required Certification**") or (B) the Labs' performance of the Services otherwise fails to comply in any material respect with applicable Law, in which case CooperGenomics may, to the extent CooperGenomics considers it appropriate, take such action as CooperGenomics considers appropriate to obtain that Required Certification or cause the Labs' performance of the Services to comply with applicable Law. The Customer's sole remedy for any failure by the Labs to have any Required Certification or otherwise to perform the Services in compliance with applicable Law shall be to cease referring patients to CooperGenomics for Services.

(b) **Customer Compliance.**

(i) The Customer shall comply with applicable health care Laws in the Customer Jurisdiction.

(ii) The Customer shall, and shall cause its clinicians and other representatives to, comply with all applicable anti-corruption and anti-bribery Laws, including the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act and any other Laws having a similar purpose. Without limiting the generality of the immediately preceding sentence, except for the payment of fees required by applicable Law to be paid to Governmental Entities, the Customer shall not, and shall cause its clinicians and other representatives not to, in connection with the Services or any other transaction or matter involving CooperGenomics, make, offer to make or promise to make any payment or transfer of anything of value, directly or indirectly, to (A) anyone working in an official capacity for any Governmental Entity, including any employee of any government-owned or controlled entity or public international organization, (B) any political party, official of a political party or candidate for political office or (C) any other person if that payment, offer of payment or promise of payment is made in order to obtain or retain business or secure any improper business advantage. "**Governmental Entity**" means any federal, state, local or foreign

political subdivision, court, administrative agency, commission or department or other governmental authority or instrumentality.

(iii) The Customer shall provide CooperGenomics with all information necessary and useful for CooperGenomics to comply with any applicable Law in connection with the Services.

(c) **DISCLAIMER OF IMPLIED WARRANTIES.** THE REPRESENTATIONS AND WARRANTIES SET OUT IN THIS AGREEMENT ARE THE SOLE REPRESENTATIONS AND WARRANTIES MADE BY EITHER PARTY CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE TESTS AND THE SERVICES, AND EACH PARTY HEREBY DISCLAIMS ANY IMPLIED REPRESENTATIONS OR WARRANTIES CONCERNING THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE TESTS AND THE SERVICES.

(d) **Record Retention.** CooperGenomics shall retain records of Services performed, and related invoices, in accordance with CooperGenomics's record retention and privacy policies in effect from time to time, for at least the minimum period required by applicable Law.

## 6. TERM AND TERMINATION.

(a) **Term.** The term of this Agreement (the "**Term**") is as provided in the SLA.

(b) **Termination Without Cause.** Either Party may terminate this Agreement at any time, without cause, by 90 days' written notice to the other Party. No compensation or indemnities shall be payable in connection with that termination.

(c) **Termination For Cause.** Either Party may terminate this Agreement, without the payment of any compensation or indemnities in connection with that termination, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

(i) Materially breaches this Agreement, and that breach is incapable of cure, or the Defaulting Party does not cure that breach within 30 days after receipt of written notice of that breach;

(ii) Becomes insolvent or admits its inability to pay its debts generally as they become due;

(iii) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law that is not fully stayed within 7 days or is not dismissed or vacated within 30 days after filing;

(iv) Is dissolved or liquidated or takes any corporate action for that purpose; or

(v) Makes a general assignment for the benefit of creditors.

(d) **Survival.** Section 5(c), this Section 6, and Sections 8–13, and the liability of each Party for its breach of its representations, warranties, covenants or obligations under this Agreement before the termination of this Agreement, shall survive the termination of this Agreement.

## 7. PRICING.

(a) The prices for the Tests are as specified by CooperGenomics in the price list that it offers to the Customer from time to time (the "**Test Prices**").

(b) CooperGenomics may, from time to time in its discretion, (i) change any Test Price upon 30 calendar days' prior written notice to the Customer and (ii) make additional Tests available to the Customer and specify the Test Prices for those additional Tests.

(c) The Test Prices are exclusive of all taxes (including sales, value added and excise taxes), duties and tariffs. To the extent that CooperGenomics is required to pay any of those amounts, CooperGenomics shall invoice the Customer for those amounts and the Customer shall pay those amounts to CooperGenomics within 30 days after the date of CooperGenomics's invoice.

(d) Except as otherwise indicated in CooperGenomics's price list or in a commercial agreement between the Parties, CooperGenomics, another Lab or another affiliate of CooperGenomics (the "**Bill Issuer**"), shall invoice the Customer monthly for all Services provided by CooperGenomics, and the Customer shall pay the Bill Issuer for those Services, in the currency indicated in the invoice, within 30 days after the date of the invoice, except, that for PGT-M Tests CooperGenomics may invoice the Customer in advance and require payment in advance prior to initiating molecular test development.

(e) If the Customer fails to timely make any payment that the Customer is required to make under this Agreement, regardless of whether that payment is to be made to CooperGenomics or another Bill Issuer and regardless of whether CooperGenomics or another Bill Issuer issued any relevant invoice, the Customer shall pay interest on the unpaid amounts at a rate equal to the lesser of 1.5% per month and the maximum rate permitted by applicable Law.

## 8. **INTELLECTUAL PROPERTY.**

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights in and to the Testing Kits and all documents and other materials that are delivered to the Customer under this Agreement or prepared by or on behalf of CooperGenomics in the course of performing the Services shall be owned by CooperGenomics.

## 9. **CONFIDENTIALITY.**

(a) Each Party (the "Recipient") shall, during the Term and for the Confidentiality Period thereafter, keep confidential the Confidential Information of the other Party (the "Discloser") disclosed or made available to it before, on or after the Effective Date in connection with this Agreement. The Recipient shall not disclose the Discloser's Confidential Information to any third person, except (i) as required to fulfill the Recipient's obligations under this Agreement and (ii) as otherwise explicitly permitted by this Agreement.

(b) "Confidential Information" means any non-public technical, laboratory, algorithmic, business or financial information, identified as such by the Discloser in writing, or identified as such in this Agreement, including the terms of this Agreement, patient information, proprietary, developmental, technical, marketing, sales, operating, performance, cost, know-how, policy, business and process information, software and all record bearing media containing or disclosing that information.

(c) The "Confidentiality Period" means 3 years from the end of the Term, except, that (i) to the extent that any Confidential Information constitutes a trade secret, this Agreement shall remain in effect for that Confidential Information until that Confidential Information ceases to be a trade secret for reasons not attributable to a breach of this Agreement by the Recipient of that Confidential Information and (ii) to the extent that any Confidential Information constitutes Protected Data, that Confidential Information shall remain protected as and to the extent provided in applicable DP Laws.

(d) Each Party shall advise its Affiliates, employees, officers, agents, clinicians and representatives (“**Representatives**”) involved in the performance of this Agreement of the terms and conditions of this Section 9 and instruct them to observe those terms and conditions. Each Party shall be responsible for any breach of this Section 9 by its Representatives.

#### 10. DATA PROTECTION – GDPR.

(a) **Applicability.** This Section 10 shall apply only if the SLA provides that GDPR (including any successor Laws in the United Kingdom) data protection terms are applicable. Otherwise, Section 11 shall apply, and this Section 10 shall not apply.

(b) **Definitions.** For the purposes of this Section 10 the following terms have the following meanings:

- (i) **"Controller", "Processor", "Data Subject", "Personal Data" and "processing"** all have the meanings given to those terms in DP Laws (and related terms such as **"process"** have corresponding meanings);
- (ii) **"Complaint"**: a complaint or request relating to the obligations of either the Customer or CooperGenomics under DP Laws that is relevant to the Protected Data, including any compensation claim from a Data Subject or any notice, investigation or other action from a regulator or Supervisory Authority;
- (iii) **"Data Subject Request"**: a request made by a Data Subject to exercise any rights of Data Subjects under DP Laws;
- (iv) **"DP Laws"**: (A) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any Laws implementing Council Directives 95/46/EC or 2002/58/EC; (B) the General Data Protection Regulation (EU) (2016/679) ("**GDPR**") and/or any corresponding or equivalent national Laws, including any successor, corresponding or equivalent national laws in the United Kingdom, in each case once in force and applicable; and (C) any other Laws relating to the processing of Personal Data, as applicable to the Customer or CooperGenomics;
- (v) **"DP Losses"** means all liabilities, including: (A) costs (including legal costs), claims, demands, actions, settlements, charges, procedures, expenses, losses and damages (whether material or non-material); (B) to the extent permitted by applicable Law: (I) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority or any other relevant regulatory authority; (II) compensation to a Data Subject ordered by a Supervisory Authority; (III) the reasonable costs of compliance with investigations by a Supervisory Authority or any other relevant regulatory authority; and (C) in respect of Section 10(k), any loss or corruption of CooperGenomics data including the costs of rectification or restoration of CooperGenomics data;
- (vi) **"Personal Data Breach"**: any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, any Protected Data;
- (vii) **"Protected Data"**: means Personal Data processed by the Customer and subsequently received by, or otherwise made available to, CooperGenomics from or by the Customer or a person acting on the Customer's behalf, or otherwise obtained by CooperGenomics in connection with the performance of the Customer's or CooperGenomics's obligations under this Agreement; and
- (viii) **"Supervisory Authority"** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering DP Laws.

(c) In relation to the Protected Data, CooperGenomics is a Data Controller and the Customer is also a Data Controller. The Customer and CooperGenomics are each responsible for complying, and shall comply, with DP Laws and their respective obligations under this Agreement in connection with the processing of Protected Data.

(d) Nothing in this Agreement shall prohibit or otherwise restrict the Customer or CooperGenomics from complying with obligations under applicable DP Laws.

(e) The Customer and CooperGenomics shall each, on reasonable request:

(i) provide reasonable assistance, information and cooperation to the other as necessary to enable the other to comply with its obligations under DP Laws, in connection with the processing of the Protected Data; and

(ii) within thirty Business Days provide to the other evidence of compliance with its data processing obligations in relation to the Protected Data to enable the requesting entity or its auditors to assess compliance with this Agreement or to respond to any request from, or requirement of, any Supervisory Authority or any other regulatory or judicial body of competent jurisdiction.

(f) The Customer and CooperGenomics shall each implement and maintain, at its cost and expense, appropriate technical and organizational measures in relation to its processing of Protected Data (including during any transfer of Protected Data to CooperGenomics) such that: (i) the processing will meet the requirements of DP Laws and ensure the protection of the rights of Data Subjects; and (ii) so as to ensure that the level of security in respect of Protected Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Protected Data transmitted, stored or otherwise processed.

(g) Without limiting any other provision of this Agreement, the Customer shall ensure that, prior to any Protected Data being received by or made available to CooperGenomics pursuant to this Agreement, the Customer: (i) obtains all necessary consents from Data Subjects of the Protected Data (and records that it has done so); and (ii) provides all privacy information to Data Subjects of the Protected Data that is required to be provided by the Customer under Articles 13 and 14 of the GDPR (as applicable), so as to ensure that the Customer's collection and processing of Protected Data including its sharing of Protected Data with CooperGenomics, and CooperGenomics's processing of the Protected Data in accordance with its obligations under this Agreement, is in all respects in compliance with applicable DP Laws. That consent and privacy information shall be in the form supplied by CooperGenomics to the Customer.

(h) If the Customer or CooperGenomics receives any Data Subject Request or Complaint directly from a Data Subject or the person making the Complaint, the recipient (as applicable) shall record and, subject to [Section 10\(i\)](#), deal at its own discretion with the Data Subject Request or Complaint. Notwithstanding the foregoing, if a Data Subject Request or Complaint received by the Customer concerns the processing of Protected Data by CooperGenomics, the Customer shall notify CooperGenomics in writing of the Data Subject Request or Complaint without delay and before responding to the Data Subject or person making the Complaint and shall take any steps reasonably requested by CooperGenomics in connection with the Complaint in so far as it relates to CooperGenomics.

(i) In respect of any Personal Data Breach (actual or suspected) of which the Customer becomes aware, the Customer shall notify CooperGenomics of the Personal Data Breach without undue delay (but in any event no later than 12 hours after becoming aware of the Personal Data Breach) and provide CooperGenomics, within 24 hours of becoming aware of the Personal Data Breach, with such details

relating to the Personal Data Breach as CooperGenomics may reasonably require. To the extent permitted by applicable Law, the Customer shall not:

(i) notify a Supervisory Authority or Data Subject of any Personal Data Breach; or

(ii) issue any public statement in relation to such Personal Data Breach;

without first consulting with, and obtaining the consent of, CooperGenomics (which CooperGenomics shall not unreasonably withhold or delay).

(j) The standard contractual clauses in Exhibit A shall apply to Protected Data that is transferred from the Customer, located within the EEA, the United Kingdom and/or Switzerland, to CooperGenomics in the U.S. (and, to the extent required by applicable Law, the United Kingdom), in connection with the Services and/or the Parties' obligations under this Agreement. CooperGenomics's and the Customer's signatures on the SLA shall be deemed to be their signatures on those standard contractual clauses.

(k) The Customer shall indemnify and keep indemnified CooperGenomics in respect of all DP Losses suffered or incurred by, awarded against CooperGenomics, arising from or in connection with any breach by the Customer of its data protection obligations under this Agreement.

(l) The Customer undertakes to ensure that only the Protected Data requested by CooperGenomics or Protected Data that the Customer reasonably considers necessary for the services set out in this Agreement is provided or made available to CooperGenomics.

(m) The Customer shall use reasonable endeavours to ensure that the Protected Data is kept up to date at all times and is correct at the time it is provided to CooperGenomics and shall notify CooperGenomics as soon as reasonably practicable of any material changes or updates to it.

(n) The Customer shall, without undue delay, inform CooperGenomics of any withdrawal by a Data Subject of its consent to either the Customer or CooperGenomics processing the Protected Data.

## 11. DATA PROTECTION – NON-GDPR.

(a) This Section 11 is applicable only to the extent provided in Section 10(a).

(b) Each Party shall comply with any obligations that it may have under applicable data protection and privacy Laws (“DP Laws”) in connection with its performance of its obligations under this Agreement.

(c) The Customer's supply of any information and samples under this Agreement shall be in accordance with any obligations the Customer may have under applicable DP Laws, and the Customer shall indemnify, defend and hold harmless CooperGenomics, the other Labs and Bill Issuers and its other affiliates from and against all losses, costs, damages, expenses (including the reasonable fees of attorneys, accountants and other professionals) and liabilities (“Losses”) incurred by any of them in connection with any third party claim made against any of them in respect of any breach or alleged breach of applicable DP Laws as a result of any samples or information supplied by the Customer under this Agreement or any breach by the Customer of Section 11(b).

(d) CooperGenomics's processing of samples and issuance of reports under this Agreement shall be in compliance with any obligations CooperGenomics may have under applicable DP Laws, and CooperGenomics shall indemnify, defend and hold harmless the Customer from and against all Losses incurred by the Customer in connection with any third party claim made against the Customer in respect of any breach or alleged breach of applicable DP Laws as a result of CooperGenomics's processing of any samples or issuance of any reports under this Agreement or any breach by CooperGenomics of Section 11(b).

(e) If either Party becomes aware of any additional actions that the Parties are, or are reasonably likely to be, required to take to comply with applicable DP Laws in connection with the activities contemplated by this Agreement, that Party shall discuss that requirement with the other Party and the Parties shall discuss how to respond to that requirement.

## 12. NON-EXCLUSIVE ARRANGEMENT.

This Agreement is non-exclusive, and the Customer is under no obligation to refer patients to CooperGenomics or solicit patients to use the Services. The Customer will not receive any benefit of any kind from CooperGenomics for making any referrals to CooperGenomics, nor will the Customer suffer any detriment for not making referrals to CooperGenomics.

## 13. MISCELLANEOUS PROVISIONS.

(a) **Relationship of the Parties.** Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency, or employment relationship between the Parties nor shall either Party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other Party.

(b) **Use of Name and Trademarks.** The Customer shall not use the name, trademark, logo or symbol of CooperGenomics for any purpose without CooperGenomics's prior written consent to that use in each instance.

(c) **Entire Agreement.** This Agreement contains the entire agreement of the Parties concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, concerning that subject matter.

(d) **Updates to T&Cs.** CooperGenomics may revise these T&Cs from time to time by posting new T&Cs on its website or otherwise making new T&Cs available to the Customer. This Agreement shall not otherwise be modified, amended, or in any way altered except by an instrument in writing signed by the Parties.

(e) **Assignment.** The Customer shall not assign or transfer this Agreement or any of its rights or obligations under this Agreement without CooperGenomics's prior written consent. All representations, warranties, and agreements of the Parties contained in this Agreement shall be binding upon and inure to the benefit of their successors and permitted assigns.

(f) **Governing Law.** This Agreement, and all issues and questions concerning the construction, validity, enforcement, interpretation and subject matter of this Agreement, shall be governed by, and construed in accordance with, the Laws of the State of New York, without giving effect to any choice or conflict of law provision or rule, whether of the State of New York or any other jurisdiction, that would cause the Laws of any jurisdiction other than the State of New York to apply.

(g) **Jurisdiction and Venue.** THE NEW YORK STATE AND UNITED STATES FEDERAL COURTS SITTING IN NEW YORK COUNTY, NEW YORK, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL ACTIONS, SUITS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH ACTION OR PROCEEDING OR FOR RECOGNITION OF ANY JUDGMENT AND (II) WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF, AND ANY DEFENSE BASED ON AN INCONVENIENT FORUM IN, ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY MAY BE SERVED WITH PROCESS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE SAME MANNER IN WHICH NOTICES AND OTHER COMMUNICATIONS MAY BE DELIVERED UNDER THIS AGREEMENT.

(h) **Jury Trial Waiver.** BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX BUSINESS TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WANT

APPLICABLE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES WANT THEIR DISPUTES TO BE RESOLVED BY A JUDGE APPLYING THOSE APPLICABLE LAWS. ACCORDINGLY, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM, EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH THAT LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(i) **Notices.** All notices and other communications under this Agreement shall be delivered in accordance with the SLA and shall be deemed to have been delivered and received (i) in the case of personal delivery or delivery by e-mail, on the date of delivery if delivered during business hours on a Business Day or, if not delivered during business hours on a Business Day, the first Business Day thereafter, (ii) in the case of delivery by internationally recognized express courier, on the Business Day delivered, and (iii) in the case of mailing by certified mail, on the 6<sup>th</sup> Business Day following mailing. “Business Day” means any day that is not a Saturday, Sunday or a day on which banking institutions in New York City are not required to be open.

(j) **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT, OR OTHERWISE IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING LOST GOODWILL, LOST PROFITS, LOST BUSINESS OR OTHER INDIRECT ECONOMIC DAMAGES, OR INJURY TO PROPERTY, REGARDLESS OF WHETHER ANY CLAIM FOR THOSE DAMAGES IS BASED ON CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER LEGAL THEORY AND REGARDLESS OF WHETHER THE PARTY ALLEGEDLY LIABLE FOR THOSE DAMAGES WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OF THOSE DAMAGES.

THE AGGREGATE LIABILITY OF COOPERGENOMICS AND ITS AFFILIATES UNDER THIS AGREEMENT AND WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER ANY CLAIM FOR DAMAGES IS BASED ON CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNTS PAID BY CLIENT FOR SERVICES UNDER THIS AGREEMENT IN THE 6 MONTHS PRECEDING THE DATE OF THE OCCURRENCE OR SERIES OF RELATED OCCURRENCES FOR WHICH LIABILITY IS ALLEGED.

(k) **Insurance.** The Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes general liability insurance and professional liability insurance, in the minimum amount of \$1,000,000 for each occurrence and a minimum amount of \$3,000,000 in the aggregate. The Customer shall, upon CooperGenomics’s request, provide proof of that coverage.

(l) **Force Majeure.** Neither Party shall be liable to the other Party for any delay or failure to perform its obligations (except payment of money) under this Agreement if it arises from or is due to any cause or causes beyond the reasonable control of the Party affected, including acts of God, acts of government, labor disturbances, shortage of or difficulty in obtaining raw materials or components, epidemics, blockades, quarantines, fire, or flood.

(m) **Interpretation; Construction; Translations.** The use in this Agreement of the terms “including” or “includes,” or similar terms, means “including, or includes, without limitation.” The word “or” is not exclusive. All references to sections, clauses, paragraphs and Exhibits mean those provisions of these T&Cs and those Exhibits attached to this these T&Cs, except where otherwise stated. The Exhibits attached to this Agreement are hereby incorporated by reference in, and form an integral part of, this Agreement. The use in this Agreement of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require. To the extent that this Agreement provides that either Party may make any determination, that Party may make that determination in its

sole and absolute discretion. CooperGenomics may, but shall not be required to, make available a translation of this Agreement into a language other than English (a "Translation"). Notwithstanding anything in this Agreement or in any Translation to the contrary, and notwithstanding any purported execution or delivery of any Translation, to the extent of any difference in terms between the English-language version of this Agreement and any Translation the English-language version of this Agreement shall control under all circumstances, and any additional or different terms of any Translation shall be void and of no effect.

(n) **Counterparts.** The SLA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Portable document format (PDF) and other electronic counterpart signatures to this Agreement shall be acceptable and binding.

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Exhibit A



EUROPEAN COMMISSION

DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship  
Unit C.3: Data protection

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**Commission Decision C(2004)5721**

**SET II**

**Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)**

Data transfer agreement between

The Customer that is a Party to the SLA..... (name)

The Customer's address as notified to CooperGenomics..... (address and country of establishment)

hereinafter "data exporter"

and

CooperGenomics, Inc. .... (name)

75 Corporate Drive, Trumbull, CT 06611 USA ..... (address and country of establishment)

hereinafter "data importer"

each a "party"; together "the parties".

**Definitions**

For the purposes of the clauses:

- a) "personal data", "special categories of data/sensitive data", "process/processing", "controller", "processor", "data subject" and "supervisory authority/authority" shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby "the authority" shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) "the data exporter" shall mean the controller who transfers the personal data;
- c) "the data importer" shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
- d) "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

Exhibit C – 1

## **I. Obligations of the data exporter**

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## **II. Obligations of the data importer**

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data

subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).

- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, at its option, in accordance with:
  - i. the data protection laws of the country in which the data exporter is established, or
  - ii. the relevant provisions<sup>1</sup> of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data<sup>2</sup>, or
  - iii. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: iii.....

Initials of data importer: /s/ CooperGenomics, Inc. .... ;

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

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<sup>1</sup> “Relevant provisions” means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

<sup>2</sup> However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

### III. Liability and third party rights

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

### IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

### V. Resolution of disputes with data subjects or the authority

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

### VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
  - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
  - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

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- iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
- iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
- v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

## **VII. Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

## **VIII. Description of the Transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

## **IX. Jury Trial Waiver**

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX BUSINESS TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WANT APPLICABLE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES WANT THEIR DISPUTES TO BE RESOLVED BY A JUDGE APPLYING THOSE APPLICABLE LAWS. ACCORDINGLY, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM, EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BASED UPON OR ARISING OUT OF THESE CLAUSES OR THE SUBJECT MATTER OF THESE CLAUSES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THESE CLAUSES, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THESE CLAUSES. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL

RIGHTS FOLLOWING CONSULTATION WITH THAT LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THESE CLAUSES MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**X. Costs**

Each party shall perform its obligations under these clauses at its own cost.

ANNEX A

**DATA PROCESSING PRINCIPLES**

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
8. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
  - a) i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and

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ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

or

b) where otherwise provided by the law of the data exporter.

ANNEX B

**DESCRIPTION OF THE TRANSFER**

(To be completed by the parties)

**Data subjects**

The personal data transferred concern the following categories of data subjects:

.....patients of the data exporter, who wish to undergo genetic testing. ....

**Purposes of the transfer(s)**

The transfer is made for the following purposes:

.....

- Provision of genetic testing services for samples collected by or on behalf of the data exporter for patients of data exporter’s practice.
- Provision of a cloud-based portal by the data importer in which sample information is stored to allow the data exporter to manage, track, and download patient results.
- Record keeping by the data importer in relation to genetic testing services performed (and related invoices) for 7 years after the provision of the relevant services.

**Categories of data**

The personal data transferred concern the following categories of data:

.....information about the identity and health/medical condition of patients including (but not limited to):

- name;
- address;
- email address;
- telephone number;
- identification number;
- date of birth;
- age;
- gender;
- information about the patient’s health/medical condition, medical history, and details of medical treatment received or requested;
- genetic information (including details of genetic testing requested or carried out and the results of such tests);
- biometric information and DNA (including blood test results); and
- information about family members (including health/medical information relating to such persons).

.....

**Recipients**

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

- .....- authorised personnel of the data importer’s group of companies;
- legal and regulatory authorities within the data importer’s jurisdiction;
- affiliates of the data importer; and
- third party service providers to the data importer.

