



## **Annex 1**

These Terms apply to and govern all services provided by **LCSB Sequencing Platform**.

The “Sequencing Platform” and the “Customer” each individually refer to as “Party” and collectively as “Parties”.

### **1. Definitions**

In these Terms, the following words have the following meanings:

Terms	Sequencing Platform Terms and Conditions;
Agreement	Services Agreement signed by and between Sequencing Platform and Customer or Purchase Order provided by Customer, whichever applicable, for the purchase of the Services provided by Sequencing Platform, including these Terms, the Submission Form, the Quotation;
Confidential Information	Any and all proprietary information in tangible form, including but not limited to the background of either Party, business, financial information, and/or information regarding the Agreement that either party may receive (the “Receiving Party”) from the other party (the “Disclosing Party”) or otherwise obtained under the Agreement. Any information disclosed in writing should be regarded as Confidential Information;
Customer	Purchaser of the Service described in the Agreement;
Data Protection Law	The EU Regulation 2016/679 named General Data Protection Regulation (the “GDPR”), as well as its successor text, and the additional applicable national laws;
Effective Date	Last date of signature of the Service Agreement or date of acceptance of the Purchase Order by the Sequencing Platform, whichever applicable;
IP Rights	All patent rights, trademarks, logos, designs, models, domain names, database rights, copyrights (including, without limitation, software, firmware, algorithms, computer programs, and multi-media works), knowhow, inventions, and all other intellectual property or similar property rights of whatever nature, current or future, under the laws of any jurisdiction, and including all applications and registrations thereto;
Project	Performance of the Services provided in compliance with the Quotation, Purchase Order, and/or Service Agreement as agreed by both Parties;
Purchase Order	An order provided by Customer and accepted by Sequencing Platform;
Quotation	Written quotation provided by Sequencing Platform and accepted by Customer;
Results	Data generated in the performance of the Service;
Sample(s)	Sample(s) to be provided by Customer to Sequencing Platform as specified in the Agreement;



Terms	Sequencing Platform Terms and Conditions;
Sequencing Platform	Luxembourg Centre for Systems Biomedicine Sequencing Platform;
Services	Activities to be provided by the LCSB Sequencing Platform and accepted by the Customer as specified in the Service Agreement;
Specification	Written specifications for Services contained in the Services Agreement and notably in the Quotation;
Submission Form	Document that describes the Samples provided by Customer and the Services to be performed, and additional information, if applicable.

## 2. Samples

- 2.1 Customer shall strictly follow Sequencing Platform's instructions for shipping and handling the Samples, and agrees to provide the Samples and all other information and materials as specified in the Quotation. Customer is responsible for ensuring the safe transport of the Samples.
- 2.2 Customer agrees and acknowledges that any failure to provide the Samples or any other information or material in accordance with the Agreement shall delay the Project and that Sequencing Platform shall not be deemed to breach of any of its obligation nor liable to the Customer in respect of any such failure of the Customer.
- 2.3 Customer shall ensure that at the time Sequencing Platform receives the Samples, each Sample meets the applicable sample quality control criteria established by Sequencing Platform. In case Customer fails to deliver sufficient amount of Samples complying with the applicable sample quality control criteria specified in the Agreement, Sequencing Platform shall inform Customer, shall not start performing any Services, and shall not be liable to Customer for any delay in completing or delivering the Services caused by such failure.
- 2.4 Customer represents and warrants that: (i) it owns or has the right to provide the Samples to Sequencing Platform for use in connection with the Project, and such delivery and use will not violate any obligation that Customer owes to any third party; (ii) it has secured all approvals, licenses and permits to deliver the Samples to Sequencing Platform for use in connection with the Project; (iii) Sequencing Platform's use of the Samples for the performance of the Services will not infringe any Intellectual Property or other propriety rights of any third party, nor violate any legal or ethical requirements.
- 2.5 In the event of any breach of any of the foregoing representations and warranties, Customer shall indemnify and hold harmless Sequencing Platform, and their respective directors, officers, employees, representatives, licensors and agents from and against any loss, costs, damages, liabilities or claims of any kind relating to such breach.
- 2.6 The Project representatives are responsible for the confirmation of Project schedule. All delivery dates shall be scheduled in good faith, but Sequencing Platform reserves the right to alter them notifying the Customer as soon as practicable. Sequencing Platform does not accept any liability for any direct, indirect, consequential or economic loss or damage due to delay in delivery however caused.



### **3. Pricing**

- 3.1 Any Quotation issued by Sequencing Platform is deemed to have a provisional nature. Such document is subject to alteration in order to take account of any change taking place between the date of Quotation and the date of Sequencing Platform's acceptance of the Purchase Order. The Quotation shall expire 30 days after the date of its issue unless otherwise specified in a written document.
- 3.2 The price of service shall be as specified in the Agreement, according to the number, kind, and quality of Samples and of provided Services specified therein. Customer acknowledges and agrees that any deviations from these criteria as originally stated in the Agreement could affect the price and could result in an increase or of a decrease of the price initially agreed. Any change related to the pricing for any of the above-mentioned reason shall require the written consent of the Parties. For the purpose of this Clause 3.2 e-mail correspondence shall be considered written communication.
- 3.3 All prices are exclusive of Value Added Tax ("VAT"), sales, use, withholding and other taxes, and all custom taxes and other tariffs claimed by any governmental authority regarding the Services provided under the Agreement. Customer is responsible for the payment of any tax duties and other government charges in respect with the Services provided under the specified Agreement and these Terms.

### **4. Delivery of Results**

- 4.1 Sequencing Platform will provide all the Results and a concluding report through a secure server to Customer, according to Customer's instructions. Sequencing Platform shall deliver data download website, account number and password to Customer via email designated by Customer's Project representative after completion of the Project, and according to the section 11 of these Terms and Data Protection Law requirements. For any discrepancy in Customer's communication, the Customer's email designated by its Project representative shall prevail. The Sequencing Platform's email by which Sequencing Platform provides its information shall prevail.
- 4.2 The Project shall be deemed to be completed upon delivery of the corresponding Results. Sequencing Platform shall have no obligation to perform any further Services on such Sample and shall not be required to deliver any copy of the Results. If Customer receives the concluding report or downloads the data with no feedback within a month, Project is deemed to satisfy the Customer.
- 4.3 After the Services for all Samples are provided, Sequencing Platform shall answer Customer's queries by phone or email regarding the Results during normal business hours for one month after the date of delivery.
- 4.4 Sequencing Platform will keep all the data generated in the Project for no later than one month after the date of delivery of Results, free of charge, and shall destroy the data upon expiry of the aforementioned period. Customer is liable for ensuring the storage of the Results once delivered, and/or for copying the Results. The Sequencing Platform is not liable for any loss of Results sent to the Customer.

### **5. Payment**

- 5.1 Unless otherwise specified in the Agreement, payment of all invoices will be made in [EUR] by the Customer to Sequencing Platform. Payment shall be done upon receipt of the invoice



and no later than (30) thirty days starting from the date of invoice. Payment shall be based on the instructions mentioned on the invoice, including but not limited to bank details, and reference to indicate.

- 5.2 Customer shall have no right to set off any amounts owed to Sequencing Platform against unpaid invoices due to Sequencing Platform.
- 5.3 Customer shall notify to Sequencing Platform any claim or query by the Customer in respect of the invoice of the services within the period of (15) fifteen days starting from the date of invoice.
- 5.4 With regard to the article 3 and further provisions of the Luxembourg law dated 18 of April 2004 and amended on 29 of March 2013 following the EU Late Payment Directive, 2011/7/EU about late payments in commercial transactions, for any invoice which is not paid in a period of (30) thirty days starting from the date of invoice Sequencing Platform reserves the right to invoice interest at the most recent ECB's key rate plus 8%. In addition, it reserves the right to invoice a global sum of 40 Euro for recovery costs shall be invoiced.

## **6. Ownership**

- 6.1 All Results, to be delivered by Sequencing Platform to Customer shall be exclusively owned by Customer. Notwithstanding with the aforesaid, before full payment by the Customer the Sequencing Platform shall be the owner of the Results.
- 6.2 For clarity, nothing contained in the Agreement shall prohibit or restrict Sequencing Platform from conducting sequencing activities on its own samples or samples provided by any third party that are the same as or similar to the Samples.
- 6.3 Customer acknowledges and agrees to take all appropriate steps reasonably requested by Sequencing Platform to secure for Sequencing Platform all rights and benefits in and to any Sequencing Platform Property. Sequencing Platform shall be appointed as Customer's attorney-in-fact to enable Sequencing Platform to record, file and prosecute any application for, and acquire, maintain and enforce, any Intellectual Property rights and any other rights in the Sequencing Platform Property.

## **7. Research use**

- 7.1 Customer agrees that the Services are provided for research use only. Services, Results, or Confidential Information provided under the Agreement and/or for the performance of the Services are expressly excluded from any further use, including but not limited to clinical diagnostic or healthcare activities, medical purpose, development purpose, commercial purposes and are not intended to be medical advice. The Services have not been subjected to any conformity assessment or other regulatory review or certified, approved or cleared by any conformity assessment body or other regulatory body in any country for diagnostic use or any other purpose.

## **8. Warranties and Liability**

- 8.1 Sequencing Platform warrants to Customer that all Results delivered shall comply with the Specifications in all material aspects. Nonetheless, Results are provided to Customer on an "as is" basis and Customer uses it at his own risk. Sequencing Platform shall not be liable, to the maximum extent of the applicable law, for any warranty, express or implied, including, but not limited to, any warranty of merchantability, fitness for a particular purpose, accuracy, utility, and non-infringement.



- 8.2 Sequencing Platform undertakes on a reasonable basis to implement the best conditions for performance of the Services. Excluding cases of gross negligence or fraud, the Sequencing Platform shall not be liable, for any damage, resulting from any event related to the conditions of performance of Services, which could occur in spite of its efforts. In no event, Sequencing Platform's liability, which may arise in connection with the Agreement, shall exceed the amount paid by the Customer under the Agreement.
- 8.3 To the extent permitted by law, in no event shall Sequencing Platform be liable to Customer or any third Party for any consequential, incidental, punitive contingent, statutory or any other special damages, including, without being limited to, loss of profits or loss of data, arising out of or related to the Agreement, whether in contract, tort, or otherwise.
- 8.4 Typographical, clerical or other error or omission in any sales literature, price list, quotation, acceptance of offer, invoice or other document or information issued by Sequencing Platform shall be subject to correction without any liability on the part of Sequencing Platform.
- 8.5 Sequencing Platform shall not be liable for any failure or delay to provide the Service or any obligation stated by the Terms to the extent that failure or delay resulting from circumstances beyond its reasonable control. Such circumstances refer, without being limited to, fire, explosion, flood, tempest, unusually adverse weather conditions, failure or shortage of power supplies, fault or failure of plant or machinery, war, hostilities, riot, acts of terrorism, strikes, lock-outs or other industrial action or trade dispute, or Customer's fault or negligence. In the case any such circumstance occurs, either Party shall notify as soon as practicable the other Party. In case such event exceeds one month, each Party may terminate the Agreement without liability.

## **9. Indemnification**

- 9.1 Referring to paragraph 2.3 of these Terms, Customer acknowledges and agrees that Sequencing Platform shall be indemnified and held harmless in respect of any liability, cost, and expenses in respect of any claim arising out of (i) infringement of ownership, Intellectual Property rights or any rights of a third party related to the Samples; (ii) any failure by the Customer to observe any obligation under the Terms and the Agreement; (iii) use of Customer of the Data or the Information related to or generated under the Terms and the Agreement for commercial purpose without written and prior consent of Sequencing Platform.
- 9.2 Any Party shall not indemnify any loss arising out of gross negligence or full misconduct of the other Party regarding the Agreement and these Terms.

## **10. Confidentiality**

- 10.1 Each Party acknowledges and agrees to fulfil its obligation to hold in confidence the Confidential Information. The Receiving Party shall not release any Confidential Information to any person or entity other than those involved in the performance of the Services, under the direct supervision of the Project representatives, and who are bound by confidentiality obligations not less strict than those set out herein.
- 10.2 The obligation related to Confidential Information shall not apply to any information which:
- i. At the time of disclosure is generally known or publicly available, or after disclosure becomes generally known or publicly available through no fault of the Parties; or
  - ii. Written evidence proves that the Receiving Party was already in lawful possession of the information prior to disclosure; or





- iii. The information is obtained from a third party who is entitled to disclose the information and not under a confidentiality obligation to the other Party in respect of the information; or
- iv. Is proven by the receiving Party to have been independently developed by the receiving Party without making use of the Confidential Information; or
- v. Is required to be disclosed by law, regulation administrative or court order to be disclosed; provided, however, that in such case, the Receiving Party shall notify the Disclosing Party to assert whatever limitations, exclusions, or exemptions may be available to protect the Disclosing Party's interests.

## **11. Data Protection**

- 11.1 For the purpose of this Agreement and the Services performed thereunder, Customer is referred to as a Data Controller and Sequencing Platform is referred to as a Data Processor.
- 11.2 By providing the Samples and the Submission Form(s) for use in the Services as described in the Agreement, data containing Personal Data will be transferred from the Customer to the Sequencing Platform (the "Data"). By acceptance of these Terms, Customer instructs the Sequencing Platform to process the Data.
- 11.3 Sequencing Platform will collect and store Personal Data of the Customer for the sole purpose of providing the Client with an account on the Sequencing Platform and/or delivering the Results to the Customer. All and any Personal Data processed for the performance of the Services shall be deleted at the latest one month after the delivery of the Results, as provided in paragraph 4.4 of these Terms.
- 11.4 Each Party shall be responsible for complying with any Data Protection requirement. The Customer ensures to provide only Data obtained and processed in accordance with the Applicable Data Protection Laws, which have undergone Pseudonymization. Customer is responsible for ensuring that the Consent of the Data Subject has been documented and given and that it covers the Processing through the Sequencing Platform corresponding to the performance of the Services. Customer is responsible for enforcing Data Subject's statutory rights. If any of these requirements is not met, the Agreement shall be terminated as soon as practicable and Sequencing Platform shall be not held responsible for any loss, harm or damage generated in connection with such termination. Sequencing Platform is not liable for any misuse of the Data and/or the Results and the Personal Data contained therein by the Customer, particularly if the misuse occurs after the date of Delivery.
- 11.5 The Sequencing Platform only processes Data, which have undergone Pseudonymisation as regards to this Agreement and shall delete such Data in a period time not superior to one (1) month after the date of the Delivery. The Sequencing Platform shall ensure that the analysis of the Data is made in compliance with Applicable Data Protection Laws requirements. Sequencing Platform shall not use nor share any Data and it will not undertake any action in order to identify any Data Subject.
- 11.6 Furthermore, Sequencing Platform as a Processor of the Data warrants and undertakes to:
  - a) Process the Data only upon written and documented instructions from the Controller; the instruction is given by the Controller by placing an order;
  - b) Authorize only employees to process the Data under the condition that they statutory obligations related to confidentiality are adequate to comply with the GDPR;
  - c) Ensure the pseudonymisation and encryption of the personal Data, as well the



confidentiality, the integrity and availability of the Personal Data in the time framework as provided in paragraph 4.5;

- d) Ask for Controller's authorization before engaging another processor, which shall present same level of guarantees;
  - e) Assisting the Controller in treating Data Subject's queries, in the limits of the nature to the framework of the Processing;
  - f) Assisting the Controller in ensuring its compliance with regards to the Data Subjects statutory rights and with the obligations pursuant to articles 32 to 36 taking into account the nature of the processing and the information available to the processor; The Processor can charge a reasonable fee to provide such assistance;
  - g) Ensure the confidentiality, the integrity and availability of the Personal Data;
  - h) If required by the controller, demonstrate the compliance with the above-mentioned measures and allow for audits conducted by the Controller or an auditor mandated by the Controller strictly limited to the matter hereto. The Controller Except in the event of an emergency situation, prior to any audit or inspection, the Controller shall give the Processor reasonable notice of 10 (ten) working days and the audit shall be performed during normal business hours;
  - i) Inform the Controller if an instruction from him seems to infringe the Data Protection Law.
- 11.7 In compliance with the requirements under Data Protection Law, Customer has the right to access to its Personal Data, and to ask the Service Provider for modification or deletion of such Personal Data. In case of any queries regarding his/her personal data the Client can contact the Data Protection Officer of the University on [dpo@uni.lu](mailto:dpo@uni.lu) during working hours or following the procedure available on [https://www.uni.lu/university/data\\_protection/your\\_rights](https://www.uni.lu/university/data_protection/your_rights).
- 11.8 The Customer represents and warrants that information about the presence of Personal Data will be provided with the Samples and that the Processing is either not a further (or "secondary") processing, or that, if the case, Processing complies with article 6.4 of the GDPR.
- 11.9 For the purposes of this Agreement, the Parties shall not transfer Personal Data to a country outside of the European Economic Area without complying with applicable Data Protection Laws and implementing appropriate safeguards.
- 11.10 The Parties agree to cooperate fully with the other Parties for responding to requests from supervisory authorities under Article 31 GDPR.
- 11.11 Within the performance of the Services under this Agreement, the Parties shall not release any Data to any person or entity other than those involved in the performance of the Services, under the direct supervision of the Project representatives, and on a strict need-to-know basis.

## **12. Term and Termination**

- 12.1 The Agreement shall take effect on the Effective Date and shall end upon completion of the Project as specified under Clause 4.2.
- 12.2 Sequencing Platform may terminate the Agreement, at any time and at its sole discretion in case that Customer becomes unable to pay its debt, or becomes the subject of any bankruptcy, insolvency, or similar proceeding, or is acquired by or merges with or into another



party. Sequencing Platform may terminate under the same conditions in case that Customer breaches its obligations related to Data Protection law.

12.3 Sequencing Platform may terminate the Agreement, with one month notice period in case that Customer breaches any of its substantial obligations, including the obligations related to quality requirements concerning the Samples.

12.4 The provisions of Articles 1, 8, 9, 10, 11 and 12 shall survive for a period of three (3) years after/from expiration or termination of the Agreement.

### **13. Miscellaneous**

13.1 Unless otherwise agreed in writing, all documents to be delivered in connection with this Agreement shall be written in the English language. In the case any document is written in another language, it shall be delivered with an English translation thereof. The English language version shall prevail for any question regarding the document(s). The Parties agree that any digital documents provided in the framework of these Terms are considered as written documents.

13.2 The Terms shall be governed and construed in accordance with the laws of Luxembourg. In the event of a dispute, the Parties agree that an amicable settlement will be sought by the Parties in good faith. In case amicable settlement fails, any dispute arising out of or in connection with the Terms shall be submitted to the exclusive competence of the courts of Luxembourg.

13.3 Customer is not allowed to assign or transfer its rights or obligations related to the Agreement without prior and written consent of Sequencing Platform.

13.4 If any provision of this Agreement should be or become invalid, the validity of the remaining provisions shall not be affected. The invalid provision shall be replaced by one, which comes closest to the initial intent of the Parties.

13.5 The Parties acknowledge and agree that the provision of any Purchase Order involves the acceptance of these Terms by the Customer. All and any Quotation, Form or other communication from the Sequencing Platform refer to and are governed by these Terms. Sequencing Platform hereby rejects any additional or different terms or conditions that Customer may use. This applies in particular, to any terms or conditions contained or referenced to in any order, acceptance, or other written document and/or communication. Failure to object to any such terms shall not constitute a waiver nor acceptance by Sequencing Platform.