

The CPGR Terms of services (TOS)

Preamble

The core Services offered by the Centre for Proteomic and Genomic Research (the CPGR) are comprised of the 3 major components Bio-consultation, Bio-analysis and Bio-informatics. Specific information about the Services can be found on the CPGR website (www.cpgr.org.za) or by contacting the CPGR at info@cpgr.org.za or +27 21 447 5669.

1. APPLICATION OF TERMS

1.1 Your use of the infrastructure (including the CPGR's website), workflows, resources, analytical tools and expertise now known and used or hereafter developed (the "Services") by the Centre for Proteomic and Genomic Research (An association incorporated under section 21 of the Companies Act 61 of 1973, registration number 2006/010411/08) ("the CPGR") is subject to the following Terms of Service ("TOS"), unless otherwise agreed to by the CPGR in writing.

1.2 Your continued use of the Services following any changes to the TOS shall be deemed to be your acceptance of such change. It is therefore your responsibility to check the TOS regularly for any changes.

1.3 The TOS may be updated by the CPGR from time to time without notice to you.

1.4 Any conditions contained in any other document (including your terms and conditions), or any amendments to this document which is not issued by the CPGR, shall be null and void unless specifically agreed to by the CPGR in writing.

1.5 In addition to the core Services, you also understand and agree that the Services may include certain communications from the CPGR, such as service announcements, administrative messages, newsletters, or press releases, and that these communications are considered the property of the CPGR.

1.6 Unless explicitly stated otherwise, any new features that augment or enhance the current Service offering of the CPGR, including the release of new applications, workflows and/or information, shall be subject to the TOS.

1.7 You are responsible for obtaining access to the Service, and that access may involve third-party fees (such as courier services or postal fees) for which you are solely responsible.

2. ORDERS AND QUOTATIONS

2 | Page

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2.1 You shall provide the CPGR with all information relevant to carrying out the Services, as requested from time to time by the CPGR. The CPGR may request completion of a questionnaire or engage other suitable means to capture information relevant to carrying out the Services.

2.2 In order to process a request and to carry out the Service the CPGR may insist on preparing a study plan, designed to meet the requirements and objectives of the Service. You shall provide information and support as requested from time to time by the CPGR, to facilitate this process.

2.3 You shall provide the CPGR with an order (the "**Order**") for the Services in a complete and accurate form and in line with any special requirements relevant to the Services you request.

2.4 The fees for the Services shall be as provided in a quotation supplied by the CPGR in response to the Order, which you shall accept or reject in writing.

2.5 The CPGR is entitled to cancel an Order if you do not confirm acceptance of the quotation in writing within 10 working days of receipt thereof.

2.6 Unless expressly agreed otherwise in writing by the CPGR, any times specified in the quotation for the delivery of the Services are given in good faith but are an estimate only. If no time is specified by the CPGR, delivery will take place within a reasonable time, or as stipulated in a study plan or other document describing the details of the Services, following acceptance of the quotation. The CPGR will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by a delay in the delivery of the Services.

3 | Page

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3. PAYMENT

3.1 For Orders of less than R 5,000.00 (Five Thousand Rand) or completion of which will probably take less than one month, the CPGR shall be entitled to submit invoices in advance for the full expenses to be incurred. The related invoice must be settled in full before the Services will commence. For Orders of R 5,000.00 (Five Thousand Rand) or more or completion of which will probably take more than one month, the CPGR shall be entitled to submit invoices for no less than 50% (Fifty Percent) of either the full expenses to be incurred and Services to be rendered, or the full value of the reagents and consumables to be used, whichever is the greatest. The related invoice must be settled in full before the Services will commence. The invoice in respect of the balance as well as any other invoices, such as any variance due to exchange rate fluctuations or deviations from a pre-agreed study plan, will be presented on completion of the Services and shall be payable within 30 (thirty) days from the date thereof.

3.2 You will make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

3.3 If you fail to pay the CPGR any sum due, then without prejudice to the CPGR's other rights and remedies you shall pay interest to the CPGR on such sum from the final due date for payment at the prime rate from time to time in force accruing on a daily basis until the date payment is made in full (whether before or after any judgment).

3.4 Any materials or data generated when performing the Service will remain the property of the CPGR until any outstanding payments related to the Service have been made.

3.5 You will be required to pay the fees for the Services except in the event of any failure of the Services being due to the CPGR's acts and/or omissions of gross negligence or the CPGR's breach of any of the warranties provided by it under these TOS.

3.6 In the event that you ask the CPGR to repeat Services, you will be required to cover any additional costs associated with the repeated work.

4 | Page

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4. YOUR OTHER OBLIGATIONS

4.1 You warrant that you:

4.1.1 have obtained all necessary consents in respect of your collection and submission of any biological samples (the Samples) for use in carrying out the Service;

4.1.2 shall comply with all applicable laws in respect of collection and submission of the Samples and results of the Services;

4.1.3 shall comply with all applicable laws and regulations in respect of further analysing or using the data generated by the CPGR. The CPGR will not be liable for any inappropriate use of materials or data generated during the Service.

4.2 You shall supply the CPGR with the Samples in such a time frame as will allow the CPGR to meet any delivery obligations.

4.3 You shall be responsible for ensuring that the Samples are in accordance with any specification agreed between you and the CPGR and in any event are in good condition and of appropriate quality and purity and are suitable for use by the CPGR.

4.4 If the Sample is of human tissue origin or where relevant to any other Sample that is not of human tissue origin, you warrant that you have gained any required ethics approval and consents for the work to be undertaken by the CPGR in respect of the Services; and the CPGR shall have no liability if these permissions and approvals have not been properly granted.

4.5 You agree to co-operate with the CPGR, as the CPGR may reasonably determine, in relation to the provision of the Services.

4.6 Unless the CPGR expressly agrees otherwise, you shall acknowledge the CPGR in any resulting publication involving information and/or results generated by the CPGR in the course of the conduct of performing the Services, as follows: "Contract Research services in the area of (specify as applicable, e.g. Genomics, Proteomics, or NGS) were provided by the Centre for Proteomic and Genomic Research (the CPGR), www.cpgr.org.za".

5 | Page

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5. SAMPLES, PROCESSING, STORAGE, RISK AND OWNERSHIP

5.1 Should the CPGR receive Samples from you upon which the Services are to be conducted in respect of each Order, the CPGR shall first verify that the paperwork and the accompanying Samples concur, failing which the CPGR will try to resolve the matter within a reasonable time frame and, if not possible, shall otherwise return the Samples to you. Return of the Samples will be carried out at your cost.

5.2 The CPGR shall take reasonable care of any Sample in its possession.

5.3 In the event of any Sample appearing to be contaminated, or otherwise found not suitable for the requested Services, the Sample shall be rejected and dealt with in a manner jointly agreed between you and the CPGR.

5.4 The CPGR will not be liable for any loss or damage to Samples unless such loss or damage arises as a direct result of the CPGR's negligence.

5.5 Any defect in the Services which is due in whole or in part to defects in the Samples will not entitle you to terminate the Order, reject the Services, make any deductions from the fees or claim damages in respect of such defect.

5.6 Unless otherwise expressly agreed in writing all Samples will be sealed by the CPGR and stored under the appropriate conditions.

5.7 You understand and accept that the Samples may be used up in the course of the conduct of the Services. The fate of any left-over samples must be defined unambiguously prior to commencing any Service. Unless instructed otherwise, retention or return of samples will be at your own cost and risk.

6. RESULTS

6.1 Results of the Service shall be any materials or data generated in the process of the Service, or as defined by the CPGR from time to time.

6.2 Unless otherwise expressly agreed in writing, the CPGR shall supply the results of the Services to you by one of the following mechanisms: email to an agreed email address; secure data reporting *via* a secure FTP website; or on an appropriate digital storage device delivered to you by hand, by post or courier.

6.3 Under no circumstances will the CPGR be liable for your use or interpretation of the results.

6 | Page

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6.4 In conjunction with the provision of the results of the Service, the CPGR shall provide you with a feedback form, requesting information relevant to the furtherance of the Services rendered by the CPGR.

6.5 A period of 10 working days is considered a reasonable timeframe to provide feedback regarding the quality and integrity of the results, be they materials or data, received by you, or to raise any concerns regarding the quality of the results, following which the CPGR shall consider the Service completed. Following this time period, any request for a repeat of the Service, or part of the Service, will be considered a request for a new Service.

7 | Page

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7. INTELLECTUAL PROPERTY

7.1 You acknowledge and agree that the Services contain proprietary and/or confidential information and know-how of the CPGR that is protected by applicable intellectual property and other laws.

7.2 You agree not to modify, sell, distribute or create derivatives of the Services, in whole or in part.

7.3 The name, logo, trademarks and service marks of the CPGR are trademarks of the CPGR, which you may not use other than as permitted in terms of the TOS or with the prior written permission from the CPGR.

7.4 The CPGR respects the intellectual property of others and reserves the right, in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who may be repeat infringers of intellectual property rights.

7.5 If you believe that your work has been copied in a way that constitutes a copyright infringement or a violation of intellectual property rights, you should notify the CPGR and submit the following information:

7.5.1 an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;

7.5.2 a description of the copyrighted work or other intellectual property that has been infringed;

7.5.3 a description of where the alleged infringing material is located on the site;

7.5.4 your physical address, contact number, and email address;

7.5.5 a statement to the effect that you believe, in good faith, that the disputed use is not authorized by you/the copyright owner, your agent, or the law;

7.5.6 a statement that the information provided by you is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

8 | Page

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8. MODIFICATION TO SERVICE

8.1 The CPGR reserves the right to, at any time and from time to time, modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice to you or any third party and shall not be liable, in any manner, for any modification, suspension or discontinuance of the Service.

9. LINKS

9.1 The CPGR's website and/or third parties may provide links to other World Wide Web sites or resources. Because the CPGR has no control over such sites and resources, you acknowledge and agree that the CPGR is not responsible for the availability of such external sites or resources, and does not endorse nor is it responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that the CPGR shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

10. EXCLUSION OF LIABILITY

10.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT: YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CPGR AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE CPGR ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY USER COMMUNICATIONS AND/OR PERSONALIZATION SETTINGS.

10.2 THE CPGR AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICES WILL BE UNINTERRUPTED,

9 | Page

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TIMELY, SECURE OR ERROR-FREE; AND (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE.

10.3 ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES ARE ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

10.4 THE SERVICES PROVIDED BY THE CPGR ARE NOT INTENDED FOR CLINICAL (DIAGNOSTIC, PROGNOSTIC, THERAPEUTIC, OR BLOOD BANKING) USE AND NO CLAIM OR REPRESENTATION IS INTENDED OR MADE WITH RESPECT TO THE CLINICAL USE OF SUCH SERVICES.

10.5 THERE IS A POSSIBILITY THAT THE SERVICES MAY NOT RENDER THE EXPECTED RESULTS, GIVEN THE NATURE OF THE SERVICES (BY WAY OF EXAMPLE, LABORATORY TESTING ON RNA MAY BE INADEQUATE IN TERMS OF QUANTITY AND/OR QUALITY AND MAY THEREFORE FAIL TO DELIVER THE DESIRED END RESULTS) AND THAT A SUCCESSFUL OUTCOME IS INTRINSICALLY LINKED TO THE QUALITY OF THE SAMPLE AS WELL AS OTHER EXTERNAL VARIABLE FACTORS THAT CAN INFLUENCE THE END RESULTS. ACCORDINGLY THE CPGR SHALL NOT BE LIABLE FOR ANY LESS THAN FAVOURABLE RESULTS, UNLESS IT CAN BE DEMONSTRATED THAT SUCH RESULTS ARE ATTRIBUTABLE TO THE CPGR'S NEGLIGENT ACTS OR OMISSIONS OR BREACHES OF ANY OF THE WARRANTIES PROVIDED BY THE CPGR UNDER THE TOS.

10.6 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TOS, THERE SHALL BE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT.

11. THE CPGR PRIVACY POLICY

11.1 Certain information about you is subject to our Privacy Policy. For more information, see our full privacy policy at <http://www.cpgr.org.za/privacy-policy/>. You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of information, including, but not limited to, the transfer of Samples and information to South Africa for storage, processing and use by the CPGR and its affiliates.

10 | Page

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11.2 Notwithstanding the above, you acknowledge, consent and agree that the CPGR may disclose your information if required to do so by law or in a good faith belief that such disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the TOS; or (c) protect the rights, property or personal safety of the CPGR, its users and the public.

12. INDEMNITY

12.1 You agree to indemnify and hold the CPGR and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to your use of the Services, your connection to the Services, your violation of the TOS, or your violation of any rights of another.

13. GENERAL

13.1 **Entire Agreement.** The TOS constitutes the entire agreement between you and the CPGR and governs your use of the Service, superseding any prior agreements between you and the CPGR with respect to the Services. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other the CPGR services, affiliate services, third-party content or third-party software.

13.2 **Applicable law and jurisdiction.** The TOS and the relationship between you and the CPGR shall be governed by the laws of South Africa without regard to its conflict of law provisions. You and the CPGR agree to submit to the non-exclusive jurisdiction of the Western Cape Division of the High Court of the Republic of South Africa.

13.3 **Waiver and Severability of Terms.** The failure of the CPGR to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS remain in full force and effect.