

## **OICR Diagnostic Development platform Terms and Conditions of Service**

When you begin to plan a project with staff from the OICR Diagnostic Development platform (“we”, “us”), we will work with you to define the objectives and deliverables of your project. The Standard Purchase Order Terms and Conditions defined below shall apply to all projects started with us whether upon acceptance of a project plan, project cost estimate, or other actions set out below under Acceptance.

### **OICR Purchase Order Standard Terms and Conditions**

**If this PO (Purchase Order) is issued under a written agreement between the company to which it is addressed (the “Customer”) and Ontario Institute for Cancer Research (“OICR”) covering the service(s) specified in this PO, it will be subject to that agreement and the terms of that agreement will override these terms in the event of any conflict or inconsistency. Otherwise, unless special terms & conditions are stated in its text, this PO and any attachments are the sole agreement between OICR and Customer with respect to service(s) specified in this PO.**

1. **ACCEPTANCE.** This PO is an offer to provide service(s) and associated Deliverables (as defined in s. 9 below), in accordance with the pricing, as set forth on the face of the PO (the “Quote”). Any of the following acts shall constitute acceptance of the terms of this PO: Customer signing and returning a copy of this PO; delivery of any of the Deliverables ordered in this PO; or written acknowledgment of the terms of this PO. Any terms proposed by Customer that are additional or inconsistent with the terms of this PO will not be binding on OICR unless OICR accepts such terms in writing.
2. **PRICE AND DELIVERY.** OICR shall furnish the Deliverables and/or provide the service(s) covered by this PO in accordance with the prices and delivery schedule stated on the Quote.
3. **PACKING AND SHIPPING OF HAZARDOUS MATERIALS.** In cases where any hazardous material is shipped by Customer to OICR, such shipment must be preceded by written notification of hazards involved, special handling requirements and relevant documentation including, but not limited to, permits, data sheets and manifest. Consent from OICR to accept such shipment must be received in writing prior to shipment.
4. **CUSTOMER OBLIGATIONS.** If any information, data, or material provided by Customer to OICR is of human origins, the Customer shall be responsible for obtaining and maintaining all necessary consents and/or Research Ethics Board/Institutional Review Board approvals required by law, regulation, guideline and/or policy. Customer acknowledges that (i) it bears all risk of loss or damage of any materials while in transit from the Customer to OICR; and (ii) the materials may be altered, damaged or destroyed during the conduct of the service(s). Upon request by OICR, Customer agrees to provide OICR with a copy of such consents and/or Research Ethics Board/Institutional Review Board approvals.
5. **USE OF GENERATED DATA.** Any data generated for Customer by OICR will undergo quality control (QC) analysis which will produce summary information such as throughput, sequencing errors, and performance data (“Summary Information”). Customer acknowledges and agrees that any Summary Information, even where it is provided to Customer, will be owned by OICR pursuant to s. 9 below and will be stored by OICR acting in its sole discretion. Customer acknowledges and agrees that OICR may publish the Summary Information in technical reports, posters, and/or manuscripts (“Publications”). No Customer Deliverables will be included in any Publications without having Customer’s consent, acting reasonably.
6. **SAMPLE STORAGE.** Unless otherwise specified in this PO, or agreed to in writing by the Parties, submitted samples and/or derivatives, including tissue, cells, extracted nucleic acids, PCR amplicons, or sequencing libraries may be returned to Customer or destroyed by OICR after 90 days following the termination or expiration of this PO.
7. **DATA STORAGE.** Unless otherwise specified in this PO, or agreed to in writing by the Parties, data generated by OICR or obtained from a third party source, including, FASTQ files, BAM files, VCF files, analysis scripts, or any other file format, may be returned or deleted by OICR after 90 days following the termination or expiration of this PO.
8. **RESEARCH USE ONLY.** Customer acknowledges and agrees that the services and or Deliverables are provided for research purposes only and are carried out in a research laboratory which is not an accredited or licensed clinical laboratory, and that as a result, OICR will not perform services or provide the Deliverables for the purposes of obtaining information for diagnosis, prophylaxis or treatment, or for any other purpose prohibited by applicable laws and regulations.
9. **TITLE.** OICR and the Customer agree that, except for Summary Information, any products, data, software and results derived or created for Customer pursuant to the Product/Service Description included in the Quote, including any intellectual property rights thereto (the “Deliverables”), shall be owned by the Customer, and that any use thereof by OICR shall strictly be limited to the performance of the service(s). However, all Summary Information and all process improvements and protocols developments, including any intellectual property rights thereto will remain the sole property of OICR.  
Title in any Deliverables provided by OICR to the Customer will remain with OICR until all invoices in respect thereof have been paid by the Customer in full, and until such full payment, the Customer shall have no property rights therein.
10. **RISK OF LOSS.** Risk of loss or damage to the Deliverables will pass to the Customer upon the Customer’s acceptance of Deliverables at the location and/or by the means specified on the Quote and/or any associated service agreement between the parties.
11. **INVOICING.** After the service is provided under this PO, OICR shall send a separate invoice, citing the Customer PO number and appropriate level of detail to facilitate payment. In consideration for the service provided by OICR, Customer agrees to pay all OICR fees in full, as indicated on the invoice, and according to the payments terms accepted on the PO and/or additional payment terms specified in any associated service agreement between the parties. All taxes are shown separately on OICR’s invoice, if applicable.
12. **WARRANTIES.** As to its legal and corporate authority, Customer and OICR warrant that (1) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation, (2) it shall perform its obligations in compliance with all laws and regulations applicable to it, and (3) its activities in connection with the PO do not and will not constitute a default or breach of any agreement by which it or any of its applicable personnel are bound.
13. **DISCLAIMER.** SUBJECT ONLY TO THE LIMITED WARRANTIES PROVIDED IN SECTION 12 ABOVE, OICR PROVIDES THE SERVICES AND/OR DELIVERABLES “AS IS” AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO ANY MATTER WHATSOEVER

INCLUDING, WITHOUT LIMITATION, THE OWNERSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE OR DELIVERABLES WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

14. INFORMATION, DATA, AND MATERIALS. If Customer furnishes OICR with information, data, or materials (including personal health information), title thereto shall remain or vest in Customer. Customer shall be responsible for any loss, damage, or destruction to such information, data, and materials. If any information, data, or material provided by Customer to OICR is of human origins, the Customer shall be responsible for obtaining and maintaining all necessary consent forms and documents required by law, regulation, guideline, or policy. Customer will not provide OICR with any direct identifiers or other individually identifiable information about any human donor. In the event that Customer erroneously discloses to OICR any personal information or personal health information OICR will promptly destroy the information and inform Customer of the error.
15. PROPRIETARY INFORMATION. Either party may disclose to the other information that it considers confidential or proprietary ("Confidential Information") during the performance of the service. Each party agrees to hold confidential any Confidential Information of the other party disclosed to it, and not to use the other party's Confidential Information for any purpose except for the performance of the service. Each party agrees to take reasonable and prudent precautions to protect and to obligate its employees, contractors and other researchers to protect the Confidential Information disclosed by the other party to it. These obligations shall apply equally to copies and extracts made of the other party's Confidential Information. This obligation of confidentiality shall not, however, apply to information which:
  - a. was known to the receiving party prior to the time of disclosure, as demonstrated by competent written evidence;
  - b. was part of the public domain prior to the time of disclosure;
  - c. becomes part of the public domain after the time of disclosure other than through any act or omission of the receiving party,
  - d. becomes known to the receiving party, without restriction, from a third party which is not subject to an obligation of confidentiality in favour of the disclosing party, as demonstrated by competent proof,
  - e. is independently developed by the receiving party without regard to the information disclosed to it by the other, as demonstrated by competent proof, or
  - f. is disclosed pursuant to the lawful requirement of a court of government agency of competent jurisdiction without condition of confidentiality, provided that Customer is notified in advance and given the opportunity to seek a protective order against such disclosure.

Nothing in this Section 15 is intended or shall be construed as creating or implying any right or license under any patent rights or other intellectual property rights owned or controlled by a party.

16. PATENT, COPYRIGHTS, AND TRADEMARKS. Customer warrants that the sale or provision of service(s) furnished hereunder will not infringe or contribute to infringement of any patent, copyright, trademark, trade secret or other proprietary right. Customer shall defend, at its own expense, any suit or claim that may be instituted against OICR or any employee of OICR for alleged infringement of rights listed above.
17. LIMITATION OF LIABILITY. OICR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF THIS AGREEMENT, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY OICR'S GROSS NEGLIGENCE IN AN AMOUNT NOT TO EXCEED FEES PAID UNDER THIS AGREEMENT. IN NO EVENT SHALL OICR BE LIABLE FOR ANY TANGIBLE PROPERTY DAMAGE, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, CONTINGENT, STATUTORY OR ANY OTHER SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOSS OF DATA) ARISING OUT OF OR RELATED TO A BREACH OF ANY WARRANTY OR ANY OTHER TERM OF THIS AGREEMENT WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF OICR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
18. ASSIGNMENT. This PO is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns. Neither party may assign this PO without the prior written consent of the other party.
19. PUBLICITY. Neither Party may use the name, trademark, service mark, logo or other identifying characteristic of the other Party, or any of its directors, trustees, officers, appointees, employees, staff, representatives or agents, in any advertising, promotional or sales literature, publication, or in any document employed to obtain funds or financing without the prior written authorization of the party. Notwithstanding the foregoing, Customer agrees that any publication of the Deliverables in theses, articles, scholarly writings or oral or written presentations at lectures or seminars shall include the following acknowledgement: "This study was conducted with the support of the Ontario Institute for Cancer Research's Genomics & Bioinformatics platform (genomics.oicr.on.ca) through funding provided by the Government of Ontario."
20. TERMINATION. This PO shall be binding once accepted pursuant to Section 1 above, except as it is otherwise agreed herein.
21. FORCE MAJEURE. Neither party shall be liable to the other for any failure to perform, or delay in the performance of, any obligation caused by circumstances beyond its reasonable control, including but not limited to: acts of God, fire, labour difficulties, war, or governmental action. It is agreed that the time for performance by either party shall be extended by the period of such uncontrollable circumstances.
22. ENTIRE AGREEMENT. This PO, including these terms and conditions and any related service agreement, contain all of the agreements, representations and understandings of the parties and supersedes and replaces any and all previous understandings, commitments or agreements, oral or written, related to the subject matter.
23. HEADINGS: The division of these standard terms and conditions into sections and the insertion of headings are for convenience of reference only and are not to affect its construction or interpretation.
24. WAIVER. The failure of OICR to insist upon strict performance of any terms and conditions, or to exercise any of its rights set out in the PO or otherwise, shall not constitute a waiver of these rights, and these rights shall continue in full force and effect.
25. SEVERABILITY: Each of the provisions contained in these standard terms and conditions are distinct and severable. Any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision will not affect the validity or enforceability of any other provision.
26. CURRENCY. Unless specified otherwise, any sums of money referred to in this PO refer to Canadian currency.
27. APPLICABLE LAW. This PO, along with these standard terms and conditions, shall be governed by and interpreted in accordance with the laws of the Province of Ontario, and the parties attorn to the jurisdiction of Ontario courts.
28. All notices shall be in writing and shall be delivered by personal delivery/courier, fax or registered mail to the parties contact information in the estimate to which these terms are attached. The notice shall be deemed to have been delivered on the day of personal delivery, on the day received by fax (as evidenced by a transmission confirmation) provided that the day is a Business Day in Ontario ("Business Day" means Monday to Friday from 9 a.m. to 5 p.m., exclusive of statutory and civic holidays in Ontario), or on the fifth day following mailing.