

ZEPTOMETRIX TERMS AND CONDITIONS OF SERVICES

1. Services. ZeptoMetrix Corporation, 878 Main Street, Buffalo, NY 14202 (“ZMC”) will perform those services described (the “Services”) at the price stated on a quote issued by ZMC (the “Quote”) for the customer (“Customer”) named on the Quote (the Services and the Quote together, the “Proposal”). These terms and conditions (“T&C”), together with the Proposal, are referred to herein as this “Agreement”. This Agreement will serve as a binding contract between ZMC and Customer for the Services upon Customer’s signing of the Proposal. Different or additional Services and related adjustments to the Proposal must be agreed to by both parties in writing before any such different or additional Services are performed and related adjustments to the Quote are incurred. If performance of such different or additional Services results in a delay in delivery of Deliverables (defined below) or the completion of the Services, there shall be a reasonable extension of the affected lead times.

2. Term. The term of this Agreement shall begin on the date indicated in the Proposal and shall end upon Customer’s written receipt and acceptance of the deliverables described in the Proposal (the “Deliverables”). Unless this Agreement is terminated by either party as permitted in this Agreement, Customer and ZMC may agree to extend the term as the Services require. Notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement with or without cause upon ten (10) business days’ prior written notice. Upon expiration of this Agreement or its earlier termination, ZMC shall immediately stop performing the Services, and shall deliver to Customer any Deliverables in whatever condition they are in as of the date of such expiration or termination, provided the Customer is not in default as of the effective date of such expiration or termination. The termination of this Agreement, which shall be accomplished without penalty, shall not relieve or release either Customer or ZMC from any rights, liabilities, or obligations that may have accrued under the law or the terms of this Agreement prior to the date of such termination. Notwithstanding the foregoing, Customer shall be responsible for reimbursement to ZMC for any Customer-specific inventory, including but not limited to work-in-process rendered obsolete or which cannot be otherwise used, returned, or sold by ZMC.

3. Payment. Customer shall pay the fee stated in the Quote in U.S. dollars within thirty (30) days following receipt of ZMC’s invoice.

4. Delivery. ZMC will ship tangible Deliverables, F.C.A. ZMC Facility (INCOTERMS 2010), to the ship-to address stipulated by Customer. Costs for freight, insurance, ZMC’s standard handling charges and, where appropriate, ancillary charges that are specific to certain Deliverables (an example of which is the requirement for dry ice), are the sole responsibility of Customer and will be added to ZMC’s invoice as applicable. Deliverables shall be packaged in a method to preserve and protect from ordinary damage and/or degradation, and shall be suitably prepared and labeled for shipment by ZMC in accordance with acceptable commercial practices and in compliance with all applicable laws. ZMC shall use reasonable efforts to meet any performance dates specified in the Proposal or otherwise requested by Customer; however, any such dates shall be deemed estimates only.

5. Property Rights; License. Customer represents and warrants to ZMC that it has and will maintain during the term of this Agreement, rights in and to any materials and information it provides to ZMC sufficient to allow ZMC to fulfill its obligations under this Agreement. Customer grants to ZMC a non-exclusive, non-transferable, non-sublicensable, and royalty-free right and license to use such materials and information solely and exclusively for ZMC to provide the Services. Except for such license, each party acknowledges that no license or other rights are expressly or by implication granted to the other party with respect to any issued or pending patents, trade secrets, trademarks, copyrights, know-how, inventions, or other proprietary or confidential information or intellectual property, whether or not patentable, of such party. **To the extent Deliverables include live biological material provided by ZMC, ZMC retains title to such biological material and Customer is prohibited from further transferring or propagating same without prior written consent from ZMC.** Customer may be required to execute a Material Transfer Agreement governing the use of live biological material. Each party agrees that it shall not use the name, logo, or trademarks of the other party, or variations thereof in any manner without the other party’s prior written consent.

6. Compliance with Law. Each party agrees to comply with all applicable laws, statutes, executive orders, rules, regulations, and ordinances in its performance of this Agreement, and, in the case of Customer, in Customer's use of Deliverables. Each party further agrees and warrants that it owns or has full and sufficient license and authority to use any software, programming, data, or other materials provided by such party in the performance of its obligations hereunder.

7. Limited Warranty; Exclusive Remedy. ZMC warrants it shall perform all Services in accordance with (a) the specifications set forth in this Agreement or otherwise provided by Customer, and (b) ZMC's current standard operating procedures, each as applicable and as any may be amended from time to time (the "Warranty"). If Customer becomes aware that any Deliverables do not conform to the Warranty, and notifies ZMC within thirty (30) days of Customer's receipt of such non-conforming Deliverables, ZMC shall either, at ZMC's exclusive option and with no additional charge to Customer, (a) re-perform the Services, or such portion of the Services as may be reasonably required to be performed, to deliver conforming Deliverables; or (b) return to Customer all compensation received by ZMC for such non-conforming Deliverables. The foregoing shall be Customer's sole and exclusive remedy and ZMC's limit of liability at law or equity for a breach of the Warranty. Customer acknowledges that the foregoing Warranty is personal to Customer and that such Warranty may be enforced against ZMC only by Customer, and not by any third party.

8. Warranty Disclaimer. Except as otherwise expressly provided for in this Agreement, ZMC and Customer each disclaim any warranties of any kind, either express or implied, statutory or otherwise, including any express or implied warranty of merchantability or fitness for a particular use or purpose. There are no express or implied warranties that the Services or use of the Deliverables will not infringe any intellectual property right; or that the Deliverables will not pose a safety or health risk, specifically support or deny any hypothesis, or accomplish any particular result.

9. Technical Assistance. Any suggestions or advice to Customer by ZMC personnel regarding use, selection, application or suitability of the Services or Deliverables ("Technical Assistance") shall not be construed as a warranty unless specifically designated as such in a writing signed by an authorized ZMC representative. **The disclaimers in paragraph 8 (Warranty Disclaimer) and limitation of liability in paragraph 11 (Limit of Liability) shall apply to any Technical Assistance.**

10. Indemnity. Customer agrees to indemnify, defend, and hold harmless ZMC from any and all uses of Deliverables by Customer.

11. Limit of Liability. Except with respect to a party's fraud, gross negligence, or willful misconduct, or a claim of indemnity, in no event shall either party, or its officers, directors, or employees, be liable for special, incidental, consequential, or punitive damages, lost profits, loss due to business disruption, or loss of goodwill, whether in contract, tort, warranty, strict liability, or otherwise arising from or relating to this Agreement or the subject matter hereof, or the exercise of rights hereunder, regardless of any notice of such damages. Notwithstanding anything to the contrary herein, in no event shall ZMC's cumulative liability to Customer for any and all claims, losses, damages, or expenses arising out of or in any way related to this Agreement exceed the aggregate payments received by ZMC from Customer for Services performed or Deliverables delivered.

12. Miscellaneous. (a) Any notices permitted or required by this Agreement shall be writing and sent by certified mail (return receipt requested), or any courier service with a publicly accessible tracking system to the other party at the address set forth in the Proposal. (b) Neither party may assign this Agreement or any of its rights under this Agreement without the consent of the other party. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement. (c) This Agreement, and all disputes and claims arising out of or related to this Agreement, shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of law provisions. All disputes and claims related to or arising out of this Agreement shall be venued exclusively in the State of New York. Parties consent expressly to the personal jurisdiction of the state and federal courts of the State of New York. (d) Neither Party shall be responsible to the other for failure to perform any provision of this Agreement arising from cause beyond its control, including but not limited to floods, civil

disturbances, wars, riots, acts of God, acts of terrorism, governmental rules, laws or actions, fires, embargoes, but expressly excluding labor disputes and/or strikes. (e) The relationship of the parties under this Agreement is that of independent contractors. Nothing in this Agreement is intended or is to be construed so as to constitute the parties as partners, joint venturers, or either party as an agent or employee of the other. Neither party has any express or implied right under this Agreement to assume or create any obligation on behalf of or in the name of the other, or to bind the other party to any contract, agreement, or undertaking with any third party. (f) This Agreement, together with any confidentiality agreement and/or Material Transfer Agreement between the parties currently effective, and any exhibits or appendices hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and any previous agreements or arrangements between the parties relating to the subject matter of this Agreement, written or oral or otherwise, are hereby canceled and superseded. This Agreement may not be modified or amended except in a writing signed by both parties. (g) Any provisions contained in the Proposal or any writing, documents, or EDI issued by Customer that are in addition to or inconsistent with these T&C are expressly rejected by ZMC (h) Nothing in this Agreement shall be construed to create an exclusive relationship between ZMC and Customer so as to prevent either party from furnishing products or services to a third party during the term of this Agreement, so long as such performance does not conflict with a party's duties hereunder, including its duty of confidentiality. (i) If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances. (j) Any provision of this Agreement that contemplates survival beyond the term of this Agreement, including without limitation Sections 5 & 7-12, will remain enforceable in accordance with its terms, notwithstanding the expiration or earlier termination of this Agreement. (k) The waiver by a party of any breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation hereof. The failure of a party to act in the event of the other's breach of this Agreement shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the party against whom enforcement is sought. (l) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Signatures transmitted via facsimile, scanned manual signatures, or Electronic Signatures will be accepted and will be binding on the parties until replaced, if at all, by originally signed duplicates. Each party agrees that any Electronic Signatures of the parties are intended to authenticate this Agreement and to have the same force and effect as manual signatures. For purposes of this Agreement, an "**Electronic Signature**" is any electronic sound, symbol, or process attached to or logically associated with a record, which is executed and adopted by a party with the intent to sign such record, including those sent by facsimile or otherwise electronically transmitted.