YCGA Terms and Conditions

These Terms and Conditions are between you (the “Customer”) and Yale University (“Yale”), on behalf of the Yale Center for Genomic Analysis (hereinafter “YCGA”), for use by Customer of services provided by YCGA.

1. Authorized Services.
	1. YCGA’s services consist of generating sequencing data from biological samples by Yale employees using YCGA facilities or equipment (“YCGA-Provided Services”).
	2. The YCGA-Provided Services shall be made available to Customer, provided Customer follows the Policy for External Use of YCGA as it exists at the relevant time, available at [INSERT HYPERLINK] (“YCGA Policy”). The YCGA website provides a descriptions and rates of YCGA-Provided Services available to Customer pursuant to these Terms and Conditions.
	3. Customer acknowledges and agrees that while Yale shall employ reasonable efforts to carry out YCGA-Provided Services it is not predictable whether the YCGA-Provided Services will conclude with usable meaningful or accurate data or results.
	4. Customer agrees that although Yale may provide data and/or any other results from the YCGA-Provided Services, Yale is not providing any clinical decision, diagnosis or treatment for any individual, and the YCGA-Provided Services may not be useful or appropriate for any clinical purpose.
2. Customer materials.

Customer may send materials to Yale for use of YCGA-Provided Services, following the procedures and requirements set forth in the YCGA Policy.

* 1. Yale bears no responsibility for preservation, maintenance, processing or special treatment of materials sent by Customer, including but not limited to special requirements pertaining to temperature control or handling, once received in accepted condition including transportation requirements.
	2. Surplus materials will be disposed of or otherwise handled as deemed instructed by Customers within a reasonable time limit of six months of completion of the Services.
	3. Customer agrees that it will limit personal identifiers associated with any human source of any provided materials to elements of dates related to the individual. Any samples and information provided by Customer will be consistent with any donor consent obligations and any other required legal authorizations, including Appendix A where applicable.
1. Attribution. Customer shall give credit and attribution to the Yale Center for Genomic Analysis as specified in the YCGA Policy.
2. Deliverables: Except as otherwise provided below, Yale bears no responsibility for retrieving or providing Customer data resulting from the YCGA-Provided Services. Yale may, in its discretion, retain information and data pertaining to the functioning of its equipment, facilities, and methodologies.
	1. Yale shall provide Customer sequencing data as specified in the YCGA Policy, which addresses what data Customers may receive and how to retrieve/receive it.
	2. Yale may retain and shall own data relating to, for example, processing times, calibration, and accuracy. Further detail about retained data may be obtained from Yale.
3. Payment.
	1. Customer agrees to make payment for services as specified in the YCGA Policy. Rates are subject to change and will be posted on the YCGA website.
	2. Customer and Yale understand that Customer may need to facilitate payment through Customer-generated documents such as Purchase Orders. Customer agrees, however, that these Terms and Conditions contain or incorporate by reference all terms and conditions applicable to Customer payment for the YCGA-Provided Services, and that any previous or ensuing Customer-generated documents used to facilitate payment shall not be contractually binding between the Parties.
4. Confidentiality. Except as set forth in Section 2(c), Customer will not disclose confidential information to Yale unless a nondisclosure agreement has been signed by both parties.
5. Indemnification. Customer agrees, to the extent permitted by law, to indemnify, hold harmless and defend Yale, its officers, trustees, employees and agents against any and all claims, suits, losses, damages, costs, fees and expenses resulting from or arising out of Customer’s use of the YCGA-Provided Services, including but not limited to (a) any breach by Customer under these Terms and Conditions; or (b) Customer’s use of any data or information obtained pursuant to these Terms and Conditions. Customer shall not be liable for actions resulting from gross negligence or willful misconduct on the part of Yale.
6. Limitation of Damages. Neither party shall be liable for any indirect, incidental or consequential damages or lost profits suffered by the other party or any others resulting from Customer’s receipt of the YCGA-Provided Services, provided however, that this provision shall not apply to Customer’s obligation to indemnify as provided in these Terms and Conditions. Any damages payable to Customer arising out of this Agreement shall not exceed the amount paid by Customer to Yale for the YCGA-Provided Services.
7. NEGATION OF WARRANTY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED BY YALE PURSUANT HERETO (INCLUDING ANY DATA, MATERIALS AND INFORMATION) ARE STATE-OF-THE-ART AND ARE PROVIDED “AS IS” WITHOUT GUARANTEE OF ANY PARTICULAR OUTCOME OR USABLE RESULTS. YALE MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE EQUIPMENT, SERVICES, OR FACILITIES, OR PROVISION OF ANY DATA, MATERIALS OR TECHNICAL INFORMATION DERIVED FROM THE SERVICES PROVIDED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. EXCEPT AS PROVIDED HEREIN, THESE TERMS AND CONDITIONS GRANT NO TANGIBLE OR INTANGIBLE PROPERTY OR PROPERTY RIGHTS.
8. Term and Termination. These Terms and Conditions will expire thirty days following Yale’s completion of the YCGA-Provided Services in connection with these Terms and Conditions. Yale reserves the right to terminate these Terms and Conditions without prior notice, whereupon all liabilities and obligations of both parties shall cease and terminate, excepting any liabilities or obligations accrued under the terms hereof prior to such termination and remaining unsatisfied at the time such termination becomes effective.
9. Survival. Any provision of these Terms and Conditions that by its nature contemplates performance or observance subsequent to any termination or expiration of these Terms and Conditions shall survive any termination or expiration of these Terms and Conditions and continue in full force and effect.
10. Governing Law and Jurisdiction.
	1. To the extent permitted by law, these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Connecticut, but of excluding that body law relating to choice of law.
	2. Each party hereby irrevocably submits itself to the jurisdiction of the Courts of the State of Connecticut and the jurisdiction of the United States District Court for the District of Connecticut for the purpose of any suit, action or other proceedings arising out of or based upon these Terms and Conditions or the subject matter thereof. Each party agrees that it shall bring any such proceeding only in such courts. Each party hereby waives any claim that its property is exempt from attachment or execution, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such suit, action, or proceeding is improper. Each party hereby consents to service of process by registered mail at the address to which notices are to be given and agrees that such service shall be deemed effective upon it as if personal service had been made upon it within New Haven County, Connecticut.
11. Entire Agreement. These Terms and Conditions, together with the YCGA Policy, if any, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, representations, commitments, offers, and writings with respect to the subject matter hereof. Any amendments shall be in writing and executed with by individuals authorized to sign on behalf of their respective party. Oral amendments shall not be binding upon either party.
12. Subcontracting or Delegation. Neither party may assign, subcontract or delegate its responsibilities under these Terms and Conditions in whole or in part, without the written consent of the other party, and any attempt to do so shall be void.
13. Force Majeure. In the event of either party being rendered unable, wholly or in part, by force majeure to carry out its obligations under these Terms and Conditions it is agreed that when such party gives notice of such force majeure in writing to the other party within a reasonable time, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability caused by the force majeure. Provided, however, that obligations of that party to make payments committed hereunder prior to, during, or after the occurrence of the cause relied upon shall not be suspended.
14. Use of Yale Name or Endorsements. Customer shall not use the name of Yale University, or any of its component units, including the Yale Center for Genomic Analysis, on any product, service, advertisement, or promotional materials without prior written approval or as provided in the YCGA Policy. Yale does not directly or indirectly endorse any product or service provided by Customer. Customer shall not in any way imply that these Terms and Conditions or use of the Yale Center for Genomic Analysis is an endorsement of any such product or service.
15. Insurance. Customer agrees to carry commercial general liability insurance to cover any obligations under section 8 of these Terms and Conditions. Such insurance should contain limits no less than $2M combined single limit per occurrence and shall include Yale as an additional insured on a primary and noncontributory basis for both ongoing operations and products/completed operations. Upon request, Customer shall provide Yale with a certificate of insurance evidencing such coverage.
16. Authorized Representative. The person submitting these Terms and Conditions on behalf of Customer represents that they have the authority to enter into these Terms and Conditions on behalf of Customer and to bind Customer to these Terms and Conditions.

HIPAA Data Use Agreement
Revision Date: 4/27/23

This Data Use Agreement (the “Agreement”) is entered into by and between Yale University (“Data User”) and Customer\_(“Covered Entity”), collectively, the “Parties”, and shall be effective as of the date of the Terms and Conditions (the “Agreement Effective Date”).

**Definitions**. The parties agree that the following terms, when used in this Agreement, shall have the following meanings, and that the terms set forth below shall be deemed to be modified to reflect any changes made hereafter to such terms by law or regulation.

* “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
* “*HIPAA Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
* “*Covered Entity”* means a health plan, a health care clearinghouse, or a health care provider (each as defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.
* “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual, that is;

created or received by a health care provider, health plan, employer, or health care clearinghouse; **and**

relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; **and**

that identifies the individual; or

with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

* “*Protected Health Information*”or“*PHI*” means Individually Identifiable Health Information, except that Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by a covered entity in its role as employer.

**Obligations of Covered Entity.**

* *Limited Data Set.* Covered Entity agrees to share Protected Health Information with Data User (the "**Limited Data Set**"). Such Limited Data Set shall not contain any of the following identifiers of the individual who is the subject of the Protected Health Information, or of relatives, employers or household members of the individual: names; postal address information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

**Obligations of Data User.**

* *Performance of Activities.* Data User may use and disclose the Limited Data Set received from Covered Entity only in connection with the performance of the activities described in this Agreement.
* *Permitted Access to Limited Data Set.* Data User shall limit the use or receipt of the Limited Data Set to individuals or classes of individuals who need the Limited Data Set for the performance of the Activities.
* *Assurances of Data User’s Non-Employee Agents.* Data User shall ensure that any agents, including subcontractors, to whom it provides the Limited Data Set agree in writing to be bound by the same restrictions and conditions that apply to Data User with respect to such Limited Data Set.
* *Nondisclosure Except As Provided In Agreement.* Data User shall not use or further disclose the Limited Data Set except as permitted or required by this Agreement.
* *Use Or Disclosure As If Covered Entity.* Data User may not use or disclose the Limited Data Set in any manner that would violate the requirements of HIPAA or the HIPAA Regulations if Data User were a Covered Entity.
* *Identification Of Individual.* Data User may not use the Limited Data Set to identify or contact any individual who is the subject of the PHI from which the Limited Data Set was created.
* *Disclosures Required By Law.* Data User shall not, without the prior written consent of Covered Entity, disclose the Limited Data Set on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Data User shall refrain from disclosing the Limited Data Set until Covered Entity has exhausted all reasonably available alternatives for relief.
* *Safeguards.* Data User shall use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided by this Agreement.
* *Reporting.* Data User shall report to Covered Entity any use or disclosure of the Limited Data Set in violation of this Agreement or applicable law.

**Termination.**

* *Term.* This Agreement shall be effective as of the Agreement Effective Date, and shall continue until the Agreement between the parties terminates.
* *Disposition of Records.* Upon termination of this Agreement for any reason, Data User may only use or disclose the Limited Data Set for the purposes specified in this Agreement and only in accordance with the terms of this Agreement. This section shall survive termination of this Agreement.