

GARVAN INSTITUTE OF MEDICAL RESEARCH

WHOLE HUMAN GENOME SEQUENCING AND RELATED SERVICES (RESEARCH ONLY)

TERMS AND CONDITIONS

1. About these Terms and Conditions

- 1.1 Eligible Customers are invited to submit an Order on these Terms and Conditions. Sequencing Services are available only for the purpose of Research.
- 1.2 An Order comprises an offer to the Garvan to purchase the Sequencing Services on these Terms and Conditions. A contract between the Garvan and the Customer is formed, or taken to be formed, on these Terms and Conditions on the Garvan issuing an Order Receipt.
- 1.3 The obligation of the Garvan to perform the Sequencing Services under clause 4 is conditional on Acceptance under clause 2.6.

2. Order and Acceptance Procedure

- 2.1 An Eligible Customer may submit an Order for Sequencing Services via the Order Centre.
- 2.2 On submitting an Order, the Eligible Customer will receive an Order Receipt. Issuance of an Order Receipt does not comprise Acceptance.
- 2.3 The Order Receipt will include payment instructions for the Deposit. The Deposit comprises:
- 2.3.1 for Eligible Customers in Australia, 50% of the Sequencing Fee; and
- 2.3.2 for Eligible Customers outside of Australia, 100% of the Sequencing Fee or as otherwise specified in the Order Receipt (and the Garvan's estimate of any expenses).
- The Deposit is payable in the currency specified in the Order Receipt.
- 2.4 The Garvan may specify Special Conditions in an Order Receipt. If the Customer does not accept the Special Conditions, it may notify the Garvan and the Garvan will be taken to have declined the Order (in which case, clause 2.10 and 2.11 will apply). Special Conditions prevail over these Terms and Conditions to the extent of any inconsistency.
- 2.5 On receiving an Order Receipt, the Customer may deliver Samples to the Garvan (or a sub-contractor or nominee of the Garvan specified for this purpose from time-to-time).
- 2.6 The Garvan will, within a reasonable period of receipt of the Samples, review the Order and inspect the Samples in accordance with the Acceptance Policy. The Garvan will:
- 2.6.1 confirm Acceptance of the Order and the Samples;
- 2.6.2 decline the Order;
- 2.6.3 decline to accept the Samples and hold the Order pending receipt of further information or further Samples; or
- 2.6.4 if the Samples are identified as non-conforming, contact the Eligible Customer to seek the agreement of the Eligible Customer to Acceptance of the Order and the Samples subject to Special Conditions which will be specified in a revised Order Receipt (failing agreement the Garvan may decline the Order).

- 2.7 Acceptance is conditional on receipt of the Deposit in cleared funds.
- 2.8 The Garvan may decline an Order or decline to accept any Sample on the basis of its Acceptance Policy or for any other lawful reason.
- 2.9 The Acceptance Policy is for the guidance of the Garvan and its employees, agents and sub-contractors. The Acceptance Policy is not binding on the Garvan and does not confer any right or expectation on the Customer.
- 2.10 If the Garvan declines an Order, the Garvan will:
- 2.10.1 return each Sample received from the Customer to the Customer at the Customer's cost; or
- 2.10.2 at the Customer's direction, destroy each Sample; and
- 2.10.3 de-identify or destroy any Personal Information received from the Customer (if it is lawful and reasonable to do so).
- 2.11 If the Garvan declines an Order, neither Party will have any continuing obligation to the other under these Terms and Conditions (except in relation to confidentiality obligations under clause 15).

3. Sample Preparation

- 3.1 The Customer must ensure that all Samples are obtained, prepared, transported and delivered in accordance with the technical instructions and specifications of the Garvan prescribed for this purpose from time to time.
- 3.2 Without limiting clause 3.1, the Customer must notify the Garvan of any risks or hazards associated with a Sample with sufficient prominence and particulars to enable the Garvan, or any sub-contractor or nominee of the Garvan, to take necessary precautions to ensure the health and safety of its employees and agents.
- 3.3 Current Sample instructions and specifications are available at <https://ccg.garvan.org.au/confluence/display/KP/KCCG+Public+Wiki>.

4. Sequencing Services

- 4.1 On Acceptance of a Sample, the Garvan must perform the Sequencing Services.
- 4.2 The Sequencing Services:
- 4.2.1 will be rendered with due care and skill; and
- 4.2.2 will be fit for the purposes of Research.
- 4.3 Yield and Coverage in respect of Sequencing Services will be as specified in the Order Receipt (or, if not specified, as determined by the Garvan).
- 4.4 The Garvan may sub-contract components of the Sequencing Services (for example, Sample preparation or bioinformatics analysis).
- 4.5 The Customer acknowledges that the Sequencing Services are rendered utilising advanced technology developed and supplied by third-parties which is in limited use worldwide. The Customer acknowledges that the performance of that technology is dependent on factors such as:

- 4.5.1 the inherent specifications and performance of the technology;
 - 4.5.2 the availability and performance of consumables;
 - 4.5.3 the calibration and maintenance of the technology;
 - 4.5.4 limitations of technical knowledge and understanding in relevant scientific fields.
- 4.6 Without limiting clause 2.7, the Garvan may at any time decline to provide, or cease to provide, the Sequencing Services where:
- 4.6.1 performing the Sequencing Services would be unlawful;
 - 4.6.2 performing the Sequencing Services would contravene the terms and conditions of use of the Sequencing Platform;
 - 4.6.3 performing the Sequencing Services may infringe the intellectual property rights of any person; or
 - 4.6.4 the Garvan considers (in its absolute discretion) that the provision of Sequencing Services would be unethical or may otherwise damage the reputation of the Garvan.

5. Turnaround and delivery

- 5.1 Subject to clause 5.2, the Garvan will complete the Sequencing Services and deliver the Data File to the Customer within 56 days of Acceptance of a Sample.
- 5.2 The Garvan may propose a different period for completion of the Sequencing Services prior to issuing an Acceptance. If the period is satisfactory to the Customer, the Garvan will complete the Sequencing Services and provide the Data File within the period specified in the Acceptance. If the period is not satisfactory to the Customer, the Customer may notify the Garvan. In that circumstance, the Garvan will be deemed to have declined the Order and clauses 2.10 and 2.11 will apply.
- 5.3 A Data File is taken to be delivered when:
 - 5.3.1 the Data File is released by the Garvan for shipping on data storage media; or
 - 5.3.2 when the Data File is made available to the Customer on a Data Delivery Platform,
 as applicable to the Order.
- 5.4 If the Customer has selected the DNAnexus Platform for delivery of the Data File, the Customer authorises the Garvan to provide the Data File to DNAnexus.
- 5.5 The Garvan will retain the Data File for a period of 90 days from the date of delivery in accordance with clause 5.3 (**Retention Period**). If the Customer does not receive the Data File or the Data File is otherwise unavailable to the Customer on the relevant Data Delivery Platform, the Customer is responsible for contacting the Garvan within the Retention Period to request the Data File be delivered again.
- 5.6 Delivery of the Data File is undertaken or facilitated by third-parties and the Garvan is not liable to the Customer for the performance or non-performance of any such third-party in respect of the delivery of, or failure to deliver, the Data File.

6. Quality Assurance

Without limiting clause 4.2, the Garvan must establish and maintain during the period in which Sequencing Services are rendered to the Customer systems and procedures for quality assurance which are consistent with generally accepted laboratory and research practice.

7. Ethics Approval and Consent

- 7.1 The Customer warrants and represents, and must ensure, that if the Research to which the Order relates:
 - 7.1.1 is required by law to be approved by a HREC; or

- 7.1.2 in accordance with generally accepted standards of research or clinical practice, would be required to be approved by a HREC,

the Customer has obtained approval of a HREC for the Research (and that approval is valid and subsisting and has not been revoked).

- 7.2 The Customer warrants and represents, and must ensure, that if the Research to which the Order relates:

- 7.2.1 is required by law to be approved by an AEC; or

- 7.2.2 in accordance with generally accepted standards of research practice, would be required to be approved by an AEC,

the Customer has obtained approval of an AEC for the Research (and that approval is valid and subsisting and has not been revoked).

- 7.3 The Customer warrants and represents, and must ensure, that if the consent of a Participant:

- 7.3.1 is required by law;

- 7.3.2 is required as a condition of approval by a HREC; or

- 7.3.3 is required in accordance with generally accepted standards of research or clinical practice

for the Research to which an Order relates, the Customer has obtained that consent (and, to the best of the Customer's knowledge, that consent is valid and subsisting and has not been revoked).

- 7.4 The Customer warrants and represents, and must ensure, that:

- 7.4.1 each Sample has been obtained in compliance with all applicable laws (including laws applicable to the donation and removal of human tissue); and

- 7.4.2 without limiting clauses 7.1, 7.2 or 7.3, the Customer is authorised and has all applicable licences to provide the Sample to the Garvan for analysis in accordance with these Terms and Conditions.

- 7.5 The Customer must promptly notify the Garvan if it becomes aware of any fact or circumstance which would cause a warranty or representation under this clause to cease to be accurate.

- 7.6 The Customer must promptly provide to the Garvan satisfactory evidence of the facts and circumstances which are the subject of warranties and representations under this clause on request.

8. Privacy

- 8.1 The Customer must ensure that:

- 8.1.1 it collects Personal Information in accordance with Privacy Laws;

- 8.1.2 it has consent of each relevant individual, or other lawful authority, to disclose any Personal Information to the Garvan for the purpose of the Sequencing Services; and

- 8.1.3 without limiting sub-clauses 8.1.1 and 8.1.2, it complies with Privacy Laws in respect of Personal Information it collects, holds, uses or discloses in connection with the subject matter of these Terms and Conditions.

- 8.2 Prior to submitting an Order, the Customer must ensure that each Participant and each other relevant individual whose Personal Information will be disclosed by the Customer to the Garvan has been provided a copy of the Privacy Collection Statement. The Customer must maintain and promptly provide to the Garvan satisfactory evidence of compliance with this clause on request.

- 8.3 The Garvan must:

- 8.3.1 take such steps as are reasonable in the circumstances to protect Personal Information collected from the Customer from misuse, interference and loss and from unauthorised access, modification or disclosure; and
- 8.3.2 otherwise comply with Privacy Laws in respect of Personal Information it collects, holds, uses or discloses in connection with the subject matter of these Terms and Conditions.
- 8.4 Where the Customer selects the DNAnexus Platform for delivery of the Data File, the Garvan will be required to disclose Personal Information relating the Customer's personnel to DNAnexus, Inc. to enable delivery of the Data File (for example, contact details necessary to create a DNAnexus account). The Customer must ensure that its personnel consent to such Personal Information being provided (having been informed that DNAnexus, Inc. handles Personal Information in accordance with its privacy policy and that the Garvan has not taken steps to ensure DNAnexus, Inc. does not breach the Australian Privacy Principles in relation to that information).

9. Responsibility for Participants

The Customer is solely responsible for the health, wellbeing and safety of Participants. Without limiting the foregoing, or any other provision of these Terms and Conditions, the Garvan is under no obligation to analyse, interpret and/or communicate to a Participant (or any other person) any result or observation arising from or in connection with the Sequencing Services.

10. Responsibility for Animals

Where applicable to the Order, the Customer is solely responsible for the wellbeing and welfare of Animals.

11. Fees

- 11.1 The Garvan will issue a tax invoice to the Customer on delivery of the Data File for:
- 11.1.1 the Sequencing Fee; and
- 11.1.2 such other expenses incurred by the Garvan on behalf of the Customer in performing the Sequencing Services (including the cost of transit of Samples, data storage media and the Data Delivery Platform).
- The Sequencing Fee and expenses are payable in the currency outlined in the Order Receipt.
- 11.2 The Customer must pay the tax invoice within 14 days of issuance. If the tax invoice is not paid in accordance with its terms, the Garvan may charge the Customer interest on the unpaid amount, accrued each day at the rate equal to the sum of the official cash rate quoted by the Reserve Bank of Australia on that day plus 2% per annum, and is capitalised (if not paid) every 30 days.
- 11.3 The Garvan must apply the Deposit received from the Customer under clause 2.3 towards the Sequencing Fee and/or expenses incurred in performing the Sequencing Services prior to issuing a tax invoice under clause 11.1.
- 11.4 If the Deposit received from the Customer under clause 2.3 exceeds the Sequencing Fee and any expenses incurred in performing the Sequencing Services, the Garvan will refund to the Customer the difference between the Deposit and the Sequencing Fee and expenses incurred.
- 11.5 The Customer's obligation to pay for Sequencing Services rendered by the Garvan is not conditional on the Customer's receipt of grant funding or other funding from any source.

12. GST

- 12.1 In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

- 12.2 Except as otherwise provided by this clause, all consideration payable under these Terms and Conditions in relation to any supply is exclusive of GST.
- 12.3 If GST is payable in respect of any supply made by a supplier under these Terms and Conditions, subject to clause 12.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under these Terms and Conditions.
- 12.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 12.3.

13. Retention of Samples

- 13.1 On submitting an Order, the Customer may specify:
- 13.1.1 that the Samples be destroyed at the completion of the Sequencing Service; or
- 13.1.2 that the Samples be retained by the Garvan at the completion of the Sequencing Services for a reasonable period, only for the purpose of re-sequencing the Samples to which the Order relates.
- 13.2 If the Customer has specified that Samples may be retained by the Garvan:
- 13.2.1 as between the Customer and the Garvan, property in and title to each Sample passes to the Garvan on Acceptance; and
- 13.2.2 the Garvan may elect to destroy Samples as it sees fit.

14. Intellectual Property Rights

- 14.1 Subject to this clause 14, title to and ownership of all IPR in the Data File vests upon its creation in the Customer.
- 14.2 The Customer must not:
- 14.2.1 use the Data File for any purpose other than for the purpose of the Customer's own Research;
- 14.2.2 authorise any other person to use, or rely on, the Data File for any purpose; or
- 14.2.3 sell, transfer, novate, assign or licence the IPR in the Data File (where the purpose, or effect, is to cause or permit any person to do any act or thing which the Customer is not permitted to do under sub-clause 14.2.1 or 14.2.2).
- 14.3 The provisions of clause 14.2 are subject to any qualification that may be expressly agreed to in writing by Garvan and the Customer.
- 14.4 As between the Customer and the Garvan, the title to and ownership of all IPR in the processes and methodologies used or enhanced by the Garvan in the provision of the Sequencing Services or as specified in the Order vests in the Garvan.
- 14.5 The title to and ownership of all IPR in Pre-existing Material remains vested in the Party who provides such Pre-existing Material. Each Party grants a non-exclusive, royalty-free licence to the other Party to use the Pre-existing Material solely for the purpose of providing, and only to the extent necessary to provide, the Sequencing Services.

15. Confidentiality

- 15.1 Each Party must:
- 15.1.1 keep confidential;
- 15.1.2 take reasonable steps to ensure that the Party's employees do not disclose to a third party;
- 15.1.3 maintain proper and secure custody of; and
- 15.1.4 not use or reproduce in any form

- any Confidential Information belonging to the other Party without the written consent of the other Party or as required by law.
- 15.2 A Party must immediately on receipt of a request from the other Party in accordance with the other Party's rights under these Terms and Conditions:
- 15.2.1 deliver all Confidential Information belonging to the other Party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- 15.2.2 destroy the Confidential Information and, if it is in electronic form, by erasing it from the media on which it is stored so that the Confidential Information is incapable of being revived; and
- 15.2.3 provide a statutory declaration to the other Party that all Confidential Information has been delivered or destroyed in accordance with this clause.
- 15.3 The obligations of the parties under this clause are continuing obligations and survive after the Sequencing Services have been completed and the Sequencing Fee paid (and otherwise survive the termination of the contract formed by the issuance of an Order Receipt).

16. Acknowledgment of Support

- 16.1 The Customer acknowledges that the Garvan provides the Sequencing Services to Eligible Customers to enable researchers to access high capital cost, advanced technology in Australia which facilitates biomedical research for the prevention and treatment of disease and the advancement of human health.
- 16.2 In recognition of the foregoing, the Customer agrees to fairly acknowledge the support of the Garvan in any public announcement, research report or other material produced by the Customer in relation to the Research of which the Sequencing Services formed part. The following is considered fair acknowledgment for whole human genome sequencing:
- Whole human genome sequencing for [this study] was provided by the Garvan Institute of Medical Research.*
- 16.3 Clause 16.2 does not apply where the Garvan, in its discretion, determines that it does not wish to be acknowledged in connection with the Research activity of which the Sequencing Services formed part. In that circumstance, the Customer must not publicly disclose in any form or medium the fact that the Garvan provided the Sequencing Services to the Customer or received the Sequencing Fee from the Customer (except to the extent that the disclosure is required by law).
- 16.4 Subject to 15.2, the Customer must not use the Garvan's name or trademarks in a manner that suggests that the Garvan endorses, or is associated with Customer's business, products or services.

17. Indemnity

- 17.1 The Customer indemnifies the Garvan against all Claims incurred or suffered by the Garvan:
- 17.1.1 in connection with a breach of a warranty or clause of these Terms and Conditions by the Customer;
- 17.1.2 in connection with the use of the Data File for any purpose other than Research; or
- 17.1.3 brought by any third-party against the Garvan in connection with the Sequencing Services.
- 17.2 The extent of the indemnity in clause 17.1.3 shall be reduced proportionately to the extent that the Claim is caused by the unlawful or negligent act of the Garvan.
- 17.3 The indemnity in this clause extends to Claims incurred or suffered by the officers, employees and agents of the Garvan. The benefit of this indemnity is held by the Garvan on trust for its officers, employees and agents.

- 17.4 This indemnity extends to and includes all costs, damages and expenses incurred in defending and/or settling any Claims, including legal costs on a full indemnity (solicitor/own-client) basis.

18. Liability

- 18.1 Any representation, warranty, condition or undertaking which (but for this clause) would be implied in these Terms and Conditions by law, is excluded to the fullest extent permitted by law.
- 18.2 The liability of the Garvan for breach of a guarantee implied by the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) in relation to the supply of goods or services not of a kind ordinarily acquired for personal domestic or household use or consumption, is limited, at the Garvan's option, to:
- 18.2.1 in the case of goods – the replacement of the goods, the supply of equivalent goods, the payment of the cost of replacing the goods or the payment of the cost of acquiring equivalent goods; or
- 18.2.2 in the case of services – the supplying of the services again or the payment of the cost of having the services supplied again.
- 18.3 To the fullest extent permitted by law, the Garvan will not be liable to the Customer for consequential, indirect or special losses or damages of any kind (including loss of profit, loss of or damage to goodwill, loss or corruption of data, or business interruption) suffered by the Customer as a result of any act or omission whatsoever of the Garvan, its employees, agents or sub-contractors.
- 18.4 Nothing in these Terms and Conditions is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

19. Regulatory Restrictions

- 19.1 The Customer acknowledges that:
- 19.1.1 the Sequencing Platform is not included on the Australian Register of Therapeutic Goods and is not intended by the manufacturer or the Garvan for use in any application which would require the Sequencing Platform to be included on the Australian Register of Therapeutic Goods; and
- 19.1.2 the use of the Sequencing Platform by the Garvan is limited by the terms and conditions pursuant to which the Sequencing Platform was supplied.
- 19.2 Nothing in these Terms and Conditions is to be interpreted so as to require the Garvan to do any act or thing which would require:
- 19.2.1 the Sequencing Platform to be included on the Australian Register of Therapeutic Goods;
- 19.2.2 the Garvan to breach the terms and conditions pursuant to which the Sequencing Platform was supplied; or
- 19.2.3 the Garvan to disclose the terms and conditions pursuant to which the Sequencing Platform was supplied.

20. Force Majeure

If Garvan is delayed or hindered in or prevented from performing any of its obligations under these Terms and Conditions by reason of any event or circumstance beyond its reasonable control, Garvan will have no liability to Customer in respect of such non-performance and the time for performing the same will be extended until the event or circumstance has ceased.

21. General

- 21.1 These Terms and Conditions may only be varied or replaced by a document duly executed by the Parties.
- 21.2 These Terms and Conditions and any Special Conditions contain the entire understanding between the Parties as to their subject matter. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by these Terms and Conditions and have no effect.
- 21.3 Neither Party has the power to obligate or bind the other Party. Nothing in these Terms and Conditions will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between the Parties. Nothing in these Terms and Conditions will be deemed to authorise or empower a Party to act as agent for or with the other Party.
- 21.4 Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by these Terms and Conditions.
- 21.5 A single or partial exercise or waiver of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right. Neither Party will be liable for any loss or expenses incurred by the other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 21.6 The Customer must not:
- 21.6.1 sell, transfer, novate, delegate, assign, licence; or
- 21.6.2 mortgage, charge or otherwise encumber
- any right or obligation under these Terms and Conditions to any person without the prior written consent of the Garvan.
- 21.7 The Garvan may:
- 21.7.1 sell, transfer, novate, delegate, assign, licence; or
- 21.7.2 mortgage, charge or otherwise encumber
- any right or obligation under these Terms and Conditions to any person.
- 21.8 Clauses 8, 9, 12, 13.2, 14, 15, 16, 17 and 18 survive the expiry or termination of the contract formed by the issuance of an Order Receipt.
- 21.9 Each indemnity in these Terms and Conditions is a continuing obligation, separate and independent from the other obligations of the parties and survives the expiry or termination of the contract formed by the issuance of an Order Receipt.
- 21.10 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by these Terms and Conditions.
- 21.11 In the interpretation of these Terms and Conditions, no rule of construction applies to the disadvantage of the Garvan on the basis that it prepared or put forward these Terms and Conditions.

22. Definitions

In these Terms and Conditions unless expressed or implied to the contrary:

Acceptance means a communication (which may be in the form of an electronic message) confirming acceptance of an Order and one or more Samples and undertaking to provide the Sequencing Services in accordance with these Terms and Conditions. **Accepted** has a corresponding meaning.

Acceptance Policy means the policy and procedures of the Garvan regarding the receipt and review of Orders and the receipt and inspection of Samples for the purpose of the Sequencing Services.

AEC means an animal ethics committee:

- (a) constituted in accordance with the National Health and Medical Research Council *Australian Code for the Care and Use of Animals for Scientific Purposes*; or
- (b) otherwise approved by the Garvan (in its absolute discretion).

For a Customer based outside of Australia, an AEC includes an animal care committee (or equivalent) approved by the Garvan (in its absolute discretion).

Animal means an animal (within the meaning given in the National Health and Medical Research Council *Australian Code for the Care and Use of Animals for Scientific Purposes*) which is used for scientific purposes in connection with the Research to which an Order relates.

Australian Consumer Law has the meaning given in the *Competition and Consumer Act 2010* (Cth).

Australian Privacy Principle has the meaning given in the *Privacy Act 1988* (Cth).

Australian Register of Therapeutic Goods means the register maintained under section 9A of the *Therapeutic Goods Act 1989* (Cth).

Business Day means Monday to Friday excluding public holidays in New South Wales, Australia.

Claims includes:

- (a) actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses; and
- (b) Regulatory Actions.

Confidential Information means all information and materials, in any form, which comes into a Party's possession about the other Party pursuant to, or as a result of or in performance of activities contemplated by, these Terms and Conditions excluding information:

- (a) which at the time of its first disclosure or observation under these Terms and Conditions was in the public domain;
- (b) which, after disclosure or observation under these Terms and Conditions, comes into the public domain otherwise than by disclosure in breach of these Terms and Conditions;
- (c) which is received by either Party from a third party who has the right to provide the information;
- (d) which was already in the receiving Party's possession or knowledge without restriction prior to its disclosure or observation; or
- (e) which the disclosing Party is required by law to disclose.

Coverage means coverage as calculated in accordance with the Illumina Technical Note "Estimating Sequence Coverage" available at www.illumina.com/content/dam/illumina-marketing/documents/products/technotes/hiseq-x-30x-coverage-technical-note-770-2014-042.pdf.

Customer means an Eligible Customer who has submitted an Order and received an Order Receipt.

Data Delivery Platform means an online platform for transfer and/or storage of data including:

- (a) the Aspera Faspex file transfer platform; and
- (b) the DNAnexus Platform.

Data File means FASTQ format of DNA sequence data (or such other available data file format agreed with the Customer and specified in the Acceptance).

Deposit means the deposit payable under clause 2.3 in respect of the Sequencing Fee and/or such other expenses incurred by the Garvan on behalf of the Customer in

performing the Sequencing Services (including the cost of transit of Samples, data storage media and the Data Delivery Platform).

DNAnexus Platform means the cloud-based storage platform for sequencing data operated by DNAnexus, Inc.

Eligible Customer means:

- (a) a hospital, health service, university or medical research institute; and
- (b) such other organisation or person who may be invited by the Garvan to submit an Order.

Garvan means the Garvan Institute of Medical Research ABN 62 330 391 937, a statutory corporation established under the *Garvan Institute of Medical Research Act 1984* (NSW).

Government Agency means a government or government department, a governmental, semi governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

HREC means a human research ethics committee:

- (a) constituted in accordance with the National Health and Medical Research Council *National Statement on Ethical Conduct in Human Research*; or
- (b) otherwise approved by the Garvan (in its absolute discretion).

For a Customer based outside of Australia, a **HREC** includes an institutional review board (or equivalent) approved by the Garvan (in its absolute discretion).

Illumina HiSeq X Ten Platform means the system for large-scale human whole genome sequencing known by name "HiSeq X Ten" and supplied to the Garvan by Illumina Australia Pty Limited ABN 97 130 775 932.

Illumina HiSeq 2500 Platform means the system for high-throughput sequencing known by name "HiSeq 2500" and supplied to the Garvan by Illumina Australia Pty Limited ABN 97 130 775 932.

IPR includes, without limitation, all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, Confidential Information (including trade secrets and know-how) and all necessary consents in relation to moral rights, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields or any rights to registration of such rights existing in Australia or elsewhere, whether created before on or after the date of this Agreement.

Order means a communication (which may be in the form of an electronic message) from an Eligible Customer to the Garvan requesting that the Garvan perform the Sequencing Services.

Order Centre means the email address kccgorders@garvan.org.au.

Order Receipt means a communication (which may be in the form of an electronic message) from the Garvan to the Customer confirming receipt of an Order.

Party means the Customer or the Garvan and **Parties** means both the Customer and the Garvan.

Participant means any person who is a subject of the Research to which an Order relates (and includes any person from whom a Sample has been obtained).

Personal Information has the meaning given in Privacy Laws.

Pre-existing Material means material including documents, computer software, equipment, information and data stored by any means which is created prior to the performance of the Sequencing Services by either Party and is used in the performance of the Sequencing Services.

Privacy Collection Statement means a document prepared by the Garvan notifying a Participant or other relevant individual whose Personal Information will be disclosed to the Garvan in connection with the subject matter of these Terms and Conditions of the matters required by Australian Privacy Principle 5 (notification of the collection of personal information) and equivalent provisions under Privacy Laws.

Privacy Laws means the *Privacy Act 1988* (Cth) and such other legislation or binding schemes applicable to either the Customer or the Garvan relating to the privacy of personal information and health records. Where the Customer is located in a jurisdiction outside of Australia, Privacy Laws include laws of that jurisdiction applicable to the Customer relating to privacy, personal information, data protection and health records.

Regulatory Action means an action, proceeding, investigation or inquiry by any Government Agency in connection with the Sequencing Services.

Research means systematic investigation undertaken to gain knowledge and understanding in a field of scientific endeavour. Whether a particular activity comprises Research for the purpose of these Terms and Conditions will be determined by the Garvan in its absolute discretion.

Sample means a biological sample provided to the Garvan for the purpose of Sequencing Services under these Terms and Conditions.

Sequencing Fee means the fees and charges payable by the Customer for Sequencing Services in accordance with the schedule of fees for Sequencing Services published by the Garvan from time-to-time (or as otherwise negotiated between the Parties). The Sequencing Fee in respect of an Order will be specified in the Acceptance.

Sequencing Platform means, as applicable to the Order, the Illumina HiSeq X Ten Platform and/or the Illumina HiSeq 2500 Platform.

Sequencing Services means:

- (a) quality control of the Sample;
- (b) library preparation of the Sample (if applicable);
- (c) as specified in the Order Receipt and Acceptance:
 - (i) whole human genome sequencing on the Illumina HiSeq X Ten Platform;
 - (ii) non-human whole genome sequencing on the Illumina HiSeq 2500 Platform; and/or
 - (iii) such other sequencing services on the Illumina HiSeq 2500 Platform; and
- (d) release of a Data File to the Customer for delivery (by the means applicable to the Order).

Special Conditions mean any special conditions specified in an Order Receipt (including any special conditions specified in respect of non-conforming samples).

Terms and Conditions means this document.

23. Interpretation

23.1 These Terms and Conditions are governed by and are to be construed in accordance with the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

23.2 In these Terms and Conditions, a reference to:

- 23.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 23.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 23.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or

functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

- 23.3 In these Terms and Conditions, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.
- 23.4 In these Terms and Conditions:
- 23.4.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 23.4.2 a reference to a clause is a reference to a clause in these Terms and Conditions;
 - 23.4.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - 23.4.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of these Terms and Conditions;
 - 23.4.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
 - 23.4.6 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'.
- 23.5 If a provision in these Terms and Conditions is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Terms and Conditions.
- 23.6 If a payment or other act is required by these Terms and Conditions to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- 23.7 In these Terms and Conditions, a reference to:
- 23.7.1 the singular includes the plural and vice versa; and
 - 23.7.2 a gender includes the other genders.