1. Definitions; Interpretation. “Agreement” means either (i) the Quotation, including these terms and conditions and the applicable Service Description which form a part thereof; (ii) all electronic information and terms of Illumina referenced during an Electronic Order, including these terms and conditions and the applicable Service Description which form a part thereof to the extent included in the Electronic Order, or (iii) all amendments and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall not be deemed to be part of the Agreement.

2. Applicability of Terms and Conditions. This Agreement shall exclusively govern the ordering, purchase and provision of the Services, and shall prevail over any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall not be deemed to be part of the Agreement.

3. Information Transfer; Samples. In order to ensure timely and satisfactory performance of the Services, it is critical that Customer provide all relevant information and materials in a timely manner to Illumina. Customer agrees to provide the Samples, and all other information and materials as specified in the Service Description in accordance with the guidelines set forth therein. Customer acknowledges that any failure to provide the Samples, information, and any other materials in accordance with the Service Description may result in delays in the project and Illumina shall not be in breach of this Agreement nor liable to the Customer in respect of any such failure of the Customer.

4. Delivery. Delivery shall have occurred by one of the following means, to be determined by mutual agreement of the parties: (a) If Results are to be delivered electronically, once Illumina has transmitted an electronic file containing all or a portion of the Results to Illumina’s FTP web site or other site as mutually agreed and has notified Customer that such file is available, or (b) If Results are to be delivered in one or more hard drive(s) or other physical material, upon shipment FOB origin of such hard drive(s) or material containing all or a portion of the Results. Customer acknowledges that Illumina does not typically retain a copy of the Results beyond Delivery and the Results may not be recoverable from Illumina’s systems after Delivery. In the event of the loss of the Results by Illumina after Delivery, Illumina shall have no further obligation to deliver the Results to the Customer.

5. Pricing; Payment. Prices for the Services shall be as specified in the Quotation or during an Electronic Order or other order and are valid solely during the period set forth therein. Unless otherwise specified in the Quotation or during an Electronic Order or other order, prices specified therein are for the number of Samples and specific Services stated therein and do not include any other services or equipment that may be necessary to provide the Services. Unless otherwise specified in the Quotation, pricing will affect, and will therefore require mutual written agreement of the parties. Illumina will send invoices to Customer upon delivery of Results or portions thereof. All invoices shall be paid in full by the Customer within thirty (30) days from the date of invoice. Any amounts not paid when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is not made within the time period specified in this Agreement, Illumina may suspend providing the Services and delivering the Results until all payments are made current. Customer shall pay for all costs (including reasonable legal fees) incurred by Illumina in connection with the collection of late payments. The amount of credit authorized by Illumina may be changed or entirely withdrawn at any time, and Illumina reserves the right to require alternative payment terms, including but not limited to a letter of credit or full or partial payment in advance.

6. Ownership of Samples; Regulatory Compliance. Customer represents and warrants that it owns or otherwise controls the Samples and that it has the right to provide the Samples to Illumina for the purpose described herein. Illumina shall use the Samples solely for the purpose of performing the Services. Illumina agrees that it will promptly return or destroy, in Customer’s sole discretion, any unused Samples or portions thereof following the delivery of the Results. Customer shall obtain and maintain all necessary licenses and other consents and comply with all applicable laws and regulations in relation to the transfer of the Samples to Illumina and the performance of the Services.

7. Intellectual Property. The Results Work Product shall be owned by Customer and all right, title, and interest in, to and under the Results Work Product, including without limitation all Intellectual Property Rights therein shall vest immediately upon their creation in the Customer. Results Work Product shall not include any discoveries or inventions, including without limitation discoveries and inventions relating to expressions, that were in the Customer’s possession or known by Illumina or its affiliated entities prior to performance of the Services, and any materials, processes, or methods used by Illumina in the performance of the Services and any Intellectual Property Rights owned by or licensed to Illumina prior to the performance of the Services, including without limitation in each case any modifications, improvements, derivations and developments thereof. Customer shall at all times retain all right, title, and interest in the Samples provided hereunder.

8. Research Use Only. Customer acknowledges that the Services are provided for research use only and are not being performed in a clinical laboratory (e.g., the Services are not being performed in a CLIA-certified laboratory). The Services are not an article or accessory intended to be used specifically for the medical purpose of: diagnosis, treatment, prevention, monitoring or alleviation of a disease, injury or disability; compensation for an injury or disability; investigation, replacement or modification of the anatomy or any physiological process or state; or control or support of contraception; and the Results are not intended to be medical advice. The Services have not been subjected to any conformity assessment or other regulatory review or certified, approved or cleared by any conformity assessment body or other regulatory body in any country for diagnostic use or any other purpose.

9. Limited Warranty. Illumina warrants to Customer that all Results delivered by Illumina hereunder shall conform to the Specifications. Except as expressly set forth in this section 9, the results are provided to Customer on an “as is” basis, and Illumina, to the maximum extent permitted by applicable law, expressly disclaims any and all warranties, express or implied, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, accuracy, utility, or non infringement with respect thereto.

10. Indemnification. Illumina shall indemnify and hold harmless Customer, its affiliated entities and their respective directors, officers, employees, agents, successors, and assigns (the “Indemnified Parties”) from and against any and all claims, suits, actions, proceedings, and liabilities, whether in law or equity, including without limitation the costs, damages, judgments, settlements, and/or losses (including reasonable legal fees) incurred by any Indemnified Party as a result of any claim, complaint, suit, proceeding, or cause of action brought by a third party pertaining to infringement of such third party’s valid and enforceable Intellectual Property Rights resulting from the methods, materials, or processes specified by Illumina and used by Illumina Denmark ApS

Orestads Boulevard 73, 2300 Copenhagen, Denmark
Reg: 34087423
VAT: DK34087423
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Illumina Denmark ApS
Illumina in performance of the Services and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys’ fees) awarded against Customer, as the case may be, in connection with any such action.

Customer shall indemnify and hold harmless Illumina, its affiliated entities and their respective directors, officers, employees, agents, successors, and assignees from and against any liabilities, expenses, or costs arising out of any claim, complaint, suit, proceedings or cause of action brought by a third party pertaining to (i) infringement of such third party’s valid and enforceable Intellectual Property Rights resulting from Customer’s request for ZENOMAP Data; (ii) any other use of information and other materials, (b) specification or selection of any methods, materials, or processes to be used in the performance of the Services, other than those methods, materials, or processes that are specified by Illumina in the Service Description and used by Illumina in performing the Service, and (c) specification or selection of the SNP loci in the case of genotyping or regions of interest in the case of targeted sequencing, and (ii) or arising out of any actions Customer has taken based on its analysis, interpretation, or use of the Result data. All provisions of this Agreement that by their nature should survive termination shall survive including without limitation Sections 1 - 15, and all payment obligations incurred hereunder. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

15. Miscellaneous.

a. Customer acknowledges and agrees that any future products and/or services (“Unreleased Products”) are subject to new parts numbers, pricing, and specifications. Customer agrees that its purchase of the Services hereunder is not in reliance on the availability of any Unreleased Products.

b. If any provision of this Agreement is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver of either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be a waiver of, a breach of, or be a waiver of any subsequent breach of, the same or any other term of this Agreement. Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties.

c. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.

d. All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (c) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

e. Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any change of control or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina’s reasonable judgment, a competitor of Illumina or any of its affiliated entities. Illumina may assign this agreement to (a) a sales agent of Illumina that (i) agrees in writing to be bound by the terms and conditions of this Agreement, or (b) an agent or subcontractor of Illumina.

f. Customer shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina’s suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer’s fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

g. This Agreement exclusively govern the ordering, purchase and provision of Services provided to Customer by Illumina hereunder, and shall override any conflicting, amending, and/or additional terms contained in any purchase orders, invoices or other similar documents hereinafter which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions.