

MacroGenics, Inc.
Terms and Conditions

1. Governing Provisions. These terms and conditions (“Terms and Conditions”) apply to custom services (“Work”) contracted by MacroGenics, Inc. (“MacroGenics”) as set forth in the description in each applicable quotation or other written statement of work (“SOW”), submitted by Service Provider and accepted by MacroGenics. These Terms and Conditions, together with the respective SOW, form the entire agreement between MacroGenics and Service Provider (“Custom Agreement”) with respect to such SOW, and in the event of any conflict with similar terms provided by Service Provider, these Terms and Conditions shall supersede all such conflicting terms, whether written or oral, relating to such SOW, except for a written document signed by both parties which specifically states that the terms and conditions of such document supersede or modify these Terms and Conditions. Service Provider’s acceptance of a purchase order or other similar document to indicate payment for the Work (“PO”) shall indicate acceptance of these Terms and Conditions.

2. Performance of Work. Service Provider shall perform the Work as an independent contractor, using methods, materials, equipment, and/or related intellectual property owned or controlled by Service Provider to provide MacroGenics with the results, data, information and/or materials produced by Service Provider as a result of the Work, as specified in each SOW (collectively “Deliverables”), which Deliverables may include data or materials that result from the use of materials supplied by MacroGenics (“MacroGenics Materials”). Service Provider will use commercially reasonable efforts to start and complete all Work in a timely manner, and will notify MacroGenics if substantial delays are likely. Service Provider will comply with all laws and regulations generally applicable to Work and with all specific instructions, specifications, and specific regulatory framework set forth in the applicable SOW.

3. MacroGenics Materials and Data. Where applicable, MacroGenics will provide Service Provider with the MacroGenics Materials specified in each SOW, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of MacroGenics Materials needed by Service Provider to perform the Work set forth in the applicable SOW, including without limitation any certification or documentation of MacroGenics Materials reasonably requested by Service Provider. The MacroGenics Materials, and all information about or resulting from the use of the MacroGenics Materials, whether provided by MacroGenics or generated by Service Provider in the performance of Work (such information collectively referred to as “Data”), shall be subject to the confidentiality and non-use requirements of Section 8. Upon completion of the Work in each SOW, Service Provider will maintain records of the respective Data for a period of no less than one (1) year. Service Provider will use MacroGenics Materials and Data only in accordance with the applicable SOW, and will not modify nor reverse engineer MacroGenics Materials except as agreed therein. Unless otherwise specified in the applicable SOW or agreed in writing, any MacroGenics Materials not consumed in the Work or required for additional Work will be destroyed after six (6) months. Service Provider will not transfer MacroGenics Materials, in whole or in part, to any third party, other than a subcontractor as anticipated by the applicable SOW, without MacroGenics’ prior written approval. Service Provider will ensure that any subcontractor, as anticipated by such SOW, is bound by similar terms and conditions no less stringent than those contained herein.

4. Service Provider Supplied Materials. Service Provider will supply the materials in each SOW to the extent not specified to be supplied by MacroGenics under such SOW, in compliance with the applicable specifications from such SOW and applicable laws and regulations and in sufficient amounts, to perform the Work as set forth in the such SOW.

5. Payments. MacroGenics shall pay Service Provider for the Work in each SOW within thirty (30) days after the date of receipt of the respective invoice(s), which shall be sent to MacroGenics upon completion of the Work (or portion thereof), according to the payment schedule and currency specified in the applicable SOW. If MacroGenics defaults on any undisputed payment when due, Service Provider, at its option and without prejudice to its other lawful remedies, may until payment is made in full, delay performance, defer delivery, charge interest at the rate of one (1%) percent per month, and/or terminate the SOW.

6. Ownership, Intellectual Property Deliverables. As between the parties, except as otherwise expressly agreed in the applicable SOW, MacroGenics shall be the exclusive owner of (i) the Data, (ii) MacroGenics Materials, (iii) any derivatives or modifications of MacroGenics Materials that are generated by Service Provider as a result of the Work performed under such SOW, and (iv) any inventions and/or discoveries that result from the performance of such Work and that directly relate to MacroGenics Materials, whether or not copyrightable or patentable (collectively, the “MacroGenics Inventions”) and Deliverables that are not included in (i), (iii) and (iv). At MacroGenics’ request and expense, Service Provider shall do all things reasonably necessary to assist MacroGenics in obtaining patents or copyrights on any MacroGenics Inventions, provided however that MacroGenics Inventions shall not include proprietary technology controlled by Service Provider that is used to perform the Work (“Service Provider Technology”) and any improvements or modifications thereof that result from such use. At MacroGenics’ request and expense Service Provider will assign its ownership in any Data, MacroGenics Inventions or Deliverables owned by Service Provider to MacroGenics and at MacroGenics’ reasonable request do all things reasonably necessary to assist MacroGenics’ in perfecting its title in such Data, MacroGenics Inventions or Deliverables. MacroGenics shall not, by virtue of the Work performed hereunder, obtain any license or other rights in any Service Provider Technology except as stated in the applicable SOW or expressly agreed in writing by both parties. Service Provider’s laboratory notebooks or other records maintained with respect to the Work shall be owned by Service Provider, provided however that if such notebooks or records contain any Data or other confidential information of MacroGenics, such Data and confidential information will continue to be the property of MacroGenics, and the portions of the notebooks and records that contain or disclose MacroGenics confidential information will be subject to Service Provider’s obligations of nonuse and confidentiality as set forth in Section 7.

7. Non-Exclusivity. Unless expressly agreed in writing, all Work is provided on a non-exclusive basis, and Service Provider reserves all rights for itself and its affiliates to provide third parties with deliverables that are identical or similar to Deliverables, provided that Service Provider shall not use any MacroGenics Materials, Deliverables, information received from MacroGenics or Data to perform Work for any third party or disclose or include in a deliverable for a third party any MacroGenics Materials, Deliverables, information received from MacroGenics or Data to perform Work.

8. Confidentiality. Service Provider shall treat all Data, MacroGenics Materials, Deliverables and information received from MacroGenics as proprietary and confidential to MacroGenics, and will not disclose Data, MacroGenics Materials, Deliverables or such information to any person except its employees, consultants, and subcontractors as necessary for purposes of providing the Work, and then only subject to a written confidentiality agreement that includes the requirements specified herein. If Service Provider discloses any information or materials comprising Service Provider Technology to MacroGenics, MacroGenics shall treat such information and materials as proprietary and confidential to Service Provider. Each party shall protect the proprietary and confidential information or materials of the other party by using the same degree of care as such party uses to protect its own materials and information, but in any event no less than a reasonable degree of care. Notwithstanding any other provisions herein, however, each recipient party shall have no obligation to the other party for any information that is (a) already known to the recipient party other than through a disclosure or on behalf of the disclosing party as demonstrated by documentation generated prior to receipt of such information; (b) publicly known other than by a wrongful act of the recipient party; (c) received from a third party lawfully entitled to disclose it; (d) disclosed pursuant to an enforceable order of a court or administrative agency; and/or (e) is independently developed by or for the recipient party.

9. Limited Warranty. Except as specifically set forth in the applicable SOW, Service Provider’s sole warranty for the performance of Work is that the Work will be performed with commercially reasonable efforts using due care in accordance the SOW (including all specifications and specific instructions in the SOW) with laws, regulations and generally prevailing industry standards applicable to such Work. Unless specified in writing Service Provider does not warrant or represent that the results of the Work will be acceptable to any regulatory agency to which they are presented or that they will advance the interests of MacroGenics. If MacroGenics believes that Service Provider, in breach of its limited warranty, made an error or omission in the Work that impedes or compromises the value or usefulness of the results of such Work, MacroGenics may notify Service Provider of such error or omission in writing, within ninety days after receipt of the final Deliverable for such Work; and Service Provider shall: (i) repeat the particular Work at Service Provider’s own expense, (ii) refund to MacroGenics the fees actually paid for the particular Work giving rise to the breach of warranty or (iii) withhold payment for such Work to the extent MacroGenics has not already paid for such Work.

9.1. THE WARRANTY SET FORTH IN THIS SECTION 9 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE WORK, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES OR USE THEREOF TO SERVICE PROVIDER’S KNOWLEDGE WILL NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

9.2. SERVICE PROVIDER’S LIABILITY TO MACROGENICS FOR BREACH OF ANY PROVISION OF THESE TERMS AND CONDITIONS (OTHER THAN (i) BREACH OF THE WARRANTY IN THIS SECTION 9 FOR WHICH LIABILITY IS LIMITED TO RE-PERFORMANCE OR REFUND AS SPECIFIED HEREIN; (ii) BREACH OF CONFIDENTIALITY, NON-USE OR INTELLECTUAL PROPERTY ASSIGNMENT/OWNERSHIP; OR (iii) BREACH OF SERVICE PROVIDER’S INDEMNIFICATION OBLIGATION) SHALL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEE TO BE PAID FOR THE WORK.

9.3. NOTHING IN THE CUSTOM AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

10. Indemnification. Except to the extent caused by the negligence, illegal conduct, misconduct, omission or breach of these Terms and Conditions by Service Provider, MacroGenics shall indemnify and hold harmless Service Provider, its affiliates and their respective officers, directors, employees and agents (“Service Provider Indemnitee(s)”) from and against any and all expenses (including, but not limited to, reasonable attorney’s fees) and losses incurred by any such Service Provider Indemnitee in connection with any claim asserted by a third party arising out of or based on (a) MacroGenics Materials or use thereof in performance of the Work as specified in such SOW and/or (b) any product or service of MacroGenics based in whole or part on MacroGenics’ reliance on Deliverables generated under such SOW, or any portion or derivative thereof. Except to the extent caused by the negligence, illegal conduct, misconduct, omission or breach of these Terms and Conditions by MacroGenics, Service Provider shall indemnify and hold harmless MacroGenics, its affiliates and their respective officers, directors, employees and agents (“MacroGenics Indemnitee(s)”) from and against any and all expenses (including, but not limited to, reasonable attorney’s fees) and losses incurred by any such MacroGenics Indemnitee in connection with any claim asserted by a third party arising out of or based on (y) Service Provider’s performance of the Work as specified in such SOW.

11. Termination. An SOW may be terminated (a) by mutual written consent of both parties hereto; (b) by either party if the other party commits any breach of any of the provisions of these Terms and Conditions, and, in the case of a breach capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice from the other party giving full particulars of the breach and confirming the intention to terminate if not remedied; (c) immediately by a party, if the other party shall become bankrupt or insolvent or if all or a substantial part of its business or assets shall be placed in the hands of a Receiver, Administrator, Administrative Receiver, Trustee in Bankruptcy or similar analogous officer or an insolvency practitioner, whether by its voluntary act or otherwise; (d) by Service Provider if Service Provider is unable to obtain third party materials or technology specified in the SOW, for reasons beyond Service Provider’s reasonable control; (e) by Service Provider upon thirty (30) days written notice if Service Provider determines that biosecurity, biosafety, and/or feasibility reasons prevent or are likely to prevent the performance of the Work, or (f) by MacroGenics upon thirty (30)

days prior written notice to Service Provider. Termination of Work in progress will result in a partial charge commensurate with the percentage of Work completed at the time of cancellation, in addition to any other termination or cancellation charges specified in the SOW.

11.1. The termination of an SOW shall not affect the accrued rights of either MacroGenics or Service Provider arising under or out of these Terms and Conditions and all provisions which are expressed to or by implication survive including but not limited to those in the second section of Section 1, Section 3 (excluding the first sentence), Sections 6 through 10, Section 11 (excluding the first sentence) and Section 12 shall remain in full force and effect.

11.2. Upon completion of the Work under or within thirty (30) days of termination of each SOW, Service Provider shall promptly deliver to MacroGenics all documents, Data, Deliverables (to the extent not already delivered) and materials, including without limitation any documents, including electronic documents, and MacroGenics Materials provided to Service Provider or generated during the course of providing Work under such SOW. Notwithstanding the foregoing, each Party may retain, solely for the purpose of determining the scope of its obligations under these Terms and Conditions, one (1) copy of documents, data or other materials generated thereunder.

12. **Miscellaneous.** These Terms and Conditions may not be assigned without the consent of the other party, except that each party may assign these Terms and Conditions to an affiliate or to any other party to whom it transfers the business and assets to the extent they apply to Work performed with such business and assets, provided that such assignee assumes all the rights and obligations of its assignor. Notwithstanding the foregoing, any assignment hereunder will not relieve the assigning party of its confidentiality and non-use obligations under these Terms and Conditions. These Terms and Conditions shall be governed by the laws of the state of Delaware. If any part of these Terms and Conditions is found to be legally unenforceable, the remaining provisions of these Terms and Conditions shall be unimpaired, and the parties shall in good faith negotiate an enforceable provision that most closely achieves the objectives of the unenforceable provision. Except for payment obligations, neither party shall be responsible for failure to perform its obligations due to natural disasters or other force majeure causes beyond its reasonable control. Neither party shall use the name of other party or of its employees in any promotion or publication without prior written consent of such other party. No waiver by either party of any breach hereof shall constitute a waiver of any other breach thereof. Changes to the Work must be agreed by both parties in writing, and may require changes in the fees or timelines.