



## TERMS AND CONDITIONS FOR SALE OF SERVICES

These Terms and Conditions and the Quotation (and any attachments) (the "Quotation"), and any subsequent amendments or addenda thereto, to which these Terms and Conditions are attached (collectively, the "Agreement") constitute the entire agreement between the customer to which the Quotation is addressed ("Customer") and ProZyme, Inc. ("ProZyme"), regarding the project described in the Quotation. Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Quotation.

### Services

ProZyme will provide the Services described in the Quotation, and will use all reasonable efforts to perform the Services in accordance with the time frame set out in the Quotation. Dates contained in the Quotation are targets used for planning and estimating purposes and, depending on circumstances, may be adjusted. ProZyme has every expectation that these Services will be conducted by the ProZyme professionals designated in the Quotation for these Services. If for any reason any of those individuals are not able to complete these Services, professionals with similar qualifications and experience will do so. Where any changes are necessary, ProZyme will give Customer reasonable notice of the changes.

### Changes to Services

Either party may request changes to the Services. Changes must be requested in writing with sufficient detail to enable the other party to assess the impact of the requested change on the cost, timing or any other aspect of the Services. Both parties agree to consider and, if appropriate, agree to any changes. To be effective, a change must be in writing and signed by both parties. Until a change is agreed in writing, the latest agreed terms will apply.

### Acceptance

The passage of ten working days without notice of non-acceptance by Customer, or use by Customer of a project deliverable or output (each a "Deliverable"), will constitute acceptance by Customer of the Deliverable. If a Deliverable is not accepted, the Customer's notice must specify in reasonable detail the reasons that the Deliverable fails to meet the requirements described in this Agreement in all material respects. Upon receipt of such notice and confirmation by ProZyme of the Deliverable's non-conformance with

the requirements of this Agreement, ProZyme will use commercially reasonable efforts to correct the Deliverable and upon such correction will re-submit the Deliverable to Customer for review. Acceptance by Customer will not be unreasonably withheld.

### Ownership

Customer shall own the copyright in all written material originated, prepared for and delivered to the Customer under this Agreement. However, ProZyme's working papers and ProZyme Confidential Information (as defined below) belong exclusively to ProZyme. The ideas, concepts, know-how, techniques, inventions, discoveries and improvements developed during the course of this Agreement may be used by ProZyme, at its sole and unfettered discretion, including without limitation by or for its customers without an obligation to account. ProZyme is in the business of providing Services for a wide variety of customers, and the Customer understands that ProZyme will continue these activities. Accordingly, nothing in this Agreement shall preclude or limit ProZyme from providing Services and/or developing processes, software or materials for itself or other customers, irrespective of the possible similarity of materials which might be delivered to the Customer.

### Confidentiality

ProZyme agrees that all financial, statistical, marketing and personnel data relating to the Customer's business, and other information identified as confidential by the Customer, are confidential information of the Customer ("Customer Confidential Information"). Customer agrees that ProZyme's proprietary software, tools, methodologies, techniques, ideas, know-how and any other oral or written information identified as confidential by ProZyme, are confidential information of ProZyme ("ProZyme Confidential Information"). Customer Confidential Information and ProZyme Confidential Information are collectively referred to as "Confidential Information."

- a. Each party shall use Confidential Information of the other party which is disclosed to it only for the purposes of this Agreement, and shall not disclose such Confidential Information to any third party without the other party's prior written consent, other than to ProZyme's subcontractors hired in connection with these Services, if any, and to each other's employees on a need-to-know basis in connection with these Services.
- b. Each party agrees to take measures to protect the confidentiality of the other party's Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own Confidential Information, but at a minimum, must use a reasonable degree of care.
- c. Each party shall take reasonable steps to advise their employees (and, in the case of ProZyme, its subcontractors) of the confidential nature of the Confidential Information and of the prohibitions on copying or revealing such Confidential Information contained herein.
- d. ProZyme and the Customer each agree to require that the other party's Confidential Information be kept in a reasonably secure location.

Notwithstanding anything to the contrary contained in this Agreement, neither party shall be obligated to treat as confidential, or otherwise be subject to the restrictions on use, disclosure or treatment contained in this Agreement for any information disclosed by the other party (the "Disclosing Party"), which:

- a. is rightfully known to the recipient prior to its disclosure by the Disclosing Party;
- b. is released by the Disclosing Party to any other person, firm or entity (including governmental agencies or bureaus) without restriction;
- c. is independently developed by the recipient without any reliance on Confidential Information; or
- d. is or later becomes publicly available without violation of this Agreement, or may be lawfully obtained by a party from any nonparty.

Neither party will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own confidential information. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party to the extent that this is required by valid legal or regulatory process, provided that (and without breaching any legal or regulatory requirement) the party to which the request is made provides the Disclosing Party with prompt written notice and allows the Disclosing Party to seek a restraining order or other appropriate relief.

#### Customer Responsibilities

If Services occur at Customer's facilities, Customer agrees to provide reasonable workspace, administrative support, computer facilities and other support which are necessary for ProZyme to perform the Services. Customer agrees to perform in a timely fashion those tasks and provide the personnel agreed to by the parties. Customer personnel assigned to work on matters related to these Services will be qualified for the tasks for which they are assigned. Customer is responsible for the overall management and control of the Services at the Customer's facilities and the results to be achieved from using the Services and any Deliverable.

ProZyme's performance is dependent on Customer carrying out its responsibilities as set out in this Agreement. Customer's failure to satisfy its responsibilities under this Agreement may lead to an increase in ProZyme's fees, depending upon the extent to which additional work must be performed by ProZyme, or other commitments rescheduled to deliver the Services, or due to an inability to provide the Services. Should Customer fail to perform any of its obligations under this Agreement, ProZyme shall not be responsible for any delay or other consequences due to such failure.

## Fees and Payment

Customer shall pay ProZyme the fees set forth in the Quotation. Customer shall also be responsible for paying any taxes (such as applicable sales taxes, duties or goods and services taxes) for which it is legally liable arising from this Agreement at the rate in force at the date the liability arises. ProZyme's invoices will be issued as set out in the Quotation. All invoices will be due upon receipt and payable within 30 days. ProZyme reserves the right to charge a commercial rate of interest on accounts that are overdue by more than one month.

## Term and Termination

The term of this Agreement will begin on the commencement date stated in the Quotation or, where no commencement date is specified, on the date of approval by both parties. If ProZyme commenced the performance of the Services prior to the execution of this Agreement, this Agreement shall nonetheless cover the performance of such Services. This Agreement will continue until the Services and Deliverables have been provided unless it is terminated earlier in accordance with the terms set out herein. The following sections of this Agreement will survive completion of the Services or its earlier termination: Confidentiality, Ownership, Limitation of Liability and Indemnification, Limited Warranties, and such other provisions of this Agreement which by their nature are intended to survive.

Either party may terminate this Agreement upon written notice to the other party. Customer will be responsible for fees and expenses incurred through the date termination notice is received. Where Customer terminates this Agreement, Customer will pay ProZyme for additional costs necessarily incurred as a result of early termination of the Services.

## Warranties

ProZyme warrants that the Services will be performed and supervised by qualified personnel. In the event that the Customer identifies any ProZyme employee that the customer believes is not qualified to perform the Services, Customer may request that such employee be replaced on the engagement. Replacement of such employee(s) is the sole remedy available to Customer for breach of this warranty. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PROZYME MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## Limitation of Liability and Indemnification

In no event shall ProZyme be liable to Customer or any third party for any loss, damage, cost or expense attributable to any act, omission or misrepresentations by Customer, its directors, employees or agents. In no event shall ProZyme be liable to Customer, whether a claim be in tort, contract or otherwise:

- (a) for any amount in excess of the total professional fees paid by Customer to ProZyme under the Quotation or any addendum to which the claim relates; or
- (b) for any consequential, indirect, lost profit or similar damages relating to or arising from the Services provided under this Agreement, except to the extent finally determined to have resulted from the gross negligence, willful misconduct or fraudulent acts of ProZyme relating to such Services.

## General

This Agreement forms the entire agreement between the parties relating to the Services, and replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.

For the duration of the Assignment, and for twelve (12) months after its termination or completion, Customer will not employ, or procure a third party to employ, any ProZyme employee who has taken part in the performance of the Services without ProZyme's prior written consent.

Neither party shall be liable to the other for any delay or failure to perform any of the Services or obligations set forth in this Agreement due to causes beyond its reasonable control.

In the unlikely event that differences arise between the parties related to or arising from this Agreement that are not resolved by mutual agreement, Customer and ProZyme agree not to demand a trial by jury in any action, proceeding or counterclaim in order to facilitate a judicial resolution and save time and expense of both parties.

If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

ProZyme, in furnishing Services to the Customer, is an independent contractor.

ProZyme does not undertake to perform any regulatory or contractual obligation of the Customer or to assume any responsibility for the Customer's business or operations.

No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver, except as set forth in "Acceptance". A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.