

# Terms & Conditions for the Transfer of Biospecimens and Data to Approved Third-Party End Users

These Terms and Conditions of Sale shall apply to all Purchase Orders and Quotations (all hereinafter defined) placed by the Client with Dono Vivo, LLC. or its Affiliates (hereinafter defined "Dono Vivo") on or after the Effective Date. Client's placement of a Purchase Order or Quotation acceptance with Dono Vivo constitutes Client's acceptance of these Terms and Conditions. All references to "Dono Vivo" contained herein shall be deemed references to Dono Vivo, LLC and its Affiliates.

## 1. DEFINITIONS

1.0.1 "Affiliate" shall refer, with respect to a particular party or other entity, another person or entity that controls, is controlled by or is under common control with such party or other entity; where, for the purposes of this definition, the term "control" shall refer to the ownership of no less than fifty-one percent (51%) of the voting stock of such entity.

1.0.2 "Applicable Law" means all applicable laws and regulations governing the collection, handling, storage, banking, transport, transfer, use, disposal, import or export of Materials, Clinical Data, Client Goods and Client Confidential Information, including laws, regulations and guidelines governing data protection and privacy.

1.0.3 "Clinical Data" shall refer to any and all clinical or research information about the individual from whom the Materials were originally obtained, or about the Materials themselves.

1.0.4 "Experimental Reagents" shall refer to any and all research materials supplied by the Client to Dono Vivo, including but not limited to antibodies, cell lines, therapeutic agents and test compounds.

1.0.5 "Materials" shall refer to any and all human biological materials, including without limitation, tissue, tissue derivatives, cell lines, blood, blood derivatives, primary cells, biofluids, and tissue microarrays.

1.0.6 "Products" shall refer to Materials and Clinical Data.

1.0.7 "Purchase Order" means the ordering document which identifies the Materials and Data ordered by the Client and includes all applicable Specifications to which the Parties have agreed.

1.0.8 "Quotation" ("Quote") shall refer to any written document setting forth the details of Materials or Products to be provided by Dono Vivo that has been accepted by Dono Vivo.

1.0.9 "Reports" shall refer to any and all final compilations of data, results or information titled "Report" that arise from Dono Vivo's performance of the Services.

1.0.10 "Results" shall refer to experimental data and any and all information arising from Dono Vivo's performance of the Services, and expressly excludes any and all Confidential Information or IP rights belonging to Dono Vivo.

1.0.11 "Specifications" shall refer to: (a) with respect to Materials or Products, the requirements applicable to the Materials or Products as set forth on a Quote or PO that is accepted in writing or electronically by Dono Vivo.

1.0.12 "Term" shall refer to the term of these Terms and Conditions, which shall commence on the Effective Date and terminate on the third (3) anniversary of the Effective Date.

## 2. ETHICS

Dono Vivo warrants that it shall comply with all Applicable Law with respect to its obligations under or in relation to this Agreement. The Parties acknowledge that Dono Vivo biospecimens are obtained according to varying levels of consent and IRB (Institutional Review Board) involvement.

## 3. RESEARCH USE

THE BIOLOGICAL SAMPLES SUPPLIED BY DONO VIVO, OR ANY OF MATERIAL ISOLATED FROM THE SAMPLES, ARE FOR INVITRO RESEARCH USE ONLY. CLIENT SHALL NOT USE ANY MATERIALS OR CLINICAL DATA OBTAINED FROM

DONO VIVO (A) FOR ANY USE THAT IS IN CONTRAVENTION OF APPLICABLE LAW OR INFORMED CONSENT; (B) AS A SOURCE OF MATERIAL FOR CLINICAL THERAPIES, OR (C) IN HUMAN SUBJECTS.

Human material may be used in vivo in animals, provided such use is conducted by the Client in compliance with all Applicable Law.

The Client shall not transfer any Materials and Clinical Data to any third party without prior written consent from Dono Vivo; unless such transfer is to an Affiliate of the Client for use in a manner consistent with this Section 3 (Research Use) and is not for valuable consideration. Client will comply with all Applicable Law with respect to the handling and use of the Materials and Clinical Data.

Client will not seek to identify any individual related to the biospecimens. If Client inadvertently identifies any individual Donor included in the collection of biospecimens, Client will neither record the identity of the Donor nor share the identification of that individual with any other person, nor will Client attempt to contact the individual him/herself. Client will inform Dono Vivo as soon as reasonably practicable, giving reasonable detail of the circumstances under which, this occurred, but shall not disclose the identity of the Donor with Dono Vivo without Dono Vivo's authorized, signed written consent.

#### 4. PURCHASE ORDERS

Purchase orders ("PO") may be used to acquire Products or Services from Dono Vivo. A PO may be placed in any commercially reasonable manner the parties determine is appropriate, including via facsimile or e-mail. Each PO will indicate the Products or Services and any appropriate Specifications related thereto, quantity, price, total purchase price, shipping instructions, requested delivery dates, appropriate billing and shipping addresses, and any other special instructions. All POs are subject to acceptance by Dono Vivo. In the event of any conflict between the terms of any PO and these Terms and Conditions, these Terms and Conditions shall govern the rights and obligations of the parties.

#### 5. QUOTATIONS

All purchases of Products, and where appropriate certain purchases of Services, shall be set forth in separate Quotations which shall be agreed to by all parties. Each Quotation shall be subject to these Terms and Conditions. To the extent that any Quotation conflicts with or is inconsistent with these Terms and Conditions, these Terms and Conditions shall govern and control the rights and obligations of the parties. Each Quotation shall be separate and distinct from all other Quotations. Neither party shall have any obligation to enter any Quotation.

#### 6. PERFORMANCE

6.0.1 Dono Vivo shall provide all Services with all reasonable skill and care using suitably qualified and experienced personnel.

6.0.2 All Dono Vivo obligations set forth in these Terms and Conditions shall be subject to the following: Dono Vivo shall not carry out such obligations where (a) the obligations lead to a conflict of interest with Dono Vivo's preexisting contractual or legal obligations; (b) necessary Materials and Clinical Data are unavailable; or (c) Dono Vivo is prevented from doing so by any reason outside of its reasonable control, including breach of these Terms and Conditions by the Client.

6.0.3 Either party may cancel any PO, or Quotation at any time by providing no less than thirty (30) days prior written notice to the other party. Any such cancellation by Dono Vivo shall be without penalty, and their sole obligation shall be to return any advance payment paid by the Client. Dono Vivo shall retain the right to suspend performance of any PO or Quotation or require adequate assurance satisfactory to Dono Vivo when, in its sole opinion, reasonable grounds exist for such action. In case of cancellation or termination by the Client of a PO or Quotation which is signed and in effect, Client shall be responsible for payment of any and all fees related to any Products already collected, prepared or provided prior to such cancellation or termination.

6.0.4 Dono Vivo shall not guarantee any favorable or useful result arising from the performance of any Services or provision of Products and Data.

#### 7. PAYMENTS

Dono Vivo's list prices are subject to change without prior notice to the Client. Prices quoted by Dono Vivo shall be firm for thirty (30) days after the date of the PO or Quotation unless otherwise agreed upon in writing by the Parties. Dono Vivo may, by giving notice to the Client at any time up to ten (10) Business Days before delivery, increase the cost set out in an invoice to reflect any increase in costs due to: (a) any factor beyond Dono Vivo's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials, manufacturing and shipping costs); (b) any request by the Client to change the delivery date(s), quantities or types of Material ordered, or the Specification; or (c) any delay caused by any Client instructions or the Client's failure to give Dono Vivo adequate or accurate information or instructions.

Payment by the Client shall be due no later than thirty (30) days of receipt of each invoice. Client shall pay all applicable sales tax, including any and all value added tax, shipping, import or export duties, customs fees and freight charges. Interest shall be payable, calculated daily, on any overdue payments, at the maximum rate allowed by law.

Client shall not assert any credit, set-off or counterclaim against Dono Vivo to justify withholding payment of any such amount in whole or in part. The method of payment shall be separately agreed by both parties hereto.

The parties agree that all payments made hereunder are for the Services, Products or Data, and are not for the Materials or Clinical Data themselves.

## 8. DELIVERY

All Products and Data transferred to the Client will be shipped CIP Shipping Point (as defined by the International Chamber of Commerce Incoterms 2010. All delivery dates are best estimates possible based on current and anticipated conditions.)

Dono Vivo shall not be liable for any loss, damage or claim by the Client arising out of failure to meet an estimated delivery date. Dono Vivo shall keep the Client reasonably apprised of the availability and estimated delivery dates of such products and Data.

## 9. OWNERSHIP & IP

9.0.1 All right and title to the Products and Data (but excluding, in either case, Dono Vivo's IP Rights (as defined herein), shall pass to the Client upon delivery in accordance with Section 8 (Delivery) of these Terms and Conditions, and subject to receipt by Dono Vivo of full payment of all associated Dono Vivo invoices.

9.0.2 Each party shall remain the absolute and unencumbered owner of any intellectual property rights owned by or otherwise in the possession of that party at the earlier of the Effective Date of these Terms and Conditions or the date of signature of the relevant PO or Quotation, including without limitation, any know-how, trade secrets, copyrights, trademarks, patent applications, and patents (hereinafter, "IP Rights"). Dono Vivo IP Rights shall include but not be limited to, all intellectual property rights of all Affiliates of Dono Vivo. As between the parties, the Client shall own any invention to the extent that it is first reduced to practice by Dono Vivo during the course of the Services, but solely to the extent that such invention incorporates either the Client's IP Rights or the Client's Confidential Information; provided that (i) Client shall not be granted any ownership rights, licenses, title or any other rights in or to any Dono Vivo rights to the extent that such rights relate to any Dono Vivo IP Rights, which include, but are not limited to any method, process, assay, software, source code, information, analyses or other technology or know-how used by Dono Vivo in its own business; and (ii) the Client shall not assert or seek to assert against Dono Vivo or its other clients any such right to the extent it would preclude Dono Vivo from: (a) providing its Services to third parties or (b) freely utilizing Dono Vivo IP Rights. Except as set forth above, all IP Rights which arise in the performance of Services automatically vest in Dono Vivo. Save as otherwise expressly stated herein, no rights, licenses or obligations are granted by or to be implied by these Terms and Conditions. Nothing in these Terms and Conditions shall be deemed to grant the Client any license to practice any Dono Vivo IP Rights.

## 10. ACCEPTANCE

The Client shall accept any Products or Data that comply with the Specifications set forth in any PO accepted by Dono Vivo. The Client may reject any Products or Data that do not conform to the Specifications. The parties acknowledge that the Data is comprised of or derived from the Donor's third party medical records, health

information or longitudinal data, and that this Data, including any and all information regarding diagnosis or treatment, has not been analyzed or verified by Dono Vivo for accuracy, and that the Client accepts such Data "AS IS." To properly reject any Products or Data, the Client shall deliver written notice of its intent to reject the Products within seven (7) business days of receipt of the applicable Products, and the Data within thirty (30) days of receipt of the applicable Data, together with a written indication of the basis for such rejection. If such notice is not delivered within the specified period, any such Products or Data shall be deemed accepted by the Client. For any Products or Data properly rejected hereunder, Client shall be entitled to return the Products or Data, in reasonably good condition, at the Client's expense, for replacement by Dono Vivo. This shall be Client's sole and exclusive remedy for Dono Vivo's breach of Section 6 (Performance).

## 11. CONFIDENTIALITY

11.0.1 The parties shall take all steps reasonably necessary to hold the other party's Confidential Information in trust and shall not use such Confidential Information for any purpose other than that expressly stated in these Terms and Conditions; nor shall either party disclose the Confidential Information belonging to the other party to any third party without the prior written consent of the disclosing party. Each party shall destroy or return all Confidential Information belonging to the other party no later than thirty (30) days after the last date of the Term, except that each party may retain one copy of the Confidential Information of the other party for legal or administrative purposes only.

11.0.2 "Confidential Information" shall refer to any information provided to either Party by the other pursuant or relating to these Terms and Conditions that is identified by the disclosing party as confidential or proprietary or that is reasonably identifiable under the circumstances of disclosure by the receiving party as confidential, other than any information which (i) has been published or comes into the public domain other than by breach of these Terms and Conditions by the recipient; (ii) is known to the recipient prior to the date of disclosure as evidenced by written records; (iii) is disclosed to the recipient by a third party having the legal right to make such disclosure; or (iv) is developed by the recipient, independently of these Terms and Conditions. The receiving party may disclose Confidential Information belonging to the disclosing party solely to the extent required by any applicable law or competent authority ("Legal Compliance"), to which the receiving party is subject, provided the receiving party gives the disclosing party a reasonable opportunity to oppose, limit or seek confidential treatment with regard to such required disclosure. Information disclosed for Legal Compliance shall nonetheless be considered Confidential Information subject to the protections of this provision.

## 12. HAZARDOUS MATERIALS

PRODUCTS DELIVERED PURSUANT TO THESE TERMS AND CONDITIONS MAY BE EXPERIMENTAL IN NATURE AND HAVE HAZARDOUS OR UNKNOWN PROPERTIES. DONO VIVO MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF THE PRODUCTS OR DATA FOR A PARTICULAR PURPOSE. Client agrees that all individuals who handle the Materials on the Client's behalf adhere to Universal Precautions for the Prevention of Transmission of HIV and other Bloodborne Pathogens ([www.cdc.gov/niosh/topics/bbp/](http://www.cdc.gov/niosh/topics/bbp/)). If Client provides Dono Vivo with Experimental Reagents or Materials for use in the Services, the Client shall provide all relevant information regarding the safety, handling, use, disposal and environmental effects of such Experimental Reagents and Materials.

## 13. ASSUMPTION OF RISK

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CLIENT SHALL ASSUME ALL LIABILITY FOR DAMAGES OR LOSS THAT MAY ARISE FROM THE CLIENT'S USE, STORAGE, TRANSFER, PROCESSING OR DISPOSAL OF THE PRODUCTS OR DATA. TO THE FULLEST EXTENT PERMITTED BY LAW DONO VIVO SHALL NOT BE LIABLE TO THE CLIENT OR ANY OTHER PARTY FOR ANY LOSS, CLAIM OR DEMAND MADE BY OR AGAINST THE CLIENT OR OTHER PARTY, DUE TO OR ARISING OUT OF THE SERVICES OR THE USE OF THE PRODUCTS AND DATA, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DONO VIVO. TO THE FULLEST EXTENT PERMITTED BY LAW DONO VIVO SHALL NOT BE LIABLE TO THE CLIENT OR ANY OTHER PARTY FOR ANY LOSS, CLAIM OR DEMAND MADE BY OR AGAINST THE CLIENT OR OTHER PARTY, DUE TO OR ARISING OUT OF THE CLIENT GOODS. CLIENT SHALL HOLD HARMLESS, INDEMNIFY AND DEFEND DONO VIVO, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND

AGAINST ANY AND ALL CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS INCLUDING ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE CLIENT GOODS.

#### 14. LIMITATION ON LIABILITY

DONO VIVO'S LIABILITY TO THE CLIENT FOR ANY CAUSE WHATSOEVER IN RELATION TO ANY PO, QUOTATION GOVERNED BY THESE TERMS AND CONDITIONS SHALL BE LIMITED TO DIRECT COSTS AND DAMAGES ONLY IN AN AMOUNT NOT EXCEEDING THE TOTAL AMOUNT RECEIVED BY DONO VIVO FROM THE CLIENT UNDER THE PARTICULAR PO OR QUOTATION WITH RESPECT TO WHICH THE LIABILITY ARISES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURS. DONO VIVO'S MAXIMUM LIABILITY TO THE CLIENT IN RELATION TO THESE TERMS AND CONDITIONS FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO DIRECT COSTS AND DAMAGES ONLY IN AN AMOUNT NOT EXCEEDING THE SUM EQUIVALENT TO THE TOTAL AMOUNT RECEIVED BY DONO VIVO FROM THE CLIENT UNDER THESE TERMS AND CONDITIONS. THE PARTIES HEREBY AGREE THAT THE LIMITATIONS CONTAINED HEREIN ARE REASONABLE IN LIGHT OF ALL THE CIRCUMSTANCES. TO THE FULLEST EXTENT PERMITTED BY LAW ALL LIABILITY THAT IS NOT EXPRESSLY ASSUMED BY DONO VIVO IN THESE TERMS AND CONDITIONS IS HEREBY EXCLUDED. UNDER NO CIRCUMSTANCES SHALL DONO VIVO BE LIABLE TO THE CLIENT FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE CAUSE.

#### 15. PUBLICATION

The Client, and any individuals designated by the Client may publish the results of work performed with the Products or Data, except to the extent such results include proprietary data or Confidential Information belonging to Dono Vivo. The Client shall use reasonable efforts to reference Dono Vivo as the provider of the Products or Data in any scholarly or industry publication arising from the use of the Products or Data. Notwithstanding, neither party shall use the name, logo, trademark or service mark of the other party, or any variation thereof, for any purpose in advertising, press release, publicity or promotional literature without the prior written consent of the party whose mark is proposed to be utilized.

#### 16. INTEGRATION

These Terms and Conditions, and all Pos and Quotations governed by it, are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersede and merge all prior discussions or proposals between the parties. These Terms and Conditions take precedence over any conflicting terms, including without limitation, terms included on an invoice, PO, Quotation or receipt.

#### 17. INDEPENDENT CONTRACTORS

The relationship between the parties is that of independent contractors. Nothing in these Terms and Conditions shall be interpreted to create a partnership, joint venture or employment relationship. No party may act as an agent of the other party hereunder, except as otherwise provided herein.

#### 18. COUNTERPARTS

Facsimile or PDF electronic signatures shall be accepted as original signatures. Placement of any orders or the transaction of any business by electronic medium shall be subject to these Terms and Conditions. These Terms and Conditions may be executed as two or more counterparts, each of which shall be deemed an original agreement.

#### 19. NO THIRD-PARTY BENEFICIARIES

These Terms and Conditions are not enforceable by any person or entity that is not a party to it.

#### 20. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Terms and Conditions to the extent that such failure or delay is caused by an Unforeseen Event. An Unforeseen Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

#### 21. CLIENT'S INSOLVENCY OR INCAPACITY

21.1. If the Client becomes subject to any of the events listed in condition 21.2, or Dono Vivo reasonably believes that the Client is about to become subject to any of them and notifies the Client accordingly, then, without limiting any other right or remedy available to Dono Vivo, Dono Vivo may cancel or suspend all further deliveries under these Terms and Conditions or under any other PO or Quotation between the Client and Dono Vivo without incurring any liability to the

Client, and all outstanding sums with respect to Products prepared or collected for or Services performed for the Client shall become immediately due.

21.2. For the purposes of condition 21.1, the relevant events are: (a) the Client files a petition in bankruptcy or for reorganization pursuant to the Federal Bankruptcy Code or any similar state or foreign law; (b) an order is made for the appointment of an administrator to manage the Client's affairs, business and property, or such an administrator is appointed; (c) an order is made for a trustee, receiver or liquidator to be appointed with respect to the Client, or any creditors of the Client has an involuntary petition in bankruptcy filed against it pursuant to the Federal Bankruptcy Code or any similar state or foreign law, and such order or petition shall not be discharged or dismissed within sixty (60) days; (d) the Client is adjudicated as bankrupt or be declared insolvent by court decree, or makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver or receivers over all or any part of its property; (e) an application to a court for protection from its creditors is made by the Client (f) any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 22.2(a) to 22.2(e) (inclusive); or (g) the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 22. NOTICES

Any notice required under these Terms and Conditions shall be in writing and shall be delivered by certified mail, return receipt requested; postage prepaid, or guaranteed overnight delivery service to the addresses provided by each party to the other.

## 23. ASSIGNMENT

The Client shall not assign or transfer these Terms and Conditions without the prior written consent of Dono Vivo, which shall not be unreasonably withheld. Dono Vivo may assign or transfer these Terms and Conditions, in whole or in part, to an Affiliate pursuant to a merger, acquisition or sale of substantially all the assets of the company.

## 24. SEVERABILITY AND WAIVER

If any provision of these Terms and Conditions shall be void, unlawful or for any reason unenforceable, that provision shall be severed from these Terms and Conditions and, if possible, replaced by a term or provision which, so far as practicable achieves the legitimate aims of the Parties. Any provision deemed void, unlawful or for any reason unenforceable shall not affect the validity and enforceability of the remaining provisions of these Terms and Conditions. Failure or delay by Dono Vivo in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract. Any waiver by Dono Vivo shall not be deemed a waiver of any subsequent breach.

## 25. AMENDMENTS

The parties agree that any amendment, revision, waiver or alteration to these Terms and Conditions shall be in writing and signed by both parties. No waiver by either party of any breach of these Terms and Conditions shall be a waiver of any preceding or subsequent breach. No waiver by either party of any right under these Terms and Conditions shall be a waiver of any other right. The parties shall not be required to give advance notice to enforce strict adherence to the terms of these Terms and Conditions.

## 26. INJUNCTIVE RELIEF

A breach of Sections 3, 9 or 10 may result in irreparable and continuing harm to a party for which there may be no adequate remedy at law and entitles an affected party to seek injunctive relief as well as other and further relief as may be appropriate. The Parties agree to submit to the personal jurisdiction of the State of Michigan and further

agree that any relief sought under this Agreement shall be pursued in either federal or state court in the State of Michigan.

#### 27. GOVERNING LAW & ARBITRATION

The validity, interpretation and enforcement of these Terms and Conditions shall be governed by the laws of the State of Michigan without reference to conflict or choice of law provisions. If a dispute arises under or relating to these Terms and Conditions, the parties shall submit the dispute to binding arbitration in the State of Michigan. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of such arbitration shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and reasonable attorney fees. Any such arbitration shall be conducted by an arbitrator experienced in scientific research and commercial law and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who is employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. Nothing in this Section 27 may be interpreted to limit or modify Section 26 (Injunctive Relief).