

WASHINGTON UNIVERSITY TERMS AND CONDITIONS

The following Terms and Conditions apply to the services provided in the Quote. “Customer” shall mean the party or individual requesting services from Washington University. “WU” shall mean Washington University.

1. SERVICES: WU will use reasonable efforts to perform the Service outlined in the attached Quote. The Quote and WU’s published print-service policies (including terms regarding cancellation, refunds, reprints, quote validity, storage of undeliverable orders, and file handling), each as in effect at the time of Customer’s acceptance, are incorporated into and form part of this Agreement. In the event of a conflict, the following order of precedence applies: (i) these Terms and Conditions; (ii) the Quote; and (iii) the published print-service policies, except that the specific cancellation and refund mechanics set forth in the Quote and published policies shall control over any inconsistent provision of these Terms and Conditions.

2. PERSONNEL: In the event that relevant WU personnel become unwilling or unable to continue the Services, WU or Customer shall have the option to terminate this Agreement unless the Parties agree that mutually acceptable alternate WU personnel can be found in a reasonable period of time.

3. OWNERSHIP OF DELIVERABLES; CUSTOMER REPRESENTATIONS:

Customer owns, shall own and shall continue to own all right, title and interest in the data, reports and results generated in the course of the Services (the “Deliverables”) and Customer Property, which includes all Confidential Information as defined below. Customer represents and warrants that it has the right to provide the design specifications and other technical information to WU for the performance of the Services.

4. CONFIDENTIALITY:

- a. “Confidential Information” is information, data and materials (including Customer Property) provided to WU by the Customer to perform the Services. Both Parties agree that in order for written information to be Confidential Information, it must be delivered in written form clearly marked as “Confidential.” All information disclosed in oral or some other non-written form must be declared at the time of delivery to be confidential and must be confirmed and summarized in writing and clearly marked as “Confidential” within thirty (30) days of disclosure to be Confidential Information. **In recognition that WU is a non-commercial, academic institution, Customer agrees to limit disclosure of Confidential Information to only that reasonably necessary for WU to perform the Services.**
- b. Subject to 4(d) and for a period of five (5) years from the date of disclosure, WU shall hold such Confidential Information in confidence, shall not disclose the Confidential Information to any third party without the express written permission of Customer, shall not use the Confidential Information other than in performing the Services, and shall treat such information with at least the same degree of care as it treats its own confidential information but not less than with a reasonable degree of care.
- c. Section 4(a) notwithstanding, however, Confidential Information shall not include information that:
 - (i) is already known to WU prior to the effective date, as evidenced by WU’s or Customer’s records;
 - (ii) becomes publicly known without the wrongful act or breach of this Agreement by WU;
 - (iii) has been or is disclosed to WU by a third party who was not, or is not, under any obligation of confidence or secrecy to Customer at the time said third party discloses to WU, or has the legal right to do so;

(iv) is developed independently by employees of WU who had no access to or knowledge of the Confidential Information, as evidenced by WU's records; or (v) is approved for release by prior written authorization of Customer.

d. WU may disclose Confidential Information to third parties as required by law or governmental regulation, however, WU shall promptly notify Customer as soon as reasonably practical of such a requirement and shall take reasonable and lawful actions to avoid or minimize the extent of such disclosure if requested by Customer, at Customer's sole cost and expense.

e. Customer Files. Design files and other content uploaded by Customer ("Customer Files") are used by WU to produce and fulfill Customer's order and to improve WU's own services, and are not shared outside WU. Customer grants WU a limited, non-exclusive, royalty-free license to use, reproduce, and process Customer Files for those purposes. Customer Files are governed by this Section 4(e) rather than by the marking requirements of Section 4(a), and nothing in this Section 4(e) alters Customer's ownership of Customer Property under Section 3.

5. NAMES AND MARKS: Neither Party may use the trademarks or name of the other Party or its employees for any commercial, advertisement, or promotional purposes without the prior written consent of the other, with WU acting through an authorized corporate officer.

6. TERM and TERMINATION:

~~Either~~Except as otherwise provided in the Quote or WU's published print-service policies (which shall govern cancellation and refunds for orders placed through WU's online print service, including any applicable non-refundable cancellation fee and the deadline by which an order may be cancelled), either party may terminate this agreement upon thirty (30) days prior written notice. Upon early termination Customer will pay WU for all work performed prior to the termination date not to exceed the quoted amount unless otherwise agreed by the parties.

7. DISCLAIMER and LIMITATIONS: NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EVERYTHING PROVIDED BY WU UNDER THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, MAY HAVE HAZARDOUS PROPERTIES, AND IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT, TRADEMARK, COPYRIGHT OR ANY OTHER THIRD-PARTY RIGHT. WU MAKES NO WARRANTIES REGARDING THE QUALITY, ACCURACY, COMMERCIAL VIABILITY OR ANY OTHER ASPECT OF ITS PERFORMANCE PURSUANT TO THIS AGREEMENT OR REGARDING THE PERFORMANCE, VALIDITY, SAFETY, EFFICACY OR COMMERCIAL VIABILITY OF ANYTHING PROVIDED BY WU UNDER THIS AGREEMENT. IN NO EVENT SHALL WU OR CUSTOMER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES SUSTAINED BY THE OTHER PARTY TO THIS AGREEMENT, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THEIR RESPECTIVE INDEMNITY OBLIGATIONS, EACH OF WU'S AND CUSTOMER'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL NOT EXCEED THE PAYMENTS MADE OR PAYMENTS DUE UNDER THIS AGREEMENT, RESPECTIVELY.

8. INDEMNITY: Customer agrees to indemnify, defend and hold harmless WU and WU's personnel, principal investigator, faculty, staff, employees, students, directors, officers, agents,

successors and assigns from any and all claims, allegations, liabilities, losses, damages, and fees (including attorney's fees), which arise from WU's performance of the Services; Customer's breach of the Agreement; its use of the Deliverables; and/or its commercialization of the Deliverables, whether by or through Customer. Customer shall not settle a claim which admits fault on behalf of WU without WU's prior written consent.

9. INSURANCE: ~~The parties~~Each party that is a business entity or commercial customer shall obtain and maintain an adequate self-insurance or insurance program to protect against potential liabilities and risk, including coverage for the indemnity obligations herein. This Section 9 does not apply to a Customer who is an individual placing an order for personal, non-commercial purposes.

10. MISCELLANEOUS:

- a. In performing their respective obligations under the Agreement, the Parties will comply with United States export control and asset control laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services, including software, processes, or technical data. Such regulations include without limitation the Export Administration Regulations, International Traffic in Arms Regulations, and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control. WU is not transferring any information or material outside of the United States under this Agreement and is providing no representation regarding the export control status or classification of any information or materials provided hereunder.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State Missouri, without regard to its rules or procedures involving conflicts of laws. All actions relating to this Agreement shall be brought exclusively in the United States District Court for the Eastern District of Missouri or the Circuit Court of St. Louis County, Missouri, if no federal subject matter jurisdiction exists. The Parties irrevocably waive all present and future objections to personal jurisdiction, forum or venue in such courts.
- c. If any provision in this Agreement is held invalid, illegal, or unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if it had never contained the invalid, illegal, or unenforceable provisions.
- d. Neither WU nor Customer will be liable for failure of or delay in performing obligations set forth in this Agreement, and neither will be deemed in breach of its obligations, other than for Payments, if such failure or delay is due to natural disasters or other causes reasonably beyond the control of a Party and reasonable notice of the delay is provided to the other Party.
- e. Each party is an independent contractor and not a partner or agent of the other party. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the parties or as imposing any partnership or agency obligation or liability upon either party. Further, neither party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other party.
- f. Each party represents and warrants that it has the right and authority to enter into and perform its obligations under this Agreement. Each party will perform all of its obligations under this Agreement in accordance with all applicable governmental laws, rules and regulations. Neither party will be obligated to enter into any further agreement with the other party.

11. ACCEPTANCE: By ~~accepting~~checking the ~~Deliverables provided hereunder or~~acceptance box at checkout, by signing the quote, ~~Customer agrees to the foregoing Terms and Conditions. or by~~

accepting the Deliverables provided hereunder, Customer agrees to the foregoing Terms and Conditions and to the Quote and published print-service policies referenced herein.