

MVAPACK Non-commercial Conditions of Use

ATTENTION Read carefully before using the Service.

Introduction

The University of Nebraska-Lincoln (“UNL”) has developed certain service known as the MVAPACK metabolomics software tool kit, or “MVAPACK” (the “Service”), which has been designed to enable the univariate and multivariate statistical analysis of metabolomics data sets from a variety of analytical sources. Although the Service has been developed based upon the most up-to-date information available, no claim is made that results of the Service are accurate or realistic under all circumstances. Therefore, its results should be considered as only one source of information that can be used to gain understanding and to guide decisions about inferring a biological systems response to any number of genetic or environmental stressors, the identification of disease biomarkers, evaluation of drug activity, or any number of current or future applications of metabolomics.

Non-commercial use of MVAPACK is available free of charge upon agreement to the terms of use set forth. You will have the opportunity to obtain a service contract to use the commercial version of the Service at any time by contacting NUtech Ventures (“NUtech”) at the e-mail address identified below.

Non-commercial use includes teaching, academic and government research, public demonstrations, personal experimentation, and the evaluation of the Service other than in a live operating environment to determine whether to enter into a commercial Service contract.

Commercial use of the MVAPACK Service **REQUIRES A COMMERCIAL LICENSE**. Commercial use includes: (1) using the Service to perform a statistical analysis of a metabolomics data set except for a limited time for the purpose of evaluating whether to enter into a commercial service contract; (2) leasing or selling access to the use of the Service; (3) using the Service to create or use information, reports or products or in performing work or providing professional services for which the Service user is compensated; (4) integration of all or part of the Service into a product for sale, lease or license by or on behalf of Service user to third parties; (5) use by a governmental agency for other than research purposes; or (6) any other activity having a purpose or effect of creating a commercial gain to Service user or others. NUtech will negotiate Commercial Service contracts upon request. These requests can be directed to "Technology Agent" at info@nutechventures.org. NUtech reserves the right to modify the terms “commercial use” and “non-commercial use” at any time without prior notice in its sole discretion.

Terms of Use

All conditions of use (defined below) must be read and agreed to prior to accessing and using MVAPACK.

Non-Commercial use of the Service is subject to the MVAPACK Non-Commercial Version Service Contract (the "Service Contract") set forth below between you (the “Service user”), and NUtech Ventures (“NUtech”).

Performing a statistical analysis using the MVAPACK website indicates your acceptance of these terms. If you do not accept these terms fully, you may not use the Service.

MVAPACK NON-COMMERCIAL VERSION SERVICE CONTRACT

1. NUtech Ventures ("NUtech") hereby permits you, the Service user, to use the MVAPACK metabolomics software tool kit, or "MVAPACK" Service and related online User Guide (together, the "Service Tools") developed at the University of Nebraska-Lincoln ("UNL") for Non-Commercial use. Non-commercial use includes teaching, academic and government research, public demonstrations, personal experimentation, and the evaluation of the Service Tools other than in a live operating environment to determine whether to enter into a commercial service contract. Commercial use of the MVAPACK Service REQUIRES A COMMERCIAL SERVICE CONTRACT. Commercial use includes: (1) using the Service to identify, evaluate, perform or monitor production activity or business operations except for the purpose of evaluating during 30 calendar days whether to enter into a commercial service contract;(2) leasing or selling access to the use of the Service; (3) using the Service to create or use information, reports or products or in performing work or providing professional services for which the Service user is compensated; (4) integration of all or part of the Service into a product for sale, lease or license by or on behalf of Licensee to third parties; (5) use by a governmental agency for other than research purposes; or (6) any other activity having a purpose or effect of creating a commercial gain to the Service user or others. NUtech reserves the right to modify the terms "commercial use" and "non-commercial use" in its sole discretion. "Use" means loading, executing or displaying the Service.

2. The Service Tools available pursuant to these conditions of use are research tools of UNL and/or NUtech and are being supplied AS IS without any obligation on the part of UNL and/or NUtech to provide any maintenance, support, updates or error corrections; and are potentially incomplete, and/or, may contain bugs or errors. End user may report to NUtech any bugs or problems encountered with the Service Tools, and provide to NUtech in writing any suggestions Service user may have on how to enhance or improve the Service Tools or make them more useable for Service user's environment. All suggestions supplied by service user that relate to the Service Tools shall be deemed to be the property of NUtech.

3. Service user acknowledges that the Service Tools are proprietary to and valuable trade secrets of NUtech, and are available to Service user only for the purposes set forth by these conditions of use. You may not sell, rent, or lease access to the Service Tools.

4. These conditions of use are effective as of the time you first accept or otherwise use the Service and shall terminate one-year after the first of such acceptance, or other use of the Service.

5. Service user agrees that it shall not publish, or permit the publication of, the results of any benchmark tests or other comparative or analytical material which refer to the Service Tools as used by the Service user, without NUtech's prior written permission. Service user is prohibited from redistributing any portion of the Service Tools, including the documentation in any form of printed or electronic communication including but not limited to magnetic media, Internet communication or bulletin boards.

6. The Service Tools contain copyrighted material, trade secrets and other valuable proprietary material. The Service Tools and their documentation are owned by UNL and/or NUtech and are protected by the laws of the United States and by laws of other nations, and by international treaties. The conditions of use confer neither title nor ownership in the Service Tools and are not a sale of any rights in the Service Tools. All worldwide ownership of and all right, title and interest in and to the Service Tools, including without limitation, all intellectual property rights therein and thereto, are and will remain exclusively with UNL and/or NUtech. In addition, Service user may have access to information that is confidential to NUtech ("Confidential Information"). Confidential Information shall include the Service Tools and all information marked as confidential. Service user agrees, during the use of the Service Tools for a period of five (5) years after termination of using the Service Tools, to hold Confidential Information in confidence.

7. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICE TOOLS IS AT YOUR SOLE RISK. THE SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND AND UNL AND NUTECH EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SERVICE WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT. UNL AND NUTECH DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED. FURTHERMORE, UNL AND NUTECH DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A UNL OR NUTECH AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE SERVICE PROVE DEFECTIVE, YOU (AND NOT UNL OR NUTECH OR A UNL OR NUTECH AUTHORIZED REPRESENTATIVE) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

8. UNDER NO CIRCUMSTANCES INCLUDING NEGLIGENCE, SHALL UNL OR NUTECH BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT OR DATA) OR OTHER DAMAGES, EITHER IN CONTRACT OR TORT, ARISING OUT OF OR CONNECTED WITH THESE CONDITIONS OF USE OR THAT RESULTS FROM THE USE OR INABILITY TO USE THE SERVICE OR RELATED DOCUMENTATION, EVEN IF UNL OR NUTECH OR A UNL OR NUTECH AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL UNL'S OR NUTECH'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU FOR THE USE OF THE SERVICE AND DOCUMENTATION.

9. Upon NUtech's reasonable belief that any Conditions of use have been violated, Service user agrees to allow an independent third party selected by NUTECH to inspect Service user's site, books and records to determine whether Service user has complied with the Conditions of use. Such inspection will occur at mutually agreeable times during normal business hours. The third party will be instructed to keep all information learned strictly confidential except as it relates to breaches of the Conditions of use.

10. Service user agrees to indemnify UNL and NUtech and their Board of Regents, Board of Directors, officers, employees, agents, and students against all damages, costs, expenses, including attorney's fees, arising from use of the Service Tools by Service user, including, but not limited to, the creation, use, making or processing of information, products, or services derived therefrom. This indemnification includes, but is not limited to, product liability.

13. The rights and obligations of the party's under these conditions of use shall be governed and construed, without reference to conflict of laws principles, by the laws of the State of Nebraska. If any of the conditions of use should be, or become invalid, this shall not affect the validity of the remaining conditions. The section in question shall be deemed to be deleted from the Conditions of use and the balance of the Conditions of use shall remain in full force and effect. No delay or failure by either party to exercise or enforce at any time any right or provision hereof shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of these Conditions of use. These Conditions of use constitute the entire agreement between the parties with respect to the use of the Service Tools, and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.