

Instituto de Biologia Molecular e Celular - IBMC

DIRECT AWARD N.º 385/2022 - IBMC

PURCHASE OF SOFTWARE LICENSES FOR VARIANT AND COPY NUMBER VARIATIONS (CNVs) ANALYSIS

SPECIFICATIONS

Index

Clause 1 - Contractual Object	4
Clause 2 - Contract.....	4
Clause 3 - Entry Into Force and Duration of the Contract.....	5
Clause 4 - Base Price.....	5
Clause 5 - Main Obligations of the Successful Tenderer	5
Clause 6 - Provision of Services	6
Clause 7 - Technical Compliance and Warranty of the Services	6
Clause 8 - Patents, Licences and Trademarks	7
Clause 9 - Contractual Price	7
Clause 10 - Income and Gains of Collective Persons (IRC)	7
Clause 11 - Payment Conditions	8
Clause 12 - Contractual Penalties.....	8
Clause 13 - Contract Termination by Awarding Authority.....	9
Clause 14 - Contract Termination by Successful Tenderer	10
Clause 15 - Suspension of the Contract	10
Clause 16 - Contract Modifications.....	10
Clause 17 - Contract Manager.....	11
Clause 18 - Subcontracting and Assignment of the Contractual Position.....	11
Clause 19 - Counting of Time Limits in the Contract Execution Phase.....	11
Clause 20 - Responsibilities.....	12
Clause 21 - Force Majeure	12
Clause 22 - Confidentiality.....	13
Clause 23 - Protection and Processing of Personal Data.....	14
Clause 24 - Strategic Policies	14
Clause 25 - Interpretation and Validity.....	14
Clause 26 - Regime of administrative offences.....	14
Clause 27 - Governing Law	14
Clause 28 - Competent Court.....	14

Clause 29 - Notices and Conventional Domicile	15
Clause 30 - Calculation of Deadlines.....	15
<i>ANNEX I</i>	16
Clause 31 - Scope.....	16
Clause 32 - Technical Specifications of the Service	16

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Clause 1 - Contractual Object

1. The present specifications comprise the clauses to be included in the contract for the acquisition of services to be entered into by the "Instituto de Biologia Molecular e Celular - IBMC" ("Public Contractor") and which shall have as scope [the Purchase of Software Licenses for Variant and Copy Number Variations \(CNVs\) Analysis](#) pursuant to the applicable legislation, with the characteristics, specificities and requirements set out in [Annex I](#) and terms and conditions defined in the contract.
2. Regarding to the provisions of the preceding paragraph, the Successful Tenderer undertakes to provide the service(s) in accordance with the terms set out in these Specifications, in particular as set out in the Annex(es) and in the awarded proposal.
3. The Specifications and its annex(es), as well as the other contractual documents, the Invitation, the awarded proposal and all correspondence exchanged between the parties are always an integral part of the contract.
4. This acquisition has the following CPV classification: 72540000-2 (Licences (utilisation service)).

Clause 2 - Contract

1. The contract will be composed, besides the respective contractual clauses and annexes, by the following documents:
 - a) The supplies of the errors and omissions of the specifications, identified by the competitors and expressly accepted by the competent organ for the contracting decision;
 - b) The clarifications and the rectifications relative to the specifications;
 - c) The present specifications;
 - d) The awarded proposal;
 - e) Clarifications on the awarded proposal provided by the Successful Tenderer.
2. In case of divergence among the documents mentioned in the paragraphs of the previous number, the respective prevalence is determined by the order in which they are indicated therein.
3. In case of divergence between the documents referred to in the paragraphs above and the clauses of the contract and its annexes, the former shall prevail, except for the adjustments proposed under the provisions of Article 99 of the Public Contracts Code (hereinafter "CCP") and accepted by the Successful Tenderer under the provisions of Article 101 of that law.

Clause 3 - Entry Into Force and Duration of the Contract

The contract enters into force 1 (one) day after the notification of the awarding decision, or the presentation of the qualification documents, whatever occurs last, and shall remain in force for the period of time needed for the complete and effective fulfilment of all contractual obligations by the Successful Tenderer, notwithstanding the ancillary obligations which should endure after the termination of the contract.

Clause 4 - Base Price

1. The global amount of USD 58.608,00 (fifty eight thousand, six hundred and eight US Dollars), corresponding to the current exchange rate of € 60,314.91 (sixty thousand, three hundred and fourteen euros and ninety one cents);
2. The base price is defined as the maximum price that the Awarding Entity is willing to pay for the execution of all the services that constitute the object of the contract.
3. Tenders exceeding the base price shall be excluded.

Clause 5 - Main Obligations of the Successful Tenderer

1. Without prejudice to other obligations provided for in applicable legislation, in these Specifications or in the contractual clauses, the following main obligations arise for the Successful Tenderer from the conclusion of the contract:
 - a) Obligation to provide licenses within less than twenty (20) days;
 - b) Obligation to provide the services, object of the contract;
 - c) To make available the service object of contract, in the latest version on the market;
 - d) Execute all tasks deemed necessary to the full execution of the services to be provided under this contract, with regard to all applicable provisions and high quality, efficiency and safety standards;
 - e) Make use of all human and material means deemed necessary and appropriate to the good execution of the services to be provided under this contract;
 - f) Obligation of warranty and conformity of the services provided with the contract;
 - g) Obligation of continuity of provision of services, during the term of the contract;
 - h) Ensure the continuous and updated operation of the software;
 - i) Immediately inform the Public Contractor of any occurrence and/or impediment that might compromise the execution of the services to be provided under this contract or the confidentiality of the data provided by the Public Contractor;

- j) Report any event that occurs during the execution of the contract and that changes, in particular, its corporate name, its legal representatives with relevance to the supply, its legal situation and its commercial situation;
- k) Provide all necessary support material for the full operation of the software.
- l) Provide the necessary maintenance, updates and technical assistance services to the services object of contract, for the contractual period.

2. The Successful Tenderer acknowledges to be solely and exclusively responsible, in any case, for the acts or omissions of its employees or agents, or any entities it subcontracts in any way, and for damages and losses to persons and property, providing at its own expenses any reimbursement or compensation such damages or losses may cause, without liability, encumbrance or charge to the Public Contractor.

Clause 6 - Provision of Services

For the purpose of requesting the services to be provided by the Successful Tenderer, the Public Contractor will send, through e-mail, from compras@ibmc.up.pt, the respective purchase order, which will include the following mandatory mentions:

- a) Identification of the services to be provided;
- b) Purchase Order number;
- c) Reference of this Public Procurement Procedure.

Clause 7 - Technical Compliance and Warranty of the Services

1. Pursuant to this clause and the law that regulates the aspects related to the sale of services and the related warranties, the Successful Tenderer guarantees to provide the services subject of the contract without any defects or discrepancies, with the legal requirements and with characteristics, specifications and requirements set out on [Annex I](#) to these Specifications.
2. In case of lack of conformity of the services object of contract, the Successful Tenderer shall proceed, at its own expense, without any additional charge to the Public Contractor and within a reasonable period of time determined by the latter, to the restoration of conformity, without prejudice to the Public Contractor's right to require the appropriate reduction of the price of services or terminate the contract.
3. The services guarantee provided for in this clause covers, in particular:
 - a) Expenses relating to the implementation of the services for restoration of conformity;
 - b) Compensation for losses caused to persons or goods resulting from the non-conforming services.

4. The Successful Tenderer shall also guarantee, in accordance with clause 5 g), the continuity of the provision of all the services covered by the contract during the term of the contract.

Clause 8 - Patents, Licences and Trademarks

1. The Successful Tenderer is responsible for any charges arising from the use, during the execution of the contract concluded, of trademarks, registered patents or licenses.
2. If Public Contractor is sued for infringing any of the rights mentioned in the previous paragraph during the execution of the contract, the Successful Tenderer will have to indemnify Public Contractor for all the expenses it will have to incur as a result and for all the amounts it will have to pay in any way whatsoever.

Clause 9 - Contractual Price

1. For the provision of the services object of the contract, as well as for the fulfillment of other obligations contained in these Specifications, the Public Contractor will pay the Successful Tenderer the price contained in the awarded proposal, namely the amount of € ____ (____)¹.

⁽¹⁾ **[to be completed at the contract term with the value appearing in the tender awarded and corresponding to an aspect of the performance of the contract tendered for which the value may not exceed the basic price of the procedure].**

2. The price referred to in the previous number includes all costs, charges and expenses whose responsibility is not expressly attributed to the Public Contractor, namely, insurance, accommodation, food and travel expenses of human resources, acquisition, transport, storage and maintenance expenses of material resources.

Clause 10 - Income and Gains of Collective Persons (IRC)

1. The services under this contract are subject to tax income (IRC) pursuant to Article 4, nr. 3, al. c), nr. 7 of the Tax Code of the Income and Gains of Collective Persons (CIRC).
2. The Convention between Portugal and the United States of America to avoid double taxation, under the nr. 1 of Article 7 allows that the services object of contract is taxed only in the country of residence of the entity providing the services.
3. To trigger this agreement, the contractor undertakes to complete and submit model RFI-21, if it has not already been sent, otherwise it does not need to be delivered, and a residence certificate for the period concerned issued by the competent authorities of that country, signed by the company.
4. This model is valid for two (2) years.

5. The maximum time limit for submitting the prescribed documentation is the receipt of the invoice(s). If not submitted, a deduction of 25% (twenty-five percent) will be made at the time of payment of the invoice(s).
6. If the same is presented, 10% (ten per cent) will be deducted in Portugal, at the moment of payment of the invoice(s) (services equivalent to Royalties).

Clause 11 - Payment Conditions

1. The invoice(s) shall be paid within 30 (thirty) days as of the date of the invoice(s), by bank transfer to the account to be indicated by the Successful Tenderer in the invoice(s).
2. The invoice(s) should be sent, preferably, by electronic means complying with all requirements foreseen under Portuguese law to the e-mail address: daf@ibmc.up.pt, or any other address indicated by the Public Contractor to the Successful Tenderer.
3. The invoicing mechanisms applied during the term of the contract to be signed are especially and jointly applicable to article 299 of the CCP; in numbers 2, 3 and 4 of article 2 of DL 123/2018, of December 28.
4. In order to comply with the provisions of the previous point, Public Contractor will notify the Successful Tenderer, throughout the contract execution, of the applicable invoicing method.
5. In case the Public Contractor disagrees, on the amounts indicated in the invoice, he should inform the Successful Tenderer in writing, about the respective grounds, remaining the latter obliged to render all necessary clarifications, also in writing, and, if appropriate, issue a new corrected invoice. The payment deadline will be suspended until all necessary clarifications are provided or a new invoice has been received.
6. The Public Contractor shall have the right to deduct from payments to be made to the Successful Tenderer any sums related to the payment of any penalties, fines or other charges that may be due to it, whatever the title may be.

Clause 12 - Contractual Penalties

1. For non-compliance with the provisions under the contract, the Public Contractor may demand from the Successful Tenderer, the payment of a pecuniary penalty, to be fixed according to the severity of the non-compliance and up to a limit of 20% (twenty percent) of the contractual value, and by delay in fulfilling contractual obligations the payment of a penalty may be required, in the following terms:
 - a) Due to non-compliance with the warranty obligation or the non-conformity of the services provided with the contract;

- b) Due to non-compliance with the obligation to continue to provide the services subject of the contract;
2. For the previous paragraphs, the penalty is calculated with the following formula:
- $$P \text{ (penalty)} = V \text{ (contract value} \times 0,001) \times A \text{ (days overdue, including Saturdays, Sundays and holidays)}$$
3. Non-compliance with the obligation of continuity in the provision of the services object of the contract constitutes the Successful Tenderer's duty to indemnify Public Contractor, in an amount that is hereby fixed as a penalty clause at 10% (ten percent) without prejudice to the right to compensation for the exceeding damage.
4. The requirement by Public Contractor to the Successful Tenderer to pay a penalty, under the terms of the preceding paragraphs, does not exonerate the Successful Tenderer from complying with the obligation in default or from practicing other acts inherent to the restoration of contractual normality, as soon as possible.
5. The application of a penalty payment by Public Contractor shall be preceded by a written warning of non-compliance to the Successful Tenderer.
6. In cases where the limit provided for in no. 2 of Article 329 of the CCP is reached and Public Contractor decides not to proceed with the termination of the contract, because it results in serious damage to the public interest, that limit is raised to 30% (thirty percent), as provided for in no. 3 of that article.
7. For the purposes of the limits stipulated in nos. 2 and 3 of the aforementioned article, when the contract provides for express or tacit extensions, the value of the penalties to be applied shall have as a reference the price of its initial term.
8. In determining the seriousness of the breach, Public Contractor will take into account, namely, the duration of the breach, its possible repetition, the degree of fault of the Successful Tenderer and the consequences of the breach.
9. Public Contractor may offset payments due under the contract against penalties due under this Clause.
10. The financial penalties provided for in this Clause shall not preclude Public Contractor from demanding compensation for the excess damage.

Clause 13 - Contract Termination by Awarding Authority

1. Without prejudice to other grounds for termination of the contract provided by law, Public Contractor may terminate the contract, as a penalty, in the event the Successful Tenderer seriously or repeatedly violates any of its obligations.

2. The right to terminate, as provided in the preceding paragraph, is exercised by written statement, sent to the Successful Tenderer by registered letter with acknowledgment of receipt, addressed to the Successful Tenderer, which shall include the indication of the breach situation and the respective grounds.
3. The right of termination by Public Contractor constitutes the Successful Tenderer's duty to indemnify Public Contractor, in an amount that is hereby fixed as a penalty clause at 10% (ten percent) of the amount of the award.
4. The indemnity referred to in the preceding paragraph shall be paid by the contractor within 30 (thirty) days of notification of termination of the contract.
5. The exercise of the right of withdrawal shall be without prejudice to the application of the sanctions provided for in these Specifications and in the Contract.
6. The termination of the effects of the contract shall be without prejudice to the verification of civil or criminal liability for acts occurring during the performance of the service.
7. In the event of termination of the contract the Successful Tenderer is obliged to immediately deliver all documentation and information, regardless of the form it is in, produced under the contract and that is in its possession, which is, for all purposes, the exclusive property of Public Contractor.

Clause 14 - Contract Termination by Successful Tenderer

The Contractor may rescind the contract in the cases foreseen in Article 332 of the CCP.

Clause 15 - Suspension of the Contract

1. Without prejudice to the right to terminate the contract, Public Contractor may, at any time, for proven reasons of public interest, namely when public safety reasons are at stake, suspend all or part of the execution of the contract.
2. The suspension referred to in the preceding paragraph shall take effect from the day following notification of the Successful Tenderer, unless the notification is later, and shall be made by registered letter with acknowledgment of receipt.
3. Public Contractor may, at any time, lift the suspension of the execution of the contract.
4. For the purposes of the preceding paragraphs, the Successful Tenderer may not claim or demand any compensation or indemnity based on the total or partial suspension of the contract.

Clause 16 - Contract Modifications

1. Any intention to modify the contract must be communicated, in writing, by the party interested in it to the other party at least 10 (ten) days prior to the date in which it intends to see the alteration introduced.

2. The contractual alterations are subject to the disciplines described in articles 311 to 315 of the CCP.

Clause 17 - Contract Manager

1. In accordance with Article 290-A of the CCP, when the contract is signed, it will be included in its clauses the designation of the Contract Manager appointed by Public Contractor.
2. The execution of the contract will be monitored and subject to evaluation by the Contract Manager (an Public Contractor employee appointed, under the terms of Article 290-A of the CCP, by the Competent Body for the decision to contract), whose function is to detect deviations, defects or other anomalies in the execution of this contract by the Successful Tenderer, under the terms of the provisions of the aforementioned article.
3. If deviations or other anomalies are detected in the execution of this contract, the Contract Manager shall communicate them to the Public Contractor managers, proposing in a reasoned report the corrective measures that, in each case, are appropriate.
4. Appointed Contract Manager: [Complete]; Contact: [Complete]
5. The Successful Tenderer undertakes to appoint a representative responsible for monitoring the execution of the contract and to act as liaison with Public Contractor for all purposes associated with the execution of the contract.

Clause 18 - Subcontracting and Assignment of the Contractual Position

The Subcontracting and Assignment of the Contractual Position are hereby prohibited in this Public Procurement Procedure.

Clause 19 - Counting of Time Limits in the Contract Execution Phase

The following rules shall apply to the deadlines counting in the contract performance phase:

- a) The deadlines are continuous, not being suspended on Saturdays, Sundays and holidays;
- b) The term fixed in weeks, months or years, starting from a certain date, ends at 24 (twenty-four) hours of the day that corresponds, within the last week, month or year, to that date, if in the last month there is no corresponding day, the term ends on the last day of that month.
- c) The deadline that ends on a Saturday, Sunday, public holiday or on a day when the service, before which the act must be performed, is not open to the public or does not operate during the normal period of time, shall be transferred to the first following working day.

Clause 20 - Responsibilities

1. The Successful Tenderer is liable to Public Contractor for all damages, directly or indirectly arising from the work under the contract, as well as those resulting from non-compliance or poor compliance with its contractual obligations, until completion of the contract execution.
2. Similarly, the Successful Tenderer is liable for all damages caused by any acts or omissions of any persons who, within the scope of its intervention, perform functions for it, regardless of the legal regime.
3. If Public Contractor is sued by third parties for damages caused by the Successful Tenderer in the performance of the contract, the latter shall indemnify the Public Contractor for all costs it has to incur as a result and for all amounts it has to pay, on any basis whatsoever.
4. The Successful Tenderer shall be fully responsible for repairing and compensating for all damage that, for reasons attributable to him, is suffered by third parties up to the completion of the contract as a result of the way the work is carried out or of the actions of his staff or suppliers.

Clause 21 - Force Majeure

1. No penalties may be imposed on the Successful Tenderer, nor is it considered as non-compliance, the punctual non performing of the contractual goods by any party, resulting from force majeure, being understood as such the circumstances that make it impossible to perform, unrelated to the of the affected party which it could not know or anticipate at the date of conclusion of the contract and whose effects it was not reasonably required to circumvent or avoid.
2. When verified the stated in the previous clause, earthquakes, floods, fires, sabotage, strikes, embargoes or international blockage, acts of war or terrorism, riots and governmental or administrative injunctive determinations may, namely, constitute force majeure.
3. The following circumstances do not constitute force majeure:
 - a) Circumstances that do not constitute force majeure for the subcontractors of the Successful Tenderer, in the part in which they intervene;
 - b) Strikes or labor conflicts limited to the Successful Tenderer or to groups of companies in which the latter is incorporated, as well as subcontracted associations or groups of companies;
 - c) Governmental, administrative or judicial determinations of penalty nature or in any other way arising from the breach by the Successful Tenderer of his obligations or encumbrances;
 - d) Popular demonstrations due to the non-compliance by the Successful Tenderer of legal provisions.

- e) Fires or floods with source in the Successful Tenderer's facilities, cause, spread and proportions of which are not determined or should be attributed to willful misconduct or negligence of the Successful Tenderer or to the non-compliance of safety regulations;
 - f) Failure in the computer or mechanical systems of the Successful Tenderer;
 - g) Events that are or should be covered by insurance.
4. The occurrence of circumstances that may substantiate situations of force majeure should be immediately communicated to the other party.
5. The force majeure determines the extension of the deadlines for compliance with the contractual obligations affected only for the period of time demonstrably corresponding to the impediment resulting from the force majeure.

Clause 22 - Confidentiality

1. The Successful Tenderer undertakes, for the duration of the contract, to keep the content of the contract private and confidential, as well as all information and documentation, technical and non-technical, commercial or other, related to the Public Contractor, of which he might have knowledge under or in relation with the execution of the contract, under penalty of being held accountable for the damages arising there from.
2. The information and documentation covered by the confidentiality obligation cannot be transferred to third parties nor be subject to any use or as a mean for advantage apart from those directly and exclusively intended for the execution of the contract.
3. The Successful Tenderer's confidentiality obligation is extended to all his workers, employees, agents and to any other person who directly or indirectly intervenes in the execution of the contract.
4. The Successful Tenderer is obliged to return to Public Contractor, at the end of the contract, all data in its possession, as well as other information and documentation obtained during the execution of the contract.
5. The confidentiality obligation set out in the present clause shall be in force for all duration of the present contract and shall remain in force after its termination whatever the cause may be, up to ten (10) years.
6. The information and documentation proven to be of public domain at the time of its acknowledgement by the Successful Tenderer or which the latter is legally obliged to disclose by law, judicial decision or at the request of regulatory entities or other entities with jurisdiction, is/are excluded from the confidentiality obligation set out in this clause.

Clause 23 - Protection and Processing of Personal Data

1. The Successful Tenderer undertakes to comply with the obligations arising from the General Data Protection Regulation (RGPD) and other legislation applicable to it relating to personal data, during the term of the contract and, where required, after its termination.
2. The Successful Tenderer shall be liable for any damage that the Public Contractor may incur as a result of the processing, by the same and/or its employees, of personal data in violation of applicable legal standards.

Clause 24 - Strategic Policies

Pursuant to point 2 of the Article 1-A of the PCC, the Successful Tenderer shall ensure, at the formation and execution stage of this contract, full compliance with the applicable social, labor, environmental, gender equality standards and the prevention and fight against corruption, arising from International, European, National or Regional Law.

Clause 25 - Interpretation and Validity

1. The contract and other contractual documents are governed by Portuguese law, being interpreted in accordance with its rules.
2. Any party to the contract who has any doubts about the meaning of any contractual documents shall put them to the opposing party to whom the meaning of that provision directly relates.
3. If any provision of the contract or any contractual documents is annulled or declared void, the remaining provisions shall not be affected by that fact and shall remain in force.

Clause 26 - Regime of administrative offences

In addition to the penalties for non-compliance provided in the Contractual Penalties Clause of the present Specification, the following constitute very serious offences as provided in Article 456, serious offences as described in Article 457 and simple offences as provided in Article 458, all of the Public Contracts Code.

Clause 27 - Governing Law

In all matters not covered by the parts of the present procedure, the applicable Portuguese legislation will be observed.

Clause 28 - Competent Court

1. For the resolution of all disputes arising from either the interpretation or the execution of the contract, the jurisdiction of the Administrative and Fiscal Court of Porto is stipulated, with express waiver of any other.

2. When, by force of an irrevocable legal provision, Public Contractor must sue the Successful Tenderer outside the county referred to in No. 1 of this Clause, the latter shall bear the costs of all travel caused to Public Contractor by such demand, its staff and lawyers' fees.

Clause 29 - Notices and Conventional Domicile

1. Except if otherwise foreseen in this contract, all communications and notices to be carried out between the parties, under the terms and in respect to the agreement, shall be made in writing and sent by registered mail with acknowledgement of receipt or by e-mail with read receipt to the addresses and e-mails indicated below, or to any other that the parties indicate by prior communication in writing to the counterpart, under penalty of being considered as not carried out.

To the Public Contractor

At the attention of: Serviço de Logística - IBMC

Address: Rua Alfredo Allen, 208; 4200-135 Porto, Portugal

E-mail: procedimentosccp@ibmc.up.pt

To the Successful Tenderer

At the attention of: [Complete]

Address: [Complete]

E-mail: [Complete]

2. The indicated addresses shall be valid for purposes of eventual summons or judicial notifications.
3. Any change in the contact information contained in this Clause must be communicated to the other party.

Clause 30 - Calculation of Deadlines

1. For the calculation of deadlines referred in the Specifications and related to Public Procurement Procedures is applicable the provisions stated in the article 87 of the Code of Administrative Procedure (CPA), by legal reference to article 470 of the Public Procurement Code, and in no case the provisions of article 88 of the CPA shall apply.
2. The deadlines foreseen in the contract are continuous, running on Saturdays, Sundays and public holidays.

ANNEX I**Clause 31 - Scope**

It is intended to acquire licenses of a computer software that allows the use of variants and coverage from exome sequencing data to detect changes in the number of copies (deletions or duplications) of one or more exons.

Clause 32 - Technical Specifications of the Service

The Successful Tenderer undertakes to make available to the Public Contractor a computer program, through the granting of licenses, with the characteristics, specifications and minimum requirements described below or similar:

- a) Licensing of a computer application that allows:
 - Execution in Linux systems, allowing the use of existing *NGS* analysis servers;
 - Execution under a Linux command line interface, for integration in our validated pipeline;
 - Local analysis of data, in order to exclude cloud services, for the sake of preserving patient data privacy;
 - Copy Number Variations (CNVs) from *NGS* data, from targeted sequencing as well as from Whole Exome Sequencing or Whole Genome Sequencing;
 - CNV analysis from the combination of two different techniques:
 - i.* Analysis of depth of coverage (both ratio and Z-Score information);
 - ii.* Variant allele frequency.
- b) Ability to use diverse external annotations from population databases, which are regularly updated, in order to filter common, likely benign CNVs from rare or not described CNVs that are likely to be pathogenic.
- c) Classification of variants according to the ACMG (American College of Genetics and Genomics) guidelines;
- d) Automation of the analysis of CNVs and integrate the pipeline already validated.
- e) Ability to store CNV call sets in a centralized repository;
- f) Ability to annotate new CNVs calls with previously stored CNV call sets.