



General Terms and Conditions of Contract Services Provided by the Bioscience Technology Facility

These are the General Terms and Conditions which, together with the Quotation issued by the University of York, shall jointly constitute the Agreement between the University of York and the Client, which shall be the entire Agreement between the parties for the provision of Services. Any terms and conditions printed on the Client's order forms or in the correspondence of either party or elsewhere or implied by trade, custom or course of dealing are hereby expressly excluded.

Services provided by the University of York include, but are not limited to, scientific and technical research, analysis, equipment access, consultancy and training.

1. Information

The Client shall take all reasonable steps to ensure, and hereby warrants, that, so far as it is aware, any information provided to the University of York pursuant to the Agreement shall be complete, accurate and not misleading. The Client acknowledges and agrees that, in performing its obligations under this Agreement, the University of York will be relying upon information supplied directly or relating to the Services and the Client warrants that all information supplied does not and will not infringe the rights of any third party or other rights whatsoever.

2. Provision of Samples

The Client shall provide any samples required to perform the Services by the agreed time and warrants that they will be of sufficient quality and quantity to enable the Services to be performed.

The Client shall provide all relevant safety data relating to hazardous samples. The Client shall ensure that hazardous samples are supplied to the University of York in appropriate packaging and that these packages and the samples contained therein are identified with the appropriate safety labelling.

The Client shall inform the University of York of any potential ethical considerations directly or indirectly associated with the samples, for example any samples that comprise or relate to human tissues, animal experimentation, cosmetics, tobacco products, materials associated with or intended for use as weapons, or materials subject to export control laws.

3. Confidentiality

The University of York and the Client shall keep confidential and shall not, without the prior written consent of the other, disclose to any person the existence or nature of the Services to be performed or any confidential information acquired from each other in connection with the Services requested. The University of York and the Client shall be entitled to disclose such information to employees involved in providing the Services, as long as they are bound by obligations of secrecy no less strict than contained herein.

This clause will not apply to information:-

- (a) which was already in the public domain at the time of disclosure otherwise than through a breach of the obligations hereunder;
- (b) which was legally in the possession of the relevant party prior to such acquisition; or
- (c) where disclosure is required by law.

None of the material or information provided by the University of York to the Client shall be used by the Client to convey any connection with the University of York, or any endorsement or implied approval of, or on behalf of, the University of York of any aspect of the Client's business or products except for disclosures required by regulatory submissions or with the prior written consent of the University of York.

Each party's obligations of confidentiality will survive expiration or termination of this Agreement and will continue for a period of five (5) years.

4. The Services

In performing the Services, the University of York shall exercise all reasonable care and due diligence but shall not be held responsible or liable in respect to any sample provided or of the use to which information supplied to the Client is put. The Client acknowledges and agrees that any evaluation, use, application, and the consequences of such information is at the sole discretion of the Client and that the Client shall be solely responsible for the same.

Except as expressly provided for in this Agreement, there are no warranties, expressed or implied, and, in particular, all conditions and warranties, which would otherwise be implied by statute or under common law, are hereby excluded.

Subject as provided below and to the Unfair Contract Terms Act 1977, the University of York shall not be liable for any and all actions, claims, demands, losses, damages, costs, charges, expenses or any other liabilities whatsoever suffered or incurred by the Client or any third party in connection with or arising out of the Services, including, without limitation, any loss of profits or contracts or any other indirect or consequential loss or damage whatsoever.

The Client shall indemnify and keep the University of York fully and effectively indemnified from and against any actions, claims, demands, damages, costs, charges expenses (including professional fees and expenses) and other liabilities arising from any such claims from the Client or any third party, including those relating to any breach by the Client of any of the terms of this Agreement.

5. Termination

Either party may terminate this Agreement forthwith by written notice to the other party if:-

- (a) the other party commits a material breach of any of its obligations hereunder and, if capable of remedy, does not remedy such breach within 30 days of receiving such written notice; or
- (b) the other party becomes bankrupt or enters into liquidation or is made the subject of an administrative order to have a receiver appointed over its assets (or any part thereof) or ceases to carry on business.

In the event of any termination of this Agreement, all accrued charges, expenses and other sums shall be invoiced and, together with all unpaid invoices, shall become immediately due and payable (including interest). The Client shall fully and effectively indemnify the University of York against all losses, costs (including cost of labour and material used), damages, charges and expenses arising as a result of such termination.

6. Data Ownership

Until payment of all sums due by the Client to the University of York under this Agreement, all data arising during the course of the Services will remain the property of the University. Upon such payment, the ownership of such data, as relates exclusively to the Services, shall become the property of the Client.

7. Intellectual Property

Each party shall retain all rights to its background information, know-how and methods. Unless otherwise agreed, all intellectual property directly arising from the provision of Services shall belong to the Client provided all sums due to the University of York have been paid. Any discoveries or improvements in the University of York's background information arising from the provision of the Services will belong to the University of York. The use of any intellectual property in the provision of the Services by the University of York does not imply any rights for the Client to subsequently use any such intellectual property.

8. Disposal of Materials

Materials provided by the Client in connection with this Agreement will only be used in connection with the Services. Unless otherwise agreed, any excess samples will only be guaranteed to be retained for one month after the completion of the Services for non-perishable goods and for ten days after the completion of the Services for perishable goods. Data obtained will only be guaranteed to be retained for one month after the completion of the Services.

9. Timing

Generally Services are provided to timescales agreed with the Client. The University of York will use its reasonable endeavour to keep to these agreed timescales but shall not be liable for any delay in meeting or failing to meet its obligations under the Agreement arising from any course outside its control. In the event of any such delay, the period for the performance of the Agreement shall be extended accordingly.

10. Payment

The University of York will invoice the Client as outlined in the Quotation. The Client will settle all invoices within thirty (30) days of receipt of the invoice.

11. VAT on Supply of Contract Services to UK Higher Educational Institution

The University of York is required to charge VAT on the supply of all contract services to UK Higher Educational Institutions unless either of the following apply:

1. The services are being provided as part of a formal research collaboration that involves a joint grant application between the University of York and another UK Higher Educational Institution that involves funds provided entirely by a charity or from voluntary contributions, in which case the interaction will be outside the scope of VAT.
2. The supply involves relevant goods which can be zero rated for VAT and an appropriate zero-rating request form is supplied that states that the customer has read the guidance in the appropriate Customs and Excise VAT Notices and apply for zero-

rating of the supply under Group 15, items 5, 6, 7, 9 or 10 of the zero-rate schedule to the VAT Act 1994.

In cases where a zero-rating application form is submitted, the following is noted:

- The Finance Department, University of York will have the final decision as to whether the zero-rating application is considered to be appropriate and for eligible goods. As part of these Terms & Conditions, the Client agrees to pay the appropriate level of VAT in cases where their submitted zero-rating certificate is not deemed to be appropriate.
- The Finance Department, University of York has ruled that the following, commonly provided services, are not considered to be an eligible supply as a "medicinal product", "ingredient", or "substance" as defined in Group 15 items 9 and 10A:
 - A report (whether electronic or paper).
 - The provision of a DNA sequence.
 - The provision of a protein identity, or sequence, or similar.

VAT will be charged on all of these services, irrespective of whether the work is being undertaken as part of a medical research programme.

12. Complaints

Complaints regarding the Services should be addressed initially to the person who provided the initial quotation. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Services by negotiation between managers who have authority to settle the dispute.

13. Ethical Considerations and Limitations

The Client will inform the University of York of any potential ethical considerations that may be associated with the work. The University of York is generally unable to undertake any work associated with or sponsored by the manufacturers and suppliers of tobacco products. Examples of other potential areas where the Client must inform the University of York of possible ethical considerations and which might require formal approval from the University of York's Biology Ethics Committee include the use of human tissues, samples derived from animal experimentation, cosmetics, and materials associated with or intended for use as weapons.

14. Miscellaneous

None of the rights or obligations arising hereunder may be assigned, transferred or in any way disposed of by the Client.

No variation or purported variation in this Agreement shall take effect unless made in writing and signed by the authorised representative of each party.

Any notice required to be given by either party in accordance with these conditions may be given by facsimile or by post. If given by facsimile, notice shall be deemed to be served when the sender machine shows the facsimile to have been sent. If given by post, notice shall be deemed to be served 48 hours after posting.

If any of the terms and conditions of this Agreement (or any part thereof) shall be found to be invalid, ineffective or unenforceable, such term or condition shall not effect any other term or condition and all terms and conditions (or parts thereof) not so affected shall remain in full force and effect.

No one who is not a party to this Agreement is intended to or may benefit from its terms because of the Contracts (Rights of Third Parties) Act 1999.

The Agreement shall be governed by the laws of England and the parties hereto hereby submit to the jurisdiction of the English courts. If required, the Client undertakes to appoint an agent for service of process in England and agrees that, should it fail to do so, the University of York shall be entitled to appoint such an agent on its behalf.