

THE PIRBRIGHT INSTITUTE STANDARD TERMS AND CONDITIONS CONTRACT FOR SUPPLY SERVICES

These Terms and Conditions may only be varied with the written agreement of Pirbright.
No terms or conditions put forward at any time by the Customer shall form part of the Agreement.

1. Definition and Interpretation

- 1.1 In this Agreement the following words shall have the following meanings:
- "Statement of Work"** means the document setting out the Customer's requirements for the supply of Services.
- "Agreement"** means the agreement between Pirbright and the Customer as evidenced by this document and comprising the Statement of Work and these terms and conditions.
- "Background IP"** means any Intellectual Property, excluding Foreground IP, owned or controlled by any party arising before commencement of or acquired in parallel with carrying out of the Services, which is necessary or may be useful in carrying out the Services.
- "Confidential Information"** means any information given to or obtained by Pirbright under this Agreement relating to the Services.
- "Customer"** means the person(s), firm or company to whom this Agreement is issued. Where the Customer consists of more than one person, the obligation of those persons in respect of this Agreement shall be joint and several.
- "Foreground IP"** means any Intellectual Property as are obtained, found, produced, devised, developed, or generated in the course of the carrying out of the Services.
- "Intellectual Property"** means any patent, copyright, design right, registered design, trademark or service mark, trade name, Know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, domain name or Know-how and any application for any of the foregoing and any similar rights in any jurisdiction.
- "Material"** means the biological material to be supplied by the Customer for the purpose of Pirbright providing The Services.
- "Pirbright"** means The Pirbright Institute, having its registered address at Ash Road, Woking, GU24 0NF.
- "The Services"** means the services to be supplied by Pirbright to the Customer as specified in the Statement of Work and shall, where the context so admits, include materials, articles and goods to be supplied thereunder.
- "Know-how"** means and includes all information, biological substances, organisms and materials (whether patentable or not), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.

1.2 Clause headings are included only for the convenience of the parties and do not affect interpretation.

2. The Services

- 2.1 No order for the supply of Services is binding unless and until it has been accepted by Pirbright in writing.
- 2.2 The Services to be provided and the dates and amount of payment are set out in the Statement of Work.
- In carrying out the Services Pirbright undertakes to the Customer that it shall-
- 2.2.1 use its reasonable endeavours to undertake the Services in accordance with and within the time period set out in the Statement of Work and at all times exercising all reasonable skill and care;
- 2.2.2 devote the efforts of suitably qualified and trained employees and provide all necessary facilities to carry out the Services;
- 2.2.3 keep detailed records of all research and other work done in carrying out the Services in accordance with best scientific practice;
- 2.2.4 provide the Customer with a report of the results of the Services;
- 2.2.5 keep and maintain in its own archive all data, records and results generated from the Services for a period of seven years following completion of the Services.
- 2.3 If Pirbright cannot undertake to provide services of this type for the Customer alone. All equipment and other accessories (except those owned and provided by the Customer) and all materials used for the purposes of the Services shall remain the property of Pirbright.

3. Warranties and Indemnities

- 3.1 The Customer warrants that all information provided by it or on its behalf as to the composition of any Material supplied to Pirbright will be full and accurate. The Customer further warrants that it will give Pirbright written notice of any hazards, known or suspected, by the Customer in the use of such Material.
- 3.2 The Customer warrants that it has the necessary rights and is entitled to use or disclose for the purposes of the Services all Intellectual Property supplied by it to Pirbright for the purposes of carrying out the Services.
- 3.3 The Customer shall indemnify and keep indemnified on a full and unqualified basis Pirbright against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage or injury to any person or to any property incurred by the reason of:
- 3.3.1 any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services,
- 3.3.2 any negligence, breach of Agreement, breach of statutory duty or other wrongful act or omission on the part of the Customer..
- 3.4 In the event of any breach or breaches of this Agreement by Pirbright, Pirbright shall not be liable to the Customer in respect of any resulting:-
- 3.4.1 loss of profit, business, revenue, goodwill or anticipated savings;
- 3.4.2 indirect or consequential loss or damage.
- 3.5 The aggregate liability of Pirbright to the Customer arising out of any breach or breaches of this Agreement shall not exceed the total amount payable by the Customer to Pirbright in accordance with the Statement of Work and in any event shall not exceed £100,000.

4. Customer Obligations

- 4.1 The Customer shall:
- 4.1.1. Ensure that the terms of any information it provides in the Statement of Work are complete and accurate;
- 4.1.2. Co-operate with Pirbright in all matters relating to The Services;
- 4.1.2. Ensure all Material is packaged in accordance with applicable regulations and is submitted according to Pirbright's specifications;

5. Confidentiality

- 5.1 Pirbright shall not without the Customer's written consent disclose to any person other than the Customer or use otherwise than for the purpose of carrying out the Services:-
- 5.1.1 the nature of the Services or the results obtained; or
- 5.1.2 any secret or confidential information before or after the date of this Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:
- (i) is acquired from the Customer or is specific to the Customer's business; and
- (ii) has not been developed or generated independently by Pirbright; or
- (iii) has not been in Pirbright's possession prior to acquisition from the Customer; or
- (iv) is not in the public domain at the time of disclosure to Pirbright, or at any time after its disclosure to Pirbright, through no breach of this Agreement by Pirbright; or
- (v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.

6. Payments

- 6.1 Payment shall be made by the Client immediately on receipt of the invoice, in Great British Pounds sterling.
- 6.2 Payment may be made by a cheque drawn on a UK clearing bank made payable to "The Pirbright Institute" or by BACS.
- 6.3 If payment is made by cheque, cheques must show the UK bank Sort Code. If payment is made by BACS, a remittance advice should be sent by the Customer.
- 6.4 Pirbright reserves the right in respect of any order to clear payment before undertaking The Services. Time of Payment shall be of the essence.

7. Publication and Public Interest

- 7.1 The results of the Services may be freely published by the Customer, but any mention of Pirbright must be approved in advance in its context by Pirbright, and the Customer will not make any reference to Pirbright without obtaining such approval. Notwithstanding the provisions of this clause 7, the Customer shall have the right to use and/or publish any reports and results generated in carrying out the Services in support of submissions to the regulatory authorities.

8. Intellectual Property Rights

- 8.1 Subject to any third party rights other than by virtue of this Agreement, any Foreground IP, including but not limited to any results, shall belong to the Customer.
- 8.2 All Background IP shall remain vested in the party to whom it belonged at the commencement of this Agreement.
- No licence is granted or implied to either Party's Background IP except as explicitly set out in this Agreement.

9. Force Majeure

- 9.1 Force Majeure shall include but is not limited any riot, strike, lockout, national emergency, terrorist event, outbreak of contagious or other notifiable human or animal disease and other events which are beyond the reasonable control of either party.
- 9.2 Neither party shall be liable for delay in performing or failure to perform obligations (not including payment obligations) under this Agreement if the delay or failure results from events or circumstances of Force Majeure. Such delay of failure shall not constitute a breach of this Agreement and the parties may agree on a plan of action to ensure delayed performance or terminate with immediate effect, whichever is appropriate in the circumstances.

10. Termination

- 10.1 This Agreement may be terminated by Pirbright or the Customer on giving written notice. On receipt of written notice of termination, Pirbright shall, in the most cost-effective way, cease carrying out the Services unless the Customer shall notify Pirbright that any part of the Services should be completed. On such a termination, payment will be made in respect of the period up to termination, pro rata on a cost basis or, if necessary, on a time basis.
- 10.2 Either party may terminate this Agreement forthwith by written notice given to the other where: that other party commits a breach of this Agreement which the party serving the notice reasonably considers is not capable of remedy; or that other party has continued in any breach of this Agreement for more than 30 days after being warned in writing of such breach.
- Pirbright may terminate this Agreement forthwith by written notice given to the Customer if:-
- 10.2.1 the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or
- 10.2.2 the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or
- 10.2.3 the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.

11. Effect of termination

- 11.1 Termination of this Agreement shall not affect:
- 11.1.1 any obligation or liability of any Party which has accrued at the date of termination; or
- 11.1.2 any of the provisions of the Agreement which are intended to continue to have effect after the Agreement has been terminated.
- 11.2 Upon termination of this Agreement Pirbright may set off against any debt owed by the Customer to Pirbright, or the amount of loss and/or damage Pirbright have reasonably assessed as resulting from the termination of the Agreement any sums otherwise due to the Customer.

12. Transfer of rights and obligations

- 12.1 The Customer shall not assign or sub-contract this Agreement or any part of it without prior consent of Pirbright in writing.
- 12.2 Pirbright may at any time, on written notice to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.

13. Waiver and variation

- 13.1 No delay by Pirbright in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.
- 13.2 No waiver by Pirbright of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.
- 13.3 Any variation of any provision of this Agreement must be effected in writing and issued by Pirbright. No purported variation by any other means shall bind Pirbright.

14. Subcontracting

- Pirbright shall be free to subcontract or otherwise deal with the whole or any part of the Services.

15. Legal Relationship

- 15.1 Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the parties.
- 15.2 Neither of the parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

16. Severability

- If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

17. Notices

- Any notices to be issued shall be in writing to the Parties' representatives as identified in Acknowledgment of Order and if sent by prepaid first class post shall be deemed to be served on the second Business Day after posting.

18. Jurisdiction and governing law

- This Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.