

Orchid Cellmark Ltd

Standard Terms & Conditions

for the Provision of Viral Testing Services

1 DEFINITIONS

- 1.1 In these terms and conditions (these "**Conditions**");
 - 1.1.1 "**Client**" means the recipient of the Services;
 - 1.1.2 "**Contract**" means the contract between Cellmark and the Client for the supply of the Services;
 - 1.1.3 "**Donor**" means the individual from who the Sample has been taken;
 - 1.1.4 "**Materials**" means any documents, reports, materials, data or information in any form provided by Cellmark in connection with the Contract;
 - 1.1.5 "**Order**" means an order (oral or written) from the Client for the supply of Services;
 - 1.1.6 "**Output Report**" means the written or oral reporting on the results of the Services;
 - 1.1.7 "**Sample**" means any biological sample submitted by the Client for testing by Cellmark;
 - 1.1.8 "**Services**" means Cellmark's provision of test equipment for obtaining, and the subsequent testing, analysis and reporting on, the Samples;
 - 1.1.9 "**Cellmark**" means Orchid Cellmark Ltd, a company incorporated in England and Wales (company number 04045527) whose registered office is at 16 Blacklands Way, Abingdon Business Park, Abingdon, Oxon, OX14 1DY, or its successors or assigns.

2 INCORPORATION

- 2.1 These Conditions shall apply to the Contract and to the Services to the exclusion of all other terms and conditions and shall prevail over all terms that the Client seeks to apply to the Contract in the Order or otherwise.
- 2.2 Variations to these Conditions will only be effective if agreed in writing by a duly authorised representative as specified by a director of Cellmark.
- 2.3 These Conditions do not affect any statutory rights of the Client.

3 SERVICES

- 3.1 Cellmark agrees to provide the Services using reasonable care and skill and in accordance with applicable legislation, regulations, guidance and good industry practice.
- 3.2 Any estimate or quotation provided by Cellmark to the Client shall be valid for a period of 30 days from its date, provided Cellmark has not withdrawn it.
- 3.3 Cellmark shall be entitled to correct any estimate or quotation it provides to the Client in the case of any error or omission in it without liability to the Client, provided that the Client is able to cancel or amend any Order based on that estimate or quotation within 48 hours of notification of such correction.
- 3.4 Time for performance of the Services shall not be of the essence. Any time periods specified by Cellmark for the performance of the Services shall be estimates only. Cellmark will use all reasonable efforts to comply with any specified time periods, however it does not accept liability for any failure to do so (including without limitation for any planned activities such as events or flights that the Client is unable to attend or make use of). The Client acknowledges that Cellmark is dependent on timely provision of the Samples by the Client.

- 3.5 Cellmark will only be required to perform the Services when it receives from the Client Samples relevant to the purpose for which the Services are required, and which have been obtained, stored and submitted strictly in accordance with the directions given by Cellmark.
- 3.6 Cellmark may request further Samples, at the expense of the Client, or cancel any Order accepted, where:
 - 3.6.1 Samples are not in accordance with Clause 3.5;
 - 3.6.2 where the quantity or quality of the Sample received is not, in the reasonable opinion of Cellmark, adequate to perform the Services; or
 - 3.6.3 if the Sample being examined poses an unacceptable health or safety risk.
- 3.7 Cellmark does not accept responsibility for:
 - 3.7.1 Samples taken using sampling kits different to those supplied/approved in advance by Cellmark;
 - 3.7.2 any acts or omissions of the sampler in obtaining a suitable sample for testing;
 - 3.7.3 Samples sent on behalf of persons not registered for testing with Cellmark; or
 - 3.7.4 Samples that are damaged in transit (and Cellmark reserves the right to destroy all such Samples on receipt).
- 3.8 Output Reports, and where appropriate the Samples submitted, will be delivered to the Client or to any such organisation as notified by the Client. Cellmark reserves the right to share the Output Reports or any information regarding the Output Reports or the Samples to any authority who is legally entitled to the same.
- 3.9 The method and carrier of postage, packaging or other method of delivery will be determined between the parties to meet the chain of custody and continuity requirements relating to the Samples.
- 3.10 The Client will pay for all storage charges of the Samples, including without limitation those arising from any request from the Client to delay performance of the Services.
- 3.11 Unless otherwise specifically agreed in writing Cellmark will destroy all unused Samples following completion of the testing. Cellmark reserves the right to retain such extracts and documentation relating to such Samples as is necessary to comply with applicable legislation.

4 CLIENT'S OBLIGATIONS

- 4.1 The Client warrants that it is legally entitled, in accordance with the Human Tissue Act 2004, the Data Protection Act 2018, and any other applicable legislation, to perform any particular act either directly or indirectly in order to obtain the Samples and supply them to Cellmark for the Services and that the Client is legally entitled to possess and store the Samples provided to Cellmark.
- 4.2 The Client warrants that it will implement all necessary protection in relation to contamination prevention and continuity of chain of custody in relation to any Samples to be provided to Cellmark.
- 4.3 The Client shall provide to Cellmark all information and assistance which may at any time be necessary or desirable or expedient for the purpose of performing the Services. The Client shall ensure that all information it provides is accurate and adequate.
- 4.4 Where the Client provides access to premises, in each case to such extent and at such time and for such purposes as Cellmark shall reasonably specify, the Client shall ensure that the premises are a safe proper and suitable environment for Cellmark's personnel to perform the Services.
- 4.5 During the term of the Contract and for a period of 12 (twelve) months thereafter, the Client shall not, save as dictated by employment legislation from time to time in force, directly or indirectly, offer to employ or remunerate any employees or personnel of Cellmark.
- 4.6 The Client shall indemnify and keep Cellmark indemnified from and against any costs, claims, demands incurred or payable by Cellmark under or as a consequence of the application of the Transfer of

Employment (Protection of Undertakings) Regulations 2006 to the Contract or otherwise connected with the termination or assignment of the Contract.

5 CHARGES AND PAYMENT

- 5.1 Unless otherwise agreed in an Order, Cellmark shall charge for the Services (the "**Charges**") by reference to time spent by it and its employees in performing the Services and its then current standard rates. Unless otherwise stated all Charges quoted by Cellmark are exclusive of VAT, which will be additionally payable by the Client. Unless otherwise agreed all charges are to be paid in Pounds Sterling.
- 5.2 Unless otherwise agreed the Charges are exclusive of any postage, packaging or other delivery charges.
- 5.3 In addition to the Charges the Client shall pay Cellmark the full amount of any expenses and disbursements (including VAT) reasonably and properly incurred in the performance of the Services by Cellmark or its employees, including (but not limited to) travel expenses; hotel expenses; the costs of telephone calls.
- 5.4 Any estimate of disbursements given shall constitute a non-binding estimate only and notwithstanding that an estimate may have been given, the Client shall pay the full amount of all disbursements so incurred by Cellmark in the performance of the Services.
- 5.5 Where pre-payment is not required for an Order:
 - 5.5.1 Cellmark will invoice the Client upon completion of the Services except where the Services are provided on an ongoing basis, in which case Cellmark will invoice the Client at the end of each calendar month for the Services provided during that preceding month.
 - 5.5.2 the Client shall pay Cellmark's invoices within 30 (thirty) days of the date of each invoice.
- 5.6 Cellmark may increase the Charges by giving the Client 1 (one) month's notice of such increase. In addition, Cellmark may increase its Charges between annual reviews if at any time:
 - 5.6.1 its costs of supplying the Services increase as a consequence of any change in law; or
 - 5.6.2 if it transpires that the Services are more costly to perform than Cellmark expected because of any inaccuracy or omission in the pre contract information provided by the Client; or
 - 5.6.3 if the scope of the Services increases or changes.
- 5.7 No payment shall be deemed to have been received until Cellmark has received in full cleared funds. The Client shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 5.8 If Cellmark is entitled to terminate the Contract under Condition 7 the Client shall immediately pay to Cellmark all sums payable to Cellmark and, in respect of Services supplied for which no invoice has been submitted, Cellmark may submit an invoice, which shall be payable immediately on receipt. Cellmark may, without prejudice to any other right it may have, set-off any liability of the Client to Cellmark against liability of Cellmark to the Client.
- 5.9 Without prejudice to any other rights or remedy that it may have, if the Client fails to pay Cellmark on the due date, Cellmark may:
 - 5.9.1 suspend all Services until payment has been made in full; and
 - 5.9.2 charge interest, at 4% above the Bank of England base rate from time to time, on any payment not received by the due date until such sum is received both before and after judgement.
- 5.10 If the Client has not challenged the validity of an invoice within 7 (seven) days of its date it shall be deemed to have accepted that all amounts stated in it are properly due and payable. If the Client disputes part of an invoice it shall nonetheless pay the undisputed part and act in good faith to resolve any dispute.

6 LIMITATION OF LIABILITY

- 6.1 Subject to Condition 6.2 and 6.3 Cellmark's total liability arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

- 6.2 Notwithstanding any other provision of these Conditions, save for clause 6.3, Cellmark will not be liable, for any:
- 6.2.1 loss of profits, loss of bargain, loss of anticipated savings, loss of production, loss of business, loss of revenue, loss of goodwill or any economic loss;
 - 6.2.2 loss of opportunity or loss of use (including without limitation an inability to make use of a booking or attend events or meetings);
 - 6.2.3 cancellation or rebooking costs relating to travel, accommodation or any other commitment that the Client or its personnel may incur as a result of, or in reliance upon, the Output Reports;
 - 6.2.4 any special, indirect or consequential losses; or
 - 6.2.5 any liability of the Client to any other person.
- 6.3 Nothing in these Conditions excludes or limits the liability of Cellmark for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation.
- 6.4 The Client expressly acknowledges that the Services and the Output Report will provide an analysis of the specific Samples taken, which accordingly will provide only an indication of the presence or otherwise of certain viral indicators at a specific moment in time. Individual test sensitivity is dependent on sampling and so a negative result only indicates that no viral RNA was detected in the sample provided and does not confirm that the Donor is necessarily free of the virus being tested for, nor that the Donor will not have subsequently become infected following the moment the Sample was taken. The Client further acknowledges that viral testing can result in 'false positives' and accordingly a positive result does not necessarily mean that a virus is present in the Donor. The Services and the Output Reports are intended to provide an indication of the possibility of the presence of a virus only, and should be considered alongside other indicators that the Client is aware of. The Output Reports should not be relied upon in isolation and the Client is solely responsible for any decisions that it makes in reliance upon the Output Reports.
- 6.5 Cellmark does not warrant that the Services or the Output Report will satisfy the requirements of any third party organisation or authority (whether in the UK or worldwide). It is the Client's responsibility to satisfy itself that the nature of the Output Report and any testing certificate provided by Cellmark is fit for its required purposes.
- 6.6 The Client indemnifies Cellmark from and against any liability of Cellmark to any person for any loss, damage, or liability incurred by that person for or arising out of (a) the negligence or breach of statutory duty of the Client or its officers, employees, agents, consultants, or any person for whom the Client is responsible in law, in each case in the cause of performance of or otherwise in any way arising out of or in connection with the Contract, (b) any warranties in this Agreement; (c) any failure to comply with any rules, laws or regulations pertaining to the samples, supplies or business described herein.
- 6.7 The Client agrees and acknowledges that the liability exclusions and financial limits set out in this Condition 6 are fair and reasonable.

7 TERMINATION

- 7.1 Cellmark may terminate the Contract at any time, if the Client is in breach of any of its obligations under the Contract or any other contract or account with Cellmark; or becomes bankrupt, insolvent or enters into liquidation or receivership or is the subject of an application for an administration order or suffers an administrative receiver to be appointed in relation to the whole or any part of its assets or makes a composition or arrangement with its creditor or suffers any judgement to be executed in relation to any, of its property or assets or undergoes an equivalent or analogous procedure; or if the Client's financial or credit condition becomes unsatisfactory to Cellmark. Termination shall not affect the accrued rights or liabilities of either party.
- 7.2 Following termination Cellmark will, at its discretion, complete any Orders accepted by Cellmark prior to the date of termination, under these terms and conditions of the Contract. If Cellmark provides any Services after the termination of the Contract then the Client shall be liable to pay for them in accordance with Condition 5.

8 REPRESENTATIONS AND WARRANTIES

- 8.1 The Client warrants to Cellmark that the performance by the Client or Cellmark of their obligations under this Agreement will not conflict with or be in violation of any decree, law, regulation or statute or other form of governmental edict surrounding (a) data protection and the privacy of the information supplied hereunder; (b) quality and confidentiality of Samples; (c) import, export or shipment of the Samples; (d) Donor consents; (e) any and all applicable registration and licensing requirements and/or government consents, as applicable; (f) applicable infectious disease (or other) reporting requirements
- 8.2 Client warrants that the individual signing the agreement is an authorized representative and has full power and capacity to act on behalf of client.
- 8.3 Client agrees promptly to notify Cellmark of any change of facts which causes the foregoing warranties to become untrue in any respect.

9 INTELLECTUAL PROPERTY

- 9.1 All intellectual property rights in the Services and Materials belong to Cellmark, subject only to a licence which Cellmark may, in its absolute decision, grant in favour of the Client to make reasonable use of Materials (provided the scope of the licence is limited to the detection, prevention and prosecution of crime and is non-exclusive). The Client will grant a royalty free non-exclusive licence in favour of Cellmark to make reasonable use of the Client's intellectual property as may be reasonably required to enable Cellmark to perform its obligations under the Contract.

10 CONFIDENTIALITY

- 10.1 Each party shall, and shall procure that its employees shall keep secret and confidential all business and trade secrets, know-how, specifications, processes, initiatives, methods of doing business, price lists and other confidential information and material disclosed by or obtained from the other ("**Confidential Information**"). Each party undertakes not to disclose the other's Confidential Information to any third party other than; its responsible employees to whom disclosure is in good faith necessary, for the proper performance of their duties in connection with the Contract, provided that the disclosing party procures that such employees or third party is aware of the obligation of confidentiality and undertakes to keep Confidential Information confidential in the same terms as this clause; or with the other party's consent.
- 10.2 The obligations of confidentiality under Clause 10.1, shall not apply to any information or material which: (a) was known to the recipient before its receipt from the disclosing party; or (b) is lawfully in the public domain other than by reason of breach; or is required to be disclosed by law or some other competent authority; or (c) Cellmark receives from the Client, if Cellmark becomes entitled to terminate the Contract under Condition 7.
- 10.3 The obligations of confidentiality under Clause 10.1 shall not prevent Cellmark using, exchanging and commercially exploiting the data and results that it obtains in connection with its Services to compile data bases of results for itself and third parties provided that in doing so it does not disclose the identity of the Client.
- 10.4 Cellmark shall be entitled to use data, results and surplus samples submitted for testing in studies relating to such matters as statistical, analytical and genetic parameters for testing and validation of methodology by independent bodies. The samples, data and results will be selected in a random anonymous manner so they cannot be linked or traced back to any individual.

11 FORCE MAJEURE

- 11.1 Cellmark shall not be liable if it is delayed in or prevented from performing its obligations due to circumstances outside its reasonable control including, without limitation, acts of God, governmental actions, war blockade military operations or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes lock-outs or other labour disputes, failures in utility supply, supplier failures, systems interruption, power surges, network unavailability, equipment failures, virus attack and any comparable circumstances.
- 11.2 If Cellmark's performance of its obligations under the Contract is prevented or delayed by an act of omission of the Client, its agents, sub-contractors or employees Cellmark shall not be liable for any costs,

charges or losses sustained or incurred by the Client as a consequence and Cellmark shall still be allowed to be paid as though it were performing normally.

12 GENERAL

- 12.1 Any notice under the Contract shall be in writing sent by first class post to the correspondence address as a party shall notify to the other in accordance with this Condition. A notice delivered by hand is served when delivered; a notice sent by post is served on the second business day after posting.
- 12.2 These Conditions and the documents referred to in it constitute the entire agreement. The Client acknowledges and agrees that in entering into the Contract, that it has not and does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made).
- 12.3 Nothing in the Contract shall create an agency, partnership or employment relationship.
- 12.4 The Client may not assign or sub-contract the Contract or any part of it without the prior written consent of Cellmark, such permission not to be unreasonably withheld. Cellmark may assign and sub-contract its rights and obligations under the Contract or any part of it to any person, firm or company.
- 12.5 Each right or remedy of Cellmark under the Contract is without prejudice to any other right or remedy of Cellmark whether under the Contract or not.
- 12.6 If any provision (or part of) of the Contract is found to be wholly or partly unenforceable it shall to the extent of such unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision (or part of) shall continue in full force and effect with the minimum modification necessary to make it enforceable.
- 12.7 Failure or delay by Cellmark in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 12.8 Subject to Condition 12.4 neither party intends any of the terms of the Contract to be enforceable by any third party pursuant to The Contracts (Rights of Third Parties) Act 1999.
- 12.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

13 GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).