

## TERMS AND CONDITIONS FOR THE SUPPLY OF DISASTER RECOVERY AND STORAGE SERVICES

### 1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Applicable Law:** all laws, regulations, rules, guidelines and other requirements of any government or regulatory authority applicable to the operation of a party's business or performance of a party's obligation under the Contract.

**Affiliate:** as of any point in time and for so long as such relationship continues to exist, any other entity that, directly or indirectly, Controls a party or is Controlled by a Party or is under common Control with a party, where "Control" means the power and ability to direct the management and policies of the controlled enterprise, whether directly or indirectly through one or more intermediaries, through ownership of voting securities of the controlled enterprise or by contract or otherwise; and the terms "Controls", "Controlled" and "Controlling" shall be construed accordingly.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Change:** a change to the nature, scope, volume or extent of the Services or otherwise.

**Charges:** the charges payable by the Client for the supply of the Services in accordance with Condition 8.

**Commencement Date:** as defined in Condition 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Condition 16.7.

**Contract:** the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.

**Client:** the person or firm who purchases Services from the Supplier.

**Disaster Recovery Backup Services:** the retention of space by the Supplier at its Facility for the quantity of Samples specified in the Quotation, in readiness for when the Client wants to utilise the Disaster Recovery Storage Services.

**Disaster Recovery Storage Services:** the stability storage services provided by the Supplier for use by the Client when it transfers the Samples to the Facility.

**Facility:** the Supplier's premises as defined in the Scope of Work.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Minimum Term:** the minimum contract term duration as specified in the Quotation, or if no term is specified then the minimum contract term duration shall be 1 year.

**MSDS:** the material safety data sheet provided by the Client to the Supplier relating to the Samples.

**Order:** the Client's order for the Services pursuant to the Quotation.

**Quotation:** the confirmation provided in writing by the Supplier to the Client of: (i) the required Services detailed or specified by the Client in the Stability Protocol or otherwise communicated to the Supplier by the Client; and (ii) the associated Charges.

**Samples:** the material supplied by the Client to the Supplier in respect of which the Supplier supplies the Services, as more particularly described in the MSDS.

**Services:** the Disaster Recovery Backup Services, Disaster Recovery Storage Services and any other services, to be supplied by the Supplier to the Client in respect of the Samples, as set out in the Stability Protocol or otherwise communicated to the Supplier by the Client.

**Scope of Work:** the document setting out responsibilities between the Client and the Supplier.

**Stability Protocol:** the description or specification of the required Services provided in writing by the Client to the Supplier.

**Supplier:** the Source BioScience company specified in the Quotation.

**Technical Agreement:** the document (if any) agreed between the parties, which: (i) provides additional technical information about the Services to that already given within the Quotation and provides for the quality standards applicable to the Services; and (ii) will be based upon the Stability Protocol where provided by the Client.

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## **2. Basis of contract**

**2.1** The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier that is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

### **3. Supply of Services**

- 3.1 The Supplier shall supply the Services to the Client in accordance in all material respects with the Stability Protocol, the Quotation and/or (if any) the Technical Agreement (as applicable).
- 3.2 The Supplier shall provide the Services with reasonable skill, expertise and care and in accordance with: (i) Applicable Law; and (ii) the Supplier's quality assurance standards incorporating GMP (i.e. all standards, practices, methods and procedures conforming to Applicable Law and applicable recognised national and local standards using that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced provider of stability and bio storage services, or a person providing services the same as or similar to the Services being supplied by the Supplier under or on in connection with the Contract, at the time such services are provided, as applicable); and (iii) ISO9001. The Supplier shall provide the personnel, facilities and equipment that are necessary for the Supplier to perform the Services in accordance with these Conditions.

- 3.3 The Supplier shall at all times maintain all accreditations or authorisations required by Applicable Law in connection with the performance of the Services in accordance with these Conditions.
- 3.4 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

#### **4. Term**

- 4.1 The Services supplied under the Contract shall continue to be supplied from the Commencement Date for the Minimum Term, after which time the Services shall be supplied indefinitely unless terminated by one of the parties giving to the other not less than 3 months' written notice unless the Contract is terminated in accordance with Condition 12.

#### **5. Client's obligations**

- 5.1 The Client shall:
- (a) check the Quotation to ensure that it is complete and accurate and, in turn, ensure that the terms of the Order are complete and accurate and that the Order accords and is consistent with the Quotation (including, without limitation, being subject to these Conditions). In the event of any such incompleteness, inaccuracy or inconsistency (to be determined by the Supplier in its sole but reasonable discretion), the Supplier shall (without prejudice to any other rights or remedies): (i) be entitled (by giving the Client written notice of the incompleteness, inaccuracy and/or inconsistency in question and the corresponding effect on the Quotation) to amend the Quotation correspondingly in accordance with the Supplier's then prevailing applicable rate to take reasonable account of such incompleteness, inaccuracy or inconsistency, and the Order and the Contract shall be deemed and treated by the parties as correspondingly amended from the date such notice is reasonably stated to take effect; and (ii) be entitled to charge the Client for any unavoidable, non-refundable costs that are reasonably (but unnecessarily due to such incompleteness, inaccuracy or inconsistency) incurred by the Supplier in

connection with the purpose building and/or preparation (to the extent unnecessary) of an appropriate storage facility for the Samples pursuant to the erroneous Order and for any unavoidable losses incurred by the Supplier due to any non-use of all or any part of such storage facility due to such incompleteness, inaccuracy or inconsistency;

- (b) ensure that the Samples submitted to the Supplier are accompanied by the corresponding MSDS and use all reasonable endeavours to ensure that the Samples are accompanied by the corresponding Stability Protocol (whether received in advance or at the time of their delivery);
- (c) ensure that the Samples submitted to the Supplier are of the same dimensions, format, quantity and weight as identified within the Quotation and corresponding Order. In the event of any discrepancy in the dimensions, format, quantity and/or weight of the Samples submitted by the Client to the Supplier and those set out in the Quotation and corresponding Order, the Supplier shall (without prejudice to any other rights or remedies): (i) be entitled (by giving the Client written notice of the discrepancy in question and the corresponding effect on the Quotation) to amend the Quotation correspondingly in accordance with the Supplier's then prevailing applicable rate to take reasonable account of such incompleteness, inaccuracy or inconsistency, and the Order and the Contract shall be deemed and treated by the parties as correspondingly amended from the date such notice is reasonably stated to take effect; (ii) be entitled to charge the Client for any unavoidable, non-refundable costs that are reasonably (but unnecessarily due to such discrepancy) incurred by the Supplier in connection with the purpose building and/or preparation (to the extent unnecessary) of an appropriate storage facility for the Samples pursuant to the Quotation and corresponding Order and for any unavoidable losses incurred by the Supplier due to any non-use of all or any part of such storage facility due to such discrepancy; and iii) be entitled to reject any Samples submitted to the Supplier that exceed the same dimensions, format, quantity and weight as identified within the Quotation and corresponding Order;
- (d) where the parties have agreed specific timescales for delivery of the Samples and these are set out in the Quotation and corresponding Order, ensure that the Samples are received by the Supplier within those agreed specific timescales. In the event of any deferment or delay by the Client in delivering the Samples against the corresponding agreed specific timescales, the Supplier shall (with prejudice to any other rights or remedies): (i) be entitled to reject the delivery of the Samples; or ii) (by giving the Client written notice of the deferment or delay in question and the corresponding effect on the Quotation) to amend the Quotation correspondingly in accordance with the Supplier's then prevailing applicable rate to take reasonable

account of such incompleteness, inaccuracy or inconsistency, and the Order and the Contract shall be deemed and treated by the parties as correspondingly amended from the date such notice is reasonably stated to take effect; and (iii) be entitled to charge the Client for any unavoidable, non-refundable costs that are reasonably (but unnecessarily due to such discrepancy) incurred by the Supplier in connection with the purpose building and/or preparation (to the extent unnecessary) of an appropriate storage facility for the Samples pursuant to the Quotation and corresponding Order and for any unavoidable losses incurred by the Supplier due to any non-use of all or any part of such storage facility due to such discrepancy;

- (e) co-operate with the Supplier in all matters relating to the Services;
- (f) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services (including, without limitation, the Stability Protocol and the MSDS), and ensure that such information is complete and accurate in all material respects; and
- (g) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

**5.2** The Client warrants, represents and undertakes that:

- (a) the Samples will comply with the corresponding MSDS; and
- (b) in respect of those Samples that are infectious or otherwise pose any health and safety risk, the Client will provide the Supplier with clear prior written notice of such infectiousness or risk reasonably far in advance of their shipment to or receipt by the Supplier.

**5.3** Before the Client sends any subsequent Samples to the Supplier above and beyond the dimensions, format, quantity and weight identified within the Quotation and corresponding Order:

- (a) the Client shall use all reasonable endeavours to provide the Supplier with prior written notice identifying the quantity of subsequent Samples in respect of which the Client is requesting the Supplier to provide the Services and the estimated arrival date and time of such Samples; and

- (b) upon receipt of any such notice, it shall be treated as a Change request for the purposes of Conditions 7.1 and Conditions 7.3 to 7.5 (inclusive), and (subject to Conditions 7.3 to 7.5 (inclusive)) the Supplier shall use all reasonable endeavours to accommodate such request and, if such request can be accommodated, to ensure that its storage facilities are ready to receive the Samples.

If the Client sends to the Supplier (with or without the corresponding Stability Protocol or MSDS) any quantity of subsequent Samples in respect of which the Client requires the Supplier to provide the Services without any prior notification, the Supplier will use all reasonable endeavours to provide the Services in respect of such Samples. If the Supplier is able to provide the Services in respect of such Samples, the Supplier shall be entitled to charge the Client for such Services at the Supplier's then prevailing applicable rate but, if and to the extent that the Supplier is unable for any reason to do so, the Samples in question will be returned to the Client at the Client's risk and expense. For the avoidance of any doubt, any Services provided by the Supplier in respect of any subsequent Samples sent by the Client above and beyond the dimensions, format, quantity and weight identified within the Quotation and corresponding Order: (i) shall be supplied pursuant to these Conditions to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing; and (ii) shall become part of the Contract.

- 5.4** All the Samples provided to the Supplier shall be deemed bailed to the Supplier, and title thereto shall at all times remain with the Client. The Supplier will protect the Samples from loss, theft, damage, and unauthorised access. The Supplier shall be responsible for any loss of or damage to the Samples caused by wilful misconduct or gross negligence of the Supplier or its employees or contractors. The Supplier will not use the Samples for any purpose other than performing the Services.
- 5.5** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Condition 5.5; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

## **6. Representations and Warranties**

**6.1** Each party represents and warrants that:

- (a) it has full right, power, and authority to enter into this Agreement and to perform its respective obligations hereunder; and
- (b) entering into this Agreement will not cause such party to be in violation of any terms and conditions of any agreement with any other individual or entity.

**6.2** The Supplier represents and warrants that:

- (a) to the best of its knowledge:
  - (i) none of the personnel who will perform the Services for the Client has been suspended, debarred or subject to temporary denial of approval, or is under consideration to be suspended, debarred or subject to temporary denial of approval, by any regulatory authority applicable to the operation of the Supplier's business from working in or providing services, directly or indirectly, to any applicant for approval of a drug product or any pharmaceutical or biotechnology company under the Generic Drug Enforcement Act 1992 or any European law or regulation;
  - (ii) in the event that the Supplier becomes aware that any of its officers, directors, or employees has become debarred, then the Supplier shall notify the Client promptly and shall promptly remove such person from performing any activity under this Agreement, and
  - (iii) the Client may request the immediate removal of the Supplier's personnel performing the Services for the Client with cause, including, but not limited to,

lack of training and/or experience necessary to properly perform the Services or violation of any provision of this Agreement;

- (b) it has or will have agreements with all personnel who will participate in the Services which impose confidentiality obligations on such personnel comparable to those set forth in this Agreement;
- (c) it has significant expertise and experience in providing services of the kind contemplated by this Agreement, and personnel performing the Services have sufficient skill, training and knowledge necessary to perform the Services;
- (d) the Services will comply with the requirements provided in this Agreement, and under Applicable Law, and the facility where the Services are being performed will be maintained in accordance with Applicable Law; and
- (e) it carries, with financially sound and reputable insurers, insurance coverage (including workers' compensation, comprehensive general liability coverage, and errors and omissions coverage) with respect to the conduct of its business against loss from risk in such amounts as is customary for well insured companies engaged in similar business.

**6.3** Except for the express warranties provided in these Conditions, each party disclaims all other warranties, express or implied, arising out of or related to the Contract, the Services and/or the Samples and expressly disclaims all implied warranties of title, merchantability, fitness for particular purpose, and non-infringement of third party rights.

## **7. Changes**

- 7.1** The Supplier shall, if requested by the Client, use all reasonable endeavours to implement any number of Changes to the Services under and in accordance with the procedure set out in Conditions 7.3 to 7.5 (inclusive).
- 7.2** The Supplier may at any time submit a suggested Change to the Services but no such change shall be implemented unless agreed in writing by the Client beforehand.
- 7.3** In the event that the Client requests a Change pursuant to Condition 7.1, the Client shall supply such information as the Supplier may reasonably require the Supplier to assess whether such Change is technically feasible and determine the effects of such Change.

- 7.4 Within 14 days of receiving a request for a Change from the Client pursuant to Condition 7.1, the Supplier shall acting at all times in good faith inform the Client as to whether the Change requested is technically feasible and what effects (if any) such Change will have on:
- (a) the performance of the Services; and
  - (b) any Charges payable under this Agreement.
- 7.5 Should the Client, following receipt of the information set out in Condition 7.4 above, elect in writing to proceed with the Change to the Services, the implementation date for such Change and the Charges shall be amended (if appropriate) in writing between the parties.
- 7.6 For the avoidance of any doubt, any change requested by the Client in the amount of the Samples to be stored by the Supplier, from that identified in the Quotation and corresponding Order, shall be considered a Change under Condition 7.

## **8. Charges and payment**

- 8.1 The Charges for the Services shall be as set out in the Quotation and corresponding Order and the Supplier shall only be entitled to charge the Client additionally pursuant to Condition 5 and/or Condition 7.
- 8.2 The Supplier reserves the right to reasonably increase its then prevailing fee rates upon the anniversary of the Contract. The Supplier will give the Client least one month prior written notice of any such increase and, if such increase is not acceptable to the Client, it shall notify the Supplier in writing and arrange for the return of its Samples (which shall be returned to the Client at its risk and expense).
- 8.3 The Supplier shall invoice the Client for the Charges payable by the Client under or in connection with the Contract monthly in arrears.
- 8.4 The Client shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

- 8.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.6 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 5% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 8.7 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## 9. Intellectual property rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 9.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

## 10. Confidentiality

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set

out in this Condition 10 as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 10 shall survive termination of the Contract.

## **11. Limitation of liability**

**11.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any other liability it is unlawful to exclude or limit.

**11.2** Subject to Condition 11.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of Sample or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of: (i) the total Charges received by the Supplier under the Contract in the 12 months immediately preceding the liability in question and (ii) the actual proceeds received by the Supplier under its relevant insurance policy or policies in respect of the liability in question.

**11.3** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**11.4** This Condition 11 shall survive termination of the Contract.

## 12. Termination

12.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 12.1(b) to Condition 12.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**12.2** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

**12.3** Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in Condition 12.1(b) to Condition 12.1(m) (inclusive), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

### **13. Consequences of termination**

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Supplier shall return, at the Client's request, risk and expense, all Samples in the Supplier's control or possession;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) Conditions which expressly or by implication survive termination shall continue in full force and effect.

#### **14. Indemnification**

**14.1** The Client shall indemnify, defend, and hold harmless the Supplier, its Affiliates and each of their respective directors, officers, employees, and agents from and against any and all liabilities, losses, damages, costs and expenses (including reasonable legal fees) resulting from any claim arising from or based on:

- (a) the Client's violation of any Applicable Law;
- (b) the Client's breach of any representations or warranties under this Agreement; or
- (c) the Client's manufacture, use, sale, or distribution of drug products that are based on the Samples,

except to the extent caused by the Supplier's violation of any Applicable Law, the Supplier's breach of any representations or warranties under this Agreement, or the wilful misconduct or gross negligence of the Supplier or its employees or contractors.

#### **15. Force majeure**

**15.1** For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party),

failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**15.2** The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

**15.3** If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

## **16. General**

### **16.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### **16.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition 16.2, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the

time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this Condition 16.2 shall not apply to the service of any proceedings or other documents in any legal action.

### **16.3 Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 16.3 shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **16.4 Waiver.**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **16.5 No partnership or agency.**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

### **16.6 Third parties.**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

**16.7 Variation.**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

**16.8 Governing law.**

The Contract, 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, and construed in accordance with the law of England and Wales.

**16.9 Jurisdiction.**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).