



## Terms and Conditions for Contracted Services

- 1. Governing Provisions.** CDI Laboratories Corporation, ("CDI LABORATORIES") agrees to provide to Client certain services identified and agreed upon by the parties (the "Services") expressly conditional on Client's assent to the terms and conditions contained herein. Client agrees that the terms of Client's purchase order or any other document supplied by Client to CDI LABORATORIES shall not be of any force or effect, except to the extent CDI LABORATORIES agrees in writing thereto.
- 2. Standard of Performance.** CDI LABORATORIES will perform all Services using due care in accordance with (a) the agreement between CDI LABORATORIES and Client relating to the Services, of which these Terms and Conditions are a part ("the Services Agreement") and (b) generally prevailing industry standards. CDI LABORATORIES will make a good faith effort to start and complete all Services on time and will notify Client if CDI LABORATORIES determines that there are likely to be substantial delays.
- 3. Payment.** CDI shall perform each Project for Client at a price that has been mutually agreed upon in advance and as is set forth in the applicable Project Order. Any other services requested by Client shall be at prices agreed to by the parties in writing. Except as otherwise agreed to herein, Client shall pay all invoices from CDI within thirty (30) days of receipt by Client. All invoices and payments shall be in United States Dollars.
- 4. Project Order Variations.** CDI will immediately notify Client of a proposed change(s) in a Project Order that CDI deems advisable for consideration by Client. Client may modify a Project Order prior to or during the Project by written notice to CDI; and, as warranted, CDI will submit to Client an amended price list with updated cost proposals, the acceptance of which shall be a precondition to CDI's obligation hereunder to perform services in accordance with the modified Project Order. CDI shall take any reasonable action that it deems necessary to protect Client's Project in the case of an emergency condition in the laboratory, and Client shall be notified of such action as soon as is reasonably possible.
- 5. Regulatory Compliance.** In conjunction with all Project Orders(s), CDI shall comply with all applicable federal, state, and local laws and regulations.
- 6. Confidentiality.** CDI shall maintain as confidential all reagents, compounds and tissue samples received or obtained from Client as a result of CDI's performance hereunder ("Materials"), and all protocols and information received or obtained from Client as a result of CDI's performance hereunder, including but not limited to results, data, information and the like, resulting from CDI's performance hereunder ("Information"). CDI shall limit access to such Materials and Information to only those persons who, under CDI's direct control or under subcontract, will be engaged in employing such Materials and Information for the purposes of fulfilling CDI's obligations under this Agreement. At no time shall such Materials and Information be employed for any purpose other than as described herein (or in any Project Order) or disclosed or provided to any third party without the prior written consent of Client. The foregoing obligations shall not

apply to Information: (a) which was known to CDI, other than under an obligation of confidentiality, prior to this Agreement, as evidenced by its written records; (b) which is or becomes generally available to the public by use, publication or the like, through no fault of CDI; or (c) which is disclosed to CDI by a third party who has the legal right to disclose Information. In addition, the foregoing obligations shall not preclude or impede in any manner CDI from using, and the parties specifically agree that CDI retains the right to use in its business operations, general knowledge, experience, know-how and expertise acquired and retained during the performance of this Agreement ("Engagement Acquired Knowledge").

7. **Debarment Certification.** In accordance with the requirements of the United States Food, Drug, and Cosmetic Act, CDI certifies that, to the best of its knowledge, CDI is not and will not be using any person presently under investigation by the FDA for debarment action, or debarred under 21 U.S.C § 335a, in any capacity, in connection with the performance of the Project. CDI also certifies that, to the best of its knowledge, CDI is not and will not be using any person or affiliate person/firm for whom convictions subject to debarment have occurred in the last five (5) years in any capacity in connection with the performance of the Project. If, at any time after execution of this Agreement, CDI becomes aware that CDI or any person employed or any affiliate person/firm has been or is in the process of being debarred, CDI hereby certifies that it will promptly so notify Client. Notwithstanding anything contained in this Agreement to the contrary, CDI shall not initiate or participate in any communications with the FDA or any other governmental agency concerning the subject matter hereof unless required by law or requested to do so by Client, and then only upon prior consultation with Client.

8. **Inspection.** If any governmental or regulatory authority conducts or gives notice to CDI of its intent to conduct an inspection at CDI's facilities or take any other regulatory action with respect to a Project(s), CDI will promptly give Client notice thereof, including all information pertinent thereto. Client acknowledges that Client may not direct the manner in which CDI fulfills its obligations to permit inspection by governmental entities. It shall not be a breach of this Agreement for CDI to comply with the demands and requests of any governmental entity in accordance with CDI's judgment, or to fail to inform and consult with Client before complying with any such demand or request (notwithstanding Section 5 above); provided however, that at no time are any copies of Information to be given to the governmental entity, and that any request for Information shall be redirected to Client, unless required by a court or other valid governmental order. In the event of such a court order, CDI shall immediately notify Client and use all reasonable efforts to secure confidential protection of such Information. Client shall have the right to inspect the facilities of CDI at any time during CDI's normal business hours.

9. **Reports and Project Monitoring.** CDI shall prepare and maintain detailed laboratory notebook records and analytical data of each Project. CDI will periodically consult with Client on the data generated and keep Client fully informed of the progress of each Project. CDI will provide an electronic copy of the final report of the results of the Project, which shall be structured in a format reasonably acceptable to Client, and which shall include any reasonable changes or additions requested by Client ("Final Report"). The Final Report shall be provided in a computer format acceptable to Client. Paper copies will be provided on request.

10. **Storage of Materials.** CDI shall store all biological specimens arising out of the Project ("Specimens") for a period of 2 months after the delivery of the Client ("Final Report"). At the time of the original shipment, client will notify CDI if it wants the biological specimens returned. The shipment of the biological specimens back to client will be paid for by client.

11. **Intellectual Property.** CDI agrees that all reports and materials prepared by CDI, and deliverables delivered by CDI under, this Agreement, whether copyrightable, patentable or not, with the exception of Engagement Acquired Knowledge, shall be the sole property of Client. CDI agrees to assign all rights it may have in such reports, information,

discoveries, inventions or improvements (with the exception of Engagement Acquired Knowledge) to Client and execute any documents Client may reasonably require relating to such reports, information, discoveries, inventions or improvements. However, Client understands and agrees that (a) CDI may produce work product under this Agreement in part by using and integrating certain of CDI's knowledge, experience, expertise, copyrighted materials, trademarks, graphics, artwork, organization, logic, algorithms, tools, processes and other intellectual property that pre-existed, and/or was or is developed independently of, work product under this Agreement ("CDI Proprietary Property"), (b) Client shall not have, or be deemed to have obtained, any ownership of or license to any such CDI Proprietary Property, and (c) Client shall not disseminate or use any such CDI Proprietary Property for purposes other than for the internal enhancement of Client's internal operations as part of the Projects under this Agreement. Client shall not be responsible for any royalties, fees, costs or charges whatsoever pertaining to any CDI Proprietary Property, other than the compensation expressly agreed to by the parties under this Agreement.

**12. Term and Termination.** If either party commits any breach or defaults upon any of the terms or conditions of this Agreement, and fails to take commercially reasonable steps to remedy such default or breach within forty-five (45) days after receipt of written notice thereof from the other party, the party giving notice, at its option and in addition to any other remedies which it may have at law or in equity, may terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of receipt of such notice.

Any rights or obligations, which by their nature are intended to survive termination of this Agreement, shall survive such termination, including but not limited to the rights and obligations of Sections 2, 5-11, 13, 14 and 16-25.

**13. Force Majeure.** CDI shall not be responsible for and shall not incur any liability for delays, loss, damages, costs, claims, loss of profit, or consequential loss caused by or resulting from (a) any prohibition, enactment, embargo, or other limitation imposed by any government or local authority; (b) disease or illness affecting either employees of CDI or experimental animals; (c) war, industrial action or civil commotion; (d) destruction or damage to buildings by fire, storm, tempest, vandalism, lightning, explosion or bursting or overflowing of water tanks; (e) the failure or withdrawal of public service; and (f) acts of God, force majeure or any other cause beyond its control.

**14. Warranties; Indemnity.**

(a) If Client notifies CDI in writing within 10 days after performance by CDI of work under a Project that does not satisfy the applicable standards under the applicable Project Order, CDI shall re-perform the deficient or nonconforming work so as to comply. THIS SECTION 13(a) SETS FORTH THE SOLE WARRANTY REMEDY OF CLIENT RELATING TO CDI'S PERFORMANCE UNDER THE PROJECT ORDERS, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS CDI EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND CLIENT ACCEPTS AND AGREES TO SUCH DISCLAIMER.

(b) Client agrees to indemnify and defend CDI, and CDI's officers, directors, employees and agents, against any loss, claim, suit, liability or expense (including attorneys' fees) arising out of Client's use of any cell lines, deliverables and information developed by CDI hereunder, or Client's failure to comply with the terms of the Project or the terms of this Agreement, unless such loss, claim, suit, liability or expense is the result of any gross negligence, omission or willful misconduct on the part of CDI, its officers, directors, employees or agents. Notwithstanding the above, the aggregate liability of Client under this Agreement, including this Section 13(b), shall be limited to the total fees then-paid and then-payable to CDI pursuant to this Agreement.

(c) CDI agrees to indemnify and defend Client, and Client's officers, directors, employees and agents, against any loss, claim, suit, liability or expense (including attorneys' fees) stemming from injuries or damages to persons or property arising out of or in connection with the services being provided by CDI hereunder, or CDI's failure to comply with the terms of the Project or the terms of this Agreement, unless such loss, claim, suit, liability or expense is the result of any gross negligence, omission or willful misconduct on the part of Client. Notwithstanding the above, the aggregate liability of CDI under this Agreement, including this Section 13(c), shall be limited to the total fees then-paid to CDI pursuant to this Agreement.

(d) In no event shall either party be liable to the other party for any loss of profit or incidental or consequential damages (other than those arising out of personal injury), regardless of the basis of such claims, even if the party has been apprised of the possibility or likelihood of such damages occurring.

**15. Insurance.** CDI shall secure and maintain in full force and effect throughout the performance of each Project and for three (3) years thereafter appropriate liability insurance coverage, including but not limited to Workmen's Compensation, General Liability, and Automobile Liability, in amounts appropriate to the conduct of CDI's business. Certificates evidencing such insurance will be made available for examination upon request by Client.

**16. Publicity.** Neither party shall use the other party's name or the names of their employees in any advertising or sales promotional material or in any other way, without the written consent of the other party, such consent not to be unreasonably withheld. The requirements of this Section 16 shall be in addition to the obligations of confidentiality set forth in Section 5 hereinabove. If mutually agreed by CDI and Client, press releases of the relationship between CDI and Client may be launched by CDI or Client.

**17. Assignment.** Neither this Agreement nor any interest hereunder shall be assignable by either party without the prior written consent of the other party except to a successor by merger or sale of substantially all of its business to which this Agreement relates.

**18. Affiliates.** As used herein, "Affiliates" shall mean any corporation or other entity which is directly or indirectly controlling, controlled by or under common control with a party. For this purpose, "control" shall mean the direct or indirect ownership of fifty percent (50%) or more of the outstanding shares or other voting rights to elect directors of the subject entity.

**19. Independent Contractors.** The relationship between Client and CDI created by this Agreement is one of independent contractors, and neither party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement. CDI shall use its own discretion and shall have complete and authoritative control over its employees and the details of performing its obligations under this Agreement. Any provisions in this Agreement that may appear to give Client the right to direct or exercise a measure of control over CDI as to the details of performing its obligations under this Agreement shall be deemed to mean that CDI shall follow the desires of Client.

**20. Waiver.** No provision of this Agreement or a Project shall be waived by any act, omission or knowledge of a party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving party.

**21. Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Puerto Rico, and the parties hereby submit to the jurisdiction of the Puerto Rico courts, both state and federal. This Agreement shall be construed and interpreted in accordance with the English language notwithstanding any translation of this Agreement into

any language other than English. The UN Convention on Contracts for the International Sale of Goods (1980) shall not apply to this Agreement.

**22. Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.

**23. Construction.** The parties mutually acknowledge that they have participated in the negotiation and preparation of this Agreement. Ambiguities, if any, in this Agreement shall not be construed against any party, irrespective of which party may be deemed to have drafted the Agreement or authorized the ambiguous provision.

**24. Headings.** The descriptive headings of this Agreement are for convenience only and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

**25. Entire Agreement.** Any Project Order attached hereto, and those later attached hereto, are incorporated herein and made a part hereof. This Agreement and such attachments constitute the entire agreement of the parties respecting the subject matter hereof. In the event of any conflict between these terms and any Project Order attached hereto, the terms of this Agreement shall control. No amendment, modification, or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each party.