

TERMS AND CONDITIONS FOR PROCUREMENT OF SERVICES (the “Terms and Conditions”)

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

“**Contractor**” means the person, organisation, firm or company named as the Contractor at section 2 of the Agreement for Procurement of Services or in the Purchase Order, as applicable, and who is to supply and sell the Services to the Trust;

“**Order**” means the Agreement for Procurement of Services or Purchase Order, as applicable, these Terms and Conditions, any Special Conditions and any other annexes to the Agreement for Procurement of Services or Purchase Order, as applicable;

“**Services**” means the services/ work/ project to be undertaken by the Contractor and ordered by the Trust as described in section 4 of the Agreement for Procurement of Services or in the Purchase Order, as applicable;

“**Special Conditions**” means the conditions, if any, set out at section 10 of the Agreement for Procurement of Services or in the Purchase Order, as applicable; and

“**Trust**” means The Wellcome Trust Limited registered company no 2711000 (as trustee of the Wellcome Trust, a registered charity (no. 210183)) whose registered office is at 215 Euston Road, London, NW1 2BE.

1.2 These Terms and Conditions form part of the agreement detailed in the Agreement for Procurement of Services or Purchase Order, as applicable, to which they are attached.

1.3 The Agreement for Procurement of Services or Purchase Order, as applicable, the Terms and Conditions, any Special Conditions and any other annexes to the Agreement for Procurement of Services or Purchase Order, as applicable, shall be read and interpreted according to the following descending order of priority: the Agreement for Procurement of Services or Purchase Order, as applicable, the Special Conditions, the Terms and Conditions, any other annexes to the Agreement for Procurement of Services or Purchase Order, as applicable.

1.4 In these Terms and Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.5 In these Terms and Conditions, references to “**Clauses**” are references to clauses in these Terms and Conditions.

1.6 In these Terms and Conditions, references to parties are references to the Contractor and the Trust and references to the other party are references to either the Contractor or the Trust where the context so admits.

1.7 The headings in these Terms and Conditions do not affect their interpretation.

2. APPLICATION OF TERMS

2.1 The terms and conditions contained in the Order are the only terms and conditions upon which the Trust is prepared

to deal with the Contractor and they shall govern the Order to the entire exclusion of all other terms and conditions.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Contractor’s quotation, acknowledgment or acceptance of order, specification or similar document will form part of the Order and the Contractor waives any right which it otherwise might have to rely on such terms and conditions.

2.3 Any non-applicability of or variation to these Terms and Conditions shall have no effect unless expressly agreed in writing at section 11 of the Agreement for Procurement of Services or in the Purchase Order, as applicable,.

2.4 In relation to future orders placed by the Trust, the Trust reserves the right to change the provisions of these Terms and Conditions from time to time.

3. ACCEPTANCE

The Order constitutes an offer by the Trust to procure the Services referred to in the Agreement for Procurement of Services or Purchase Order, as applicable, at the price stated therein and subject to the terms and conditions contained within the Order. No Order shall be accepted until the Contractor either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

4. DELIVERY OF SERVICES/DISSEMINATION OF RESULTS OF SERVICES

Provision of all Services or the dissemination of the results of the Services shall be made to the address(es) or shall be disseminated in the manner specified at sections 6 and 7 of the Agreement for Procurement of Services or in the Purchase Order, as applicable,

5. PRICE

The price of the Services shall be stated at section 8 of the Agreement for Procurement of Services or in the Purchase Order, as applicable, and shall, unless otherwise agreed in writing by the Trust, be and remain firm.

6. PAYMENT

The Trust shall pay the price of the Services within 30 days of receipt by the Trust of valid invoice(s) from the Contractor subject to the Services having been provided to the satisfaction of the Trust, but time for payment shall not be of the essence of the Order. All Services shall be invoiced on the date of completion and a separate invoice shall be forwarded in respect of each instalment in respect of which the Trust is obliged to make payment in accordance with any provision regarding payment in the Agreement for Procurement of Services or Purchase Order, as applicable, unless otherwise agreed by the parties in writing.

7. TIME FOR PROVISION OF SERVICES/ DISSEMINATION

The Services shall be provided and completed/disseminated on or before the date(s) for provision specified at section 6 of the Agreement for Procurement of Services or in the Purchase Order, as applicable, or, if no date is specified, within a reasonable period provided that the Trust shall be under no obligation to accept provision before the specified date(s), but reserves the right to do so. The provision of Services/dissemination by the Contractor by the date specified in the Agreement for Procurement of Services or Purchase Order, as applicable, is essential to enable the Contractor to require performance of the Trust’s obligations under this Order. The Trust shall (without prejudice to any other rights of the Trust) be entitled to reject the Services and terminate the Order if any part of the Services ordered is not provided or the results of the Services are not disseminated by the specified date(s).

8. CONFIDENTIALITY

- 8.1 The Contractor shall keep in strict confidence this Order and its subject matter, any results arising from the provision of Services, all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Contractor by the Trust or its agents and any other confidential information concerning the Trust's business or its products which the Contractor may obtain (the "**Confidential Information**").
- 8.2 The Contractor shall restrict disclosure of the Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Contractor's obligations to the Trust under the Order and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Contractor and procure compliance with those obligations by such persons.
- 8.3 The Contractor shall only use the Confidential Information for the purposes of performing its obligations under the Order.

9. PROTECTION OF THE TRUST'S INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any and all existing and future intellectual property rights (including copyright, design rights, registered designs, trademarks, database rights, patents, moral rights, know-how or proprietary rights, whether registered or unregistered, and all rights against third parties in respect of the foregoing whatsoever in any part of the world) arising from the Order and/or the Services (the "**Intellectual Property**") shall belong to the Trust unless otherwise agreed in writing by the parties.
- 9.2 The Contractor hereby assigns with full title guarantee all existing Intellectual Property, and undertakes to assign any future Intellectual Property, to the Trust.
- 9.3 The Contractor warrants that it has not and will not grant or assign any Intellectual Property to any third party whatsoever in any part of the world.
- 9.4 The Contractor has no rights to the Intellectual Property except to the extent necessary to perform its obligations under the Order and waives (and shall procure that its employees, agents and sub-contractors waive) any and all moral rights arising out of or in connection with the Services or Order.
- 9.5 The Contractor shall not do or cause to be done anything which infringes, damages or might infringe or damage either the Intellectual Property or the Trust's other intellectual property rights.
- 9.6 The Contractor warrants that, in performing its obligations under the Order, it has not and shall not infringe any third party intellectual property rights.
- 9.7 The Contractor shall notify the Trust immediately, on becoming aware of any actual, threatened or potential infringement of the Intellectual Property or of any challenge to or claim against the Intellectual Property on the basis that it infringes any third party rights. The Contractor shall not take any action in relation thereto (including, without limitation, making any admission or settlement) without the Trust's prior written consent. Any action taken by the Trust in this regard shall be in the Trust's absolute discretion and the Contractor undertakes to provide such assistance with any action taken by the Trust as the Trust reasonably requests.

10. PUBLICITY

- 10.1 The Contractor shall not use the name or other identity of the Trust for its own publicity or promotional purposes which are not in furtherance of its obligations under this Order without the prior consent of the Trust.
- 10.2 The content and form of any publicity produced or material published by the Contractor relating to the Services or Order shall be approved by the Trust prior to such publicity being finalised for placement in the public domain.
- 10.3 The Contractor shall discuss with the Trust in good faith the form of an appropriate acknowledgment of the Trust's role in commissioning the results of the Services.

11. USE OF TRUST PROPERTY

- 11.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Trust to the Contractor for use in the provision of Services (the "**Trust Property**") shall at all times be and remain the exclusive property of the Trust.
- 11.2 Trust Property shall be held by the Contractor in safe custody and the Contractor shall provide for insurance of Trust Property at its full value to the Trust. Proof of compliance with this insurance requirement is to be furnished to the Trust on request.
- 11.3 Trust Property shall be maintained and kept in good condition by the Contractor until returned to the Trust and shall not be disposed of other than in accordance with the Trust's written instructions.
- 11.4 Trust Property shall not be used otherwise than as authorised by the Trust in writing.

12. TERMINATION

- 12.1 Without prejudice to and in addition to the Trust's right at Clause 7 to terminate the Order (for failing to deliver the Services on time), the Order may be terminated in whole or in part:
- 12.1.1 by either party on notice in writing with immediate effect if the other party is in breach of any of its terms (including in breach of warranty) and has failed to remedy the breach within 28 days of receiving written notice from the other party of the breach;
- 12.1.2 by the Trust giving the Contractor not less than 28 days notice in writing, stating the reasons for termination, whereupon all work on the Order shall be discontinued and the Trust shall pay to the Contractor the Contractor's reasonable costs incurred directly in connection with Services satisfactorily performed up to, but not including, the date of termination; or
- 12.1.3 by the Trust on notice in writing with immediate effect if:
- any distress, execution or other process is levied upon any of the assets of the Contractor;
 - the Contractor has a resolution passed or a petition is presented to wind it up (otherwise than for a solvent reconstruction or amalgamation), or has a receiver appointed of the whole or any part of its assets, or is subject to any bankruptcy, insolvency, administration, sequestration or similar proceedings; or

- c) the Contractor ceases or threatens to cease to carry on its business.
 - 12.2 the termination of the Order, however arising, will be without prejudice to the rights and duties of the Trust accrued prior to termination. The terms and conditions of the Order which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
 - 12.3 Upon termination of the Order, the Contractor shall immediately deliver up to the Trust any Trust Property.
- 13. CONTRACTOR'S WARRANTIES AND UNDERTAKINGS**
- 13.1 The Contractor warrants that it shall comply in every respect with all instructions, specifications, drawings, designs or formulae provided or specified by the Trust to the Contractor or any other specification agreed by the parties and shall comply with all applicable laws, legislation (including, without limitation, the Data Protection Act 1998), directives, regulations, codes or best practice from time to time in force and obtain any necessary consents required for the performance of its obligations under the Order.
 - 13.2 The Contractor warrants that all Services supplied to the Trust will be supplied with competence, due care and skill and by appropriately qualified personnel.
 - 13.3 During the term of the provision of Services to the Trust the Contractor shall carry adequate insurance cover in such amount and in respect of such risks as are appropriate for the Project including in respect of all employees, agents and sub-contractors of the Contractor as shall be carrying out activities in connection with the provision of the Services.
 - 13.4 If the Contractor shall be required to be on the Trust's premises in order to provide the Services, the Contractor undertakes to the Trust that the Contractor will bring to the attention of all employees, agents, sub-contractors and representatives of the Contractor as shall be involved in any way in the provision of Services to the Trust, the requirements of the Trust's health and safety requirements and contractors on-site requirements. The Contractor shall be responsible for ensuring that such requirements are duly observed by all such employees, agents, sub-contractors and representatives of the Contractor.

14. INFORMATION REQUESTS AND PROGRESS REPORTS

The Contractor shall keep the Trust fully informed of progress of carrying out its obligations pursuant to the Order and shall comply with any and all of the Trust's reasonable requests for information arising out of or in connection with this Order.

15. RESOURCES

The Contractor shall assign appropriately qualified personnel to supply the Services to the highest professional standards generally observed within the field within which the Contractor conducts its business. The Contractor shall use all reasonable endeavours to minimise changes to any personnel referred to in the Order as having been assigned to supply the Services. Any changes to such personnel shall be notified to the Trust as soon as reasonably practicable and the Trust reserves its right to terminate the Order pursuant to Clause 12.1.1 if there are changes to key personnel assigned to supply the Services.

16. LIABILITY

Save with respect to death or personal injury caused by the Trust's negligence, the Trust shall not be liable for any damages, costs, claims, liabilities, expenses, losses (including indirect or consequential loss) and demands arising out of or in connection with this Order.

17. INDEMNITY

- 17.1 The Contractor will indemnify and keep the Trust fully indemnified in respect of any and all damages, costs, claims, liabilities, expenses, losses (including indirect or consequential loss) and demands incurred by the Trust, directly or indirectly as a result of the Contractor's breach of any of the terms, conditions, warranties or undertakings contained in the Order.
- 17.2 The Contractor undertakes to insure itself against any and all liability under this Order and the Trust has the right to require proof in writing that this insurance requirement has been complied with.

18. PRESERVATION OF RIGHTS

Each right or remedy of the Trust under the Order is in addition and without prejudice to any other right or remedy of the Trust, whether under the Order or at common law or under statute, and in no way limits these other rights.

19. SURVIVAL

Any termination of the Order shall not affect the accrued rights of the Trust nor the liabilities and obligations of the Contractor. In particular, but without prejudice to the generality of the foregoing, Clauses 8 (Confidentiality) and 9 (Intellectual Property) of these Terms and Conditions will survive termination or expiry of the Order.

20. TRUST'S RIGHTS OF SET-OFF

The Trust reserves the right to set off against any payment due by the Trust to the Contractor any sums that the Contractor owes to the Trust.

21. ASSIGNMENT AND SUB-CONTRACTING

- 21.1 The Contractor shall not assign, delegate, sub-contract or otherwise transfer any or all of its rights and obligations under this Order to any third party without the prior written consent of the Trust.
- 21.2 The Trust may assign the Order or any part of it to any person or organisation.

22. RELATIONSHIP

Nothing in the Order and no action taken by the Contractor or the Trust pursuant to and arising out of or in connection with the Order shall constitute, or be deemed to constitute, the Contractor and Trust a partnership, association, joint venture or other co-operative entity. The Contractor is independent from the Trust and shall not be deemed an employee or agent of the Trust. The Contractor does not have the power to bind the Trust and shall not represent itself as being able to do so.

23. WAIVER

Failure on the Trust's part at any time to enforce any provision of the Order shall in no way affect the Trust's rights at a later date to require performance of the Order nor shall a waiver of any breach be taken or held to be a waiver of any subsequent breach of any provision.

24. VARIATION

No amendment or variation to the terms of the Order shall take effect unless agreed in writing and signed by authorised representatives of each of the parties.

25. SEVERANCE

If any provision of the Order is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable:

- 25.1 it shall, to the extent required, be severed from the Order and rendered ineffective as far as possible without modifying the remaining provisions of this Order, and shall not in any way affect the validity or enforcement of this agreement; and
- 25.2 the parties shall negotiate in good faith to replace such term with a valid or enforceable term which reflects their original intentions as closely as possible.

26. NOTICES

- 26.1 Notices under this Order must be sent by first class post or (with a hard copy confirmation sent that day by post) by fax or e-mail, or by hand, to the appropriate address set out in the Order or such other address as the addressee may by written notice have directed.
- 26.2 Notices sent as above shall be deemed to have been received:
 - 26.2.1 on the same business day in the case of hand-delivery, fax or e-mail, or, if not delivered or sent on a business day, on the next business day;
 - 26.2.2 on the second business day following the day of posting in the case of inland first class mail; or
 - 26.2.3 seven business days after the day of posting in the case of air-mail.

27. ENTIRE AGREEMENT

- 27.1 The Order contains the whole agreement between the parties in respect of the subject matter and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The parties confirm that they have not entered into the Order on the basis of any representation that is not expressly incorporated into this Order.
- 27.2 Without limiting the generality of Clause 26.1, neither party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this Order, and a party's only remedy is for breach of contract. However, nothing in this Order purports to exclude liability for any fraudulent statement or act.

28. DISPUTE RESOLUTION

The parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to the Order promptly through negotiations between representatives of the Contractor and the Trust who have authority to resolve the same.

29. EXCLUSION OF THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Order and the parties to this Order do not intend that any term of this Order will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

30. GOVERNING LAW AND JURISDICTION

The Order shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.