

## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

### 1 DEFINED TERMS AND INTERPRETATION

The definitions and interpretation provisions set out in the Appendix apply in these Conditions (“**Conditions**”).

### 2 BASIS OF CONTRACT

- 2.1 The Supplier shall provide a quote in relation to Services required by the Customer containing the price of the Services, the estimated timeline and the Deliverables. Any 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.
- 2.2 A Customer requiring Services shall place an Order which shall constitute an offer by the Customer to purchase Services and Deliverables in accordance with these Conditions. Dates specified in the Order are estimates only. The Supplier shall use all reasonable endeavours to meet such dates.
- 2.3 The Order shall only be accepted when the Supplier confirms acceptance in writing in its discretion of the Services (to include confirmation of Specification) (“**Confirmation of Order**”) of the Order at which point a legally binding Contract comes into existence (“**Commencement Date**”). The Supplier may decline any Order.
- 2.4 The Contract constitutes the entire agreement between the parties and no other statement, promise, representation, assurance or warranty is made or given by or on behalf of the Supplier.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Contract is non-exclusive. The Supplier may enter into agreements for the supply of similar services and provide similar Deliverables to third parties.

### 3 SUPPLY AND QUALITY OF SERVICES

- 3.1 The Supplier shall supply the Services in accordance with the Specification in all material respects.
- 3.2 The Services can be changed by the Supplier to comply with any applicable law or safety requirement.
- 3.3 The Services and Deliverables will be provided using reasonable care and skill.
- 3.4 The outcomes of research cannot be guaranteed, failure to achieve the desired outcome is not a breach of Contract.

### 4 OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer shall:
  - 4.1.1 provide complete and accurate information in the Order and Specification for Deliverables and/or Services;
  - 4.1.2 ensure that the Customer Materials have all necessary licenses and permissions and are fit for purpose and of good and appropriate quality and provided in such quantities and at such times as required to ensure that the Services can be provided in accordance with the Contract; specifically this will include such licenses and permissions to allow the Supplier to use the Customer Materials to provide the Services;
  - 4.1.3 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the premises of the Customer as reasonably required by the Supplier;
  - 4.1.5 provide accurate information and materials as the Supplier may reasonably require;
  - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 4.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (“**Supplier Materials**”) in its possession in safe custody, in good condition, at its own risk;
  - 4.1.8 make the supplier aware of any relevant health and/or safety legislated requirements, licenses for handling and/or storage of materials etc. prior to commencement of service activities.
  - 4.1.9 not ship any potentially hazardous materials that have not been approved in advance
- 4.2 If the Supplier is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation then without limiting its other rights or remedies:

- 4.2.1 the Supplier shall have the right to suspend performance of the Services and provision of the Deliverables;
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Supplier to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for its costs or losses arising directly or indirectly from such default.

## **5 SUPPLY OF CUSTOMER MATERIALS**

The Customer shall provide the Customer Materials to such address as requested by the Supplier.

## **6 DELIVERABLES**

- 6.1 Each Deliverable shall be accompanied by a delivery note describing it and any special storage instructions.
- 6.2 The Supplier shall deliver the Deliverables to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Deliverables are ready.
- 6.3 Delivery of Deliverables shall be by the method selected by the Supplier and shall be completed on their arrival at the Delivery Location.
- 6.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 6.5 The Supplier may deliver the Deliverables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **7 QUALITY OF DELIVERABLES**

- 7.1 The Supplier warrants that on delivery the Deliverables shall:
  - 7.1.1 conform in all material respects with their description and any applicable Specification relating to them;
  - 7.1.2 be free from known material defects in design, material and workmanship;
- 7.2 Upon the receipt of the Deliverables, the Customer shall immediately:
  - 7.2.1 check the quantities and record any objections on the Delivery Note and/or acknowledgement of receipt; and
  - 7.2.2 check the frozen status of the Deliverables and volumes per vial.
- 7.3 In case of a discovered defect the Customer shall provide to the Supplier a notice of defect (by e-mail) clearly specifying the nature of the defect no later than the expiry of the day on which the Deliverables were received, unless not capable of reasonably being identified on first inspection in which event notice of defect shall be given no later than two (2) weeks after receipt of the Deliverables.
- 7.4 Subject to clause 7.5 if:
  - 7.4.1 the Customer gives notice in writing under clause 7.3 that any Deliverables do not comply with clause 7.1; and
  - 7.4.2 the Supplier is given a reasonable opportunity of examining such Deliverables; and
  - 7.4.3 the Customer (if asked to do so by the Supplier) returns such Deliverables to the Supplier's place of business at the Customer's cost,
    - the Supplier shall, at its option, repair or replace the defective Deliverables, or refund the price of the defective Deliverables.
- 7.5 The Supplier shall not be liable for the Deliverables' failure to comply with the warranty in clause 7.1 if:
  - 7.5.1 the Customer makes any further use of such Deliverables after giving a notice in accordance with clause 7.3;
  - 7.5.2 the defect arises because the Customer failed to follow the Supplier's instructions as to the storage, installation, use or maintenance;
  - 7.5.3 the defect arises as a result of compliance with any Deliverables Specification supplied by the Customer;
  - 7.5.4 the Customer alters or interferes with such Deliverables without the written consent of the Supplier;

- 7.5.5 the Customer mixes the Deliverables with other products;
- 7.5.6 the defect arises as a result of wilful damage, negligence, or abnormal working conditions.
- 7.6 The risk in the Deliverables shall pass to the Customer on delivery.
- 7.7 Subject to clause 9.6, title to the Deliverables shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Deliverables.
- 7.8 Until title to the Deliverables has passed to the Customer, the Customer shall store the Deliverables separately from all other Deliverables held by the Customer so that they remain readily identifiable as the Supplier's property.
- 7.9 If before title to the Deliverables passes to the Customer the events in clauses 12.2.2 to 12.2.9 occur, without limiting any other right or remedy the Supplier may have:
  - 7.9.1 the Customer's right to use them ceases immediately; and
  - 7.9.2 the Supplier may at any time require the Customer to deliver up all Deliverables in its possession and if it fails to do so to promptly recover the Deliverables.

## 8 CHARGES AND PAYMENT

- 8.1 The payment for the Services and Deliverables ("**Charges**") shall be calculated in accordance with the standard fee rates of the Supplier and costs, as set out in the Order and confirmed in the Confirmation of Order or if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. Charges shall be paid in the currency of invoice.
- 8.2 The Supplier shall invoice the Customer on commencement and/or completion of the Services or delivery of the Deliverables (as the case may be) or as otherwise agreed in writing with the Customer. Invoices shall be paid within 30 days to a bank account nominated in writing by the Supplier.
- 8.3 All amounts payable by the Customer are exclusive of value added tax and any other sales taxes which shall be payable by the Customer in addition if applicable.
- 8.4 The Customer shall pay interest on any overdue amount at the rate of 5% per annum above the base rate of Barclays Bank Plc 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 Customer shall pay the interest together with the overdue amount.
- 8.5 The Customer 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 Customer against any amount payable by the Supplier to the Customer.

## 9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services including, without limitation all Deliverables shall be owned by and the exclusive property of the Supplier and/or a Company in its Group. All Supplier Materials shall be the exclusive property of the Supplier.
- 9.2 The use by the Customer of any third party Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor.
- 9.3 The Customer shall indemnify and keep indemnified the Supplier at all times against all costs, claims, damages or expenses incurred by the Supplier, or for which the Supplier may become liable, with respect to any intellectual property infringement claim or other claim relating to the work carried out in the performance of the Specification as stated by the Customer.
- 9.4 All Customer Materials are the exclusive property of the Customer.
- 9.5 Deliverables are licensed to the Customer (without the right to assign and/or sublicense) by the Supplier **only for *in vitro* research use**. No other use is permitted without the prior written consent of the Supplier.
- 9.6 If the Customer exceeds the scope of the license granted under clause 9.5, such license shall immediately terminate and all Deliverables and derivative(s) thereof shall immediately be destroyed by the Customer.
- 9.7 Compliance with laws and/or regulations may require the Supplier to obtain written confirmation from the Customer that the Supplier's laboratory products are not being used for human diagnostic or therapeutic purposes and the Customer agrees to provide the Supplier with such written confirmation upon reasonable advanced written notice to Customer by the Supplier. It is the Customer's responsibility to ensure compliance with all laws and regulations concerning the use, storage and disposal of Deliverables.

## 10 CONFIDENTIALITY

- 10.1 A party (“**receiving party**”) shall keep in strict confidence all technical, scientific or commercial know-how, specifications, inventions, processes or initiatives including, without limitation; in the case of information of the Supplier relating to its aptamer libraries, construction, screening, protocols, equipment configurations, production of aptamers and related technologies]including those which may be in development or pre-development which are of a confidential nature and have been disclosed to the receiving party by the other party and/or one of the companies in its Group (“**disclosing party**”), their employees, agents or subcontractors, and any other confidential information concerning the disclosing party’s business, its products and services or those of its Group 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 clause as though they were a party to the Contract.
- 10.2 The receiving party shall not be liable for the disclosure or use of Confidential Information that, as such receiving party can demonstrate by competent physical evidence:
- 10.2.1 at the time of disclosure is known to the receiving party or has been published, patented or is otherwise publicly available; or
- 10.2.2 after disclosure, becomes publicly available other than through a breach of these terms & conditions; or
- 10.2.3 becomes known to the receiving party from a source that legally obtained such information without an obligation of confidentiality or nondisclosure; or
- 10.2.4 is disclosed pursuant to law, regulation or lawful order or process.
- 10.3 The Supplier and the Customer agree not to use the other’s name or trademarks or those of any other members of the other’s Group in any advertising, publicity or news release related to any project without the prior written consent of the other of them, which shall not be unreasonably withheld or delayed.
- 10.4 This clause 10 shall survive termination of the Contract.

## 11 LIMITATION OF LIABILITY

- 11.1 **Nothing in these** Conditions shall limit or exclude the liability of the Supplier for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2 the total liability of the Supplier to the Customer 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 amount of the payments received by the Supplier under that Contract (exclusive of VAT).
- 11.3 Save as otherwise provided in the Contract, the terms implied by statute or regulation of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

## 12 TERMINATION

- 12.1 The Supplier or the Customer may terminate a Contract by giving to the other of them 60 days’ written notice.
- 12.2 Without limiting its other rights or remedies, either the Supplier or the Customer may terminate a Contract with immediate effect by giving written notice to the other of them (“**other party**”) if:
- 12.2.1 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 7 days of receipt of notice in writing to do so;
- 12.2.2 the other party suspends, or threatens to suspend its business and/or 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 or as having no reasonable prospect of so doing, within the meaning of section 123 of the Insolvency Act 1986 or section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any

of the foregoing apply or negotiates with any creditors to reschedule debt or enters into a compromise or arrangement with creditors;

- 12.2.3 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 other than (where a company) 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;
  - 12.2.4 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;
  - 12.2.5 the other party (being an individual) is the subject of a bankruptcy petition order;
  - 12.2.6 a creditor or encumbrancer of the other party attaches or takes possession of the whole or any part of its assets;
  - 12.2.7 in respect of the other party, an application or notice of intention is made to court, or an order is made, for the appointment of an administrator or, administrative receiver or receiver; or such officer is otherwise appointed;
  - 12.2.8 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 clause 12.2.2 to clause 12.2.7 (inclusive);
  - 12.2.9 the other party (being an individual) dies or becomes a patient under any mental health legislation.
- 12.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services and delivery of the Deliverables under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 12.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer 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:

- 13.1 the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest and all other amounts owing (subject to receipt of an invoice) and return all of the Supplier Materials and any Deliverables which have not been fully paid for; and
- 13.2 clauses which expressly or by implication survive termination shall continue in full force and effect.

### 14 FORCE MAJEURE

- 14.1 For the purposes of this 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.
- 14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Deliverables for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 15 GENERAL

#### 15.1 Assignment and other dealings

- 15.1.1 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.
- 15.1.2 The Customer 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.

#### 15.2 Notices

- 15.2.1 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 clause, and

shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, or e-mail.

15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; 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 or e-mail, one Business Day after transmission.

15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 15.3 **Severance**

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.

### 15.4 **Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise 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 the 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.

### 15.5 **Third party rights**

15.5.1 Except as provided in clause 15.5.2, a person who is not a party to the Contract shall not have any rights to enforce its terms.

15.5.2 A member of the Supplier's Group shall be able to enforce the provisions of clauses 9 and 10.

15.5.3 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.

### 15.6 **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 in writing and signed by the Supplier.

### 15.7 **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.

### 15.8 **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 this Contract or its subject matter or formation (including non-contractual disputes or claims).

### 15.9 **Announcements**

The parties shall not at any time make any announcement relating to the subject matter of these terms and conditions without the prior written approval of the other party except to the extent that such information is already lawfully in the public domain or required by law or regulation.

### 15.10 **Entire Agreement**

Neither party has relied on any representation, warranty, collateral contract or other assurance except those set out in this Contract and waives any right to pursue any previously made. To the extent any previous representation, warranty, collateral contract or assurance was made to or with a party that party waives all rights and remedies in respect of it. However, nothing in this clause shall limit or exclude liability for fraud.

## APPENDIX

### Definitions and Interpretation

#### 1 DEFINITIONS

In these Conditions, the following definitions apply:

“**Charges**” means the charges payable by the Customer for the supply of the Services and freight costs for delivery of the Deliverables in accordance with clause 8;

“**Contract**” means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;

“**Customer**” means the person or firm who purchases the Services from the Supplier;

“**Customer Materials**” means the proteins or antigens or DNA or other materials for expression as antigens or otherwise delivered by the Customer to allow the Supplier to perform the Services;

“**Deliverables**” means the products or materials produced by the Supplier for the Customer as required and set out in the Order and agreed to be provided in a Confirmation of Order;

“**Force Majeure Event**” shall have the meaning given in clause 14.1;

“**Group**” means in relation to a company, that company and any company which is a holding company of that company or a subsidiary of that company or of such holding company (and the expressions “**Group Company**” and “**Group Companies**” shall be construed accordingly);

“**Intellectual Property Rights**” means 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;

“**Order**” means the order by the Customer placed in writing by mail or e-mail for the supply of Services, as set out in the purchase order form of the Customer and to include the delivery address, invoice address, a summary of Services to be provided and Deliverables required, all general and laboratory safety information about the Customer Materials including, without limitation proteins, antigens or DAN to be delivered by the Customer to permit the Services to be performed (if any) and Deliverables delivered, together with details of a duly authorised person from the Customer and a signature and relevance performance dates required;

“**Party**” means either the Customer or the Supplier who are party to the Contract;

“**Services**” means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification;

“**Specification**” means the description or specification for the Services and/or Deliverables set out in the Confirmation of Order in writing by the Supplier to the Customer. In certain circumstances, a project may require several different Specifications to cover different phases of a project. In this agreement, Specification should be read as referring to the Specification in relation to the current phase of work, where appropriate;

“**Supplier**” means Aptamer Solutions Limited (registered in England and Wales with company number 08027459); Aptamer Diagnostics Limited (registered in England and Wales with company number 06543213); Aptamer Therapeutics Limited (registered in England and Wales with company number 9058803); Aptasort Limited (registered in England and Wales with company number 9059325); Aptamer Group Limited (registered in England and Wales with company number 9061413) and

“**Supplier Materials**” has the meaning set out in clause 4.1.6.

#### 2 CONSTRUCTION

In these Conditions, the following rules apply:

2.1 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

2.2 A reference to a party includes its personal representatives, successors or permitted assigns;

2.3 “**Subsidiary**” and “**holding company**” shall have the meanings given in the Companies Act 2006.

2.4 A reference to “**writing**” or “**written**” includes e-mails.