

FIOS GENOMICS LIMITED - STANDARD CONDITIONS OF BUSINESS

1. Interpretation

1.1 In these Conditions of Business, except where the context otherwise requires, the following words and expressions shall have the following meanings:

'Company' means Fios Genomics Limited, a company registered in Scotland with company number SC341432 with registered office at Nine, Edinburgh Bioquarter, 9 Little France Road, Edinburgh Scotland EH16 4UX

'Contract' the agreement between the Customer and the Company consisting of the Proposal, the Customer's acceptance of the Proposal and these Conditions of Business;

'Customer' the person, firm or company who purchases Services from the Company, as specified in the Proposal;

'Customer Data' the experiment data of the Customer which is derived from microarray or other genomic platform(s) and provided to the Company pursuant to the Contract and in accordance with the prescribed form or requirements set out by the Company from time to time;

'DPA' means the Data Protection Act 1998, and related subordinate legislation, as may be amended, updated or re-enacted from time to time.

'Fees' means the fees due by the Customer to the Company for the Services as set out in the Proposal;

'Parties' means the Company and the Customer and **'Party'** shall be construed accordingly; and

'Proposal' means the document provided by the Company outlining the Services to be carried out by the Company for the Customer, together with the Fees.

'Report' means the output from the analysis of Customer Data to be provided by the Company to the Customer in relation to the Services as specified in the Proposal;

'Services' means the data analysis service of the Company whereby the Customer Data is analysed by the Company and a Report is produced by the Company and issued to the Customer in accordance with these Conditions of Business;

'VAT' means value added tax chargeable under the law of Scotland for the time being and any similar additional tax.

Any reference in these Conditions of Business to a statute or any provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

The headings in these Conditions of Business are for convenience only and shall not affect their interpretation.

In the event of any conflict between the terms of these Conditions of Business and the Proposal, then the Proposal shall prevail.

These conditions shall: (i) apply to and be incorporated into all Contracts for Services between the Company and the Customer

No binding contract for the performance of the Services will come into existence until the Company has received the Customer's verbal or written acceptance of the Proposal. The Customer reserves the right to amend or withdraw any Proposal if it has not been accepted by the Customer within 30 days of the date of the Proposal. The Company will only commence the Services on receipt of such acceptance.

2. Supply of Services

2.1 Subject to and conditional upon receipt by the Company of the Customer Data, the Company shall perform the Services in accordance with and subject to these conditions.

2.2 In the event that the Company does not receive the Customer Data in accordance with condition 2.1, then the Company is entitled without any penalty to the Company and at its absolute discretion to cancel the Contract and provide the Customer with a refund of any Fees already paid for Services that have not been performed. Alternatively, the Company may at its absolute discretion suspend, without any penalty to the Company, the provision of the Services until such failure has been remedied.

- 3.1 The Services shall be performed by or on behalf of the Company exercising reasonable care and skill. The Company shall use reasonable endeavours to deliver the Report to the Customer in accordance with any stated timescales. However, unless expressly specified to the contrary by the Company in writing, time shall not be of the essence in connection with any timescales.
- 3.2 Unless the Company and the Customer agree to the contrary in writing, the Company shall be under no obligation to provide services in relation to the Contract other than the Services, but if it does so, then in default of express agreement to the contrary, the Company shall be entitled to charge the Customer the cost of so doing in accordance with its then current charging arrangements.

4. Customer's Obligations and Data Protection

- 4.1 The Customer shall: (i) provide, in a timely manner to the Company, the Customer Data and other information as the Company may request, (ii) ensure that all such Customer Data and information is provided in accordance with any prescribed form and/or minimum requirements set out by the Company from time to time (which may include without limitation uploading the Customer Data onto a secure website of the Company); and (iii) obtain and maintain all necessary licences and consents and comply with all relevant legislation to ensure that the Company use the Customer Data for the performance of the Services, in all cases before the date on which the Services are to start.
- 4.2 If the Customer Data includes any personal data (as that term is defined in the DPA), then the parties acknowledge that the Company shall be deemed the data processor and the Customer the data controller and the Company shall, in providing the Services: (i) comply with its obligations under the DPA; (ii) process the personal data only to the extent, and in such a manner, as is necessary for the purposes of this Contract; (iii) process the personal data in accordance with the Customer's instructions from time to time; and (iv) ensure that appropriate security measures are used to protect against unauthorised use of, or access to, the personal data.
- 4.3 Customer acknowledges the Copyright terms of all third party software and analysis packages utilized by the Company for the conduct of the project. The customer acknowledges that non-exclusive and non-transferable end user rights are applied to all third party software and analysis packages which permits download, display, use and copy in whole or in part. These rights do not permit the selling, marketing or sub-licensing or transfer of the above terms and all warranties and liabilities in relation to third party packages remains with the Company.

5. Intellectual Property

- 5.1 For the avoidance of doubt, all intellectual property rights existing in the Customer Data shall remain the property of the Customer and/or the permitted licensor(s) of the Customer and all background intellectual property rights of the Company shall remain the property of the Company.
- 5.2 Unless specified to the contrary in the Contract or the Report, the copyright and all other intellectual property rights in the Report shall belong to the
- 5.3 Company, but subject to prompt payment of Fees and all other sums due to the Company under the Contract, the Company grants to the Customer the right to use the Report
- 5.4 for the Customer's own business and/or research purposes (whatever these may be), provided however in each case that the Reports are not
- 5.5 provided to any competitors of the Company or used for any illegal purposes.

6. Fees

- 6.1 In consideration of the Company performing the Services, the Customer shall pay the Fees by bank transfer within 21 days of the date of invoice or within such shorter period as may be specified under the relevant Contract. Time for payment shall be of the essence of the Contract.
- 6.2 All Fees are exclusive of VAT which shall be paid by the Customer in accordance with the terms of the applicable regulations.
- 6.3 If any Fees of the Company are not paid to Company on or before the due date, then Company shall be entitled to either suspend the Services or cancel the Contract (all as set out in condition 2.2).
- 6.4 If the scope of the Services is increased at the request of the Customer (for whatever reason) beyond what is agreed or anticipated at the outset then the Company reserves the right to charge the Customer an additional fee or fees (as the case may be) to cover any additional work (based on the Company's standard charge out rates).

7. Warranties, Disclaimers & Indemnity

- 7.1 Each Party warrants to the other that it is entitled to enter into and perform the Contract.
- 7.2 The Company will use its reasonable endeavours to ensure the accuracy of the Report, however, to the maximum extent permitted by law, the Company gives no warranty, express or implied, (i) as to the accuracy of the Report and/or Customer Data; (ii) that the use of the Report and/or the Customer Data is suitable for any particular purpose or will provide any desired objective; (iii) that the Report and/or Customer Data is free from defects or faults; and (iv) that use of the Report and/or the Customer Data will not result in infringement of third party rights. Reports are provided 'as is' without any express or implied warranty including but not limited to implied warranties as to merchantability or fitness for a particular purpose. To the maximum extent permitted by law, the Company accepts no liability whatsoever in respect of any claim(s) of whatsoever nature arising from the use of the Report and/or reliance upon the Report by the Customer and/or by any third party.
- 7.3 The express terms of the Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.
- 7.4 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 7.5 The Customer shall indemnify and keep indemnified at all times the Company from and against all claims, actions, losses, damages, demands, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs and expenses) which may be brought against or be incurred or suffered by the Company and which arise out of or in connection with product liability claims in respect of any of the Customer's (or any third party's) products or services which are based on the Report.

8. Liability

- 8.1 This condition 7 prevails over all other conditions and sets forth the entire liability of the Company to the Customer in respect of (i) breach of the Contract however arising; (ii) use made by the Customer of the Services, including the Report; and (iii) any representation, statement or delictual act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 Nothing in the Contract shall exclude or limit the Company's liability for death or personal injury or any liability which cannot be excluded or limited by law.
- 8.3 The Customer acknowledges the terms of clause 6.2 and assumes sole responsibility for its use of the Report, and any conclusions drawn from such use, save as provided in condition 7.2.
- 8.4 Save as provided in condition 7.2, the Company shall not be liable to the Customer for the following loss and damage (including costs and expenses relating to or arising out of such loss or damage) whether arising from statute, tort, delict (including negligence), contract, or otherwise and whether or not the Customer has been advised of the possibility of such loss and damage: (i) any consequential, indirect or special losses; (ii) loss of revenue, business, profits, interest or anticipated savings; (iii) increased costs of working; (vi) loss of opportunity; (v) loss of date; or (vi) loss of goodwill and reputation.
- 8.5 Save as provided in condition 7.2, the Company's maximum and aggregate liability for any loss or damage arising out of or in connection with the Contract, howsoever arising, shall not exceed two times the total aggregate of the Fees actually paid to the Company by the Customer in accordance with the Contract.

9. Force Majeure

- 9.1 The Company shall not be liable for any delay in performing or for failure to perform its obligations

hereunder if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control ("Force Majeure Event").

- 9.2 Notwithstanding condition 9.1, if the Company becomes aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the Customer with the period for which it is estimated that such failure or delay shall continue.
- 9.3 Notwithstanding condition 9.1, the Company shall use all reasonable endeavours to (i) continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure Event; and (ii) minimise the effects of such Force Majeure Event.
- 9.4 If any Force Majeure Event continues for a period of 30 days or more, the Customer may, forthwith by notice in writing to the Company, terminate the Contract with immediate effect.

10. General

- 10.1 *Entire Contract*: The Contract supersedes and cancels all previous agreements and working arrangements whether oral or written, express or implied between the Parties in respect of or in connection with the matters referred to in the Contract.
- 10.2 *No Waiver*: No delay or failure by the Company in exercising or enforcing any of its rights or remedies under the Contract will prejudice or restrict its rights, nor will any waiver of rights by the Company operate as a waiver of subsequent rights.
- 10.3 *Notices*: Notices to be given under the Contract must be in writing and sent to the address of the recipient set out in the Contract, or any other address which the recipient may tell the other in writing.
- 10.4 Any notice may be delivered by hand personally or sent by first class prepaid letter (within the United Kingdom) or airmail (if overseas) or by facsimile or by electronic mail and will be treated as served: if by hand, when delivered; if by first class post, 48 hours after posting; if by airmail, 6 business days after posting; if by facsimile, when despatched, provided the sender's fax machine produces automatic confirmation of error free transmission to the recipient's fax number and if by electronic mail, when it is first stored in the other Party's electronic mailbox, evidenced by the sender's electronic delivery receipt.
- 10.5 *Amendment*: The Contract may be amended only in writing signed by a director of the Company and a duly authorised representative of the Customer.
- 10.6 *Assignment*: The Contract is personal to the Customer and neither the Contract nor any rights, licences or obligations under the Contract may be assigned or novated by the Customer without the prior written consent of the Company. The Contract and its rights, licences and obligations under the Contract may be assigned or novated by the Company provided the Customer is given written notice by the Company of such assignment or novation.
- 10.7 *Confidentiality*: The terms of the Contract and any matters arising from or relating to it shall be kept confidential by the Parties at all times (except where such information (i) at the date of the Contract is demonstrably within the public domain, (ii) after the date of the Contract comes into the public domain, otherwise than by reason of a breach of this condition 10.6, or (iii) with the prior written consent of the other Party); declaring that the Company shall however be entitled to provide details of the Contract as the Company may determine to its sub-contractors as part of their engagement with the provision of the Services.
- 10.8 *Independent Contractor*: Each Party to the Contract is an independent contractor, and the Contract does not create a partnership, agency, joint venture or employment relationship between the Company and the Customer.
- 10.9 *Sub-contractors*: The Company shall be entitled to sub-contract its obligations and responsibilities under the Contract provided that the Company shall be responsible for the compliance by such sub-contractors with the obligations and responsibilities of the Company under the Contract.
- 10.10 *Applicable Law*: The Contract shall be governed by and interpreted in accordance with the laws



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of Scotland the Parties hereby submit to the exclusive jurisdiction of the Scottish Courts.