

Standard Terms and Conditions

Services provided by the Canadian Light Source Inc. and its personnel are governed by the following standard terms and conditions. These terms and conditions limit and exclude the liability of the Canadian Light Source Inc. in described circumstances.

1. Definitions.

In these standard terms and conditions ("Conditions") and in all documents forming part of an agreement with the Canadian Light Source Inc. for the provision of services, the following terms have the following meaning:

- a. "Client" means the person or company with whom CLSI enters into a Contract and is to and for whom the services are provided. It is acknowledged that no other person or company is entitled to look to CLSI for any benefit under this Contract.
- b. "CLSI" means the Canadian Light Source Inc.
- c. "Confidential Information" means any business, marketing, technical, scientific or other information which, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties exercising reasonable business judgment to be confidential.
- d. "Contract" means the agreement between the Client and CLSI for the provision of the Work and comprises CLSI's Service Contract, these Standard Terms and Conditions, and any Special Conditions, and the Statement of Work or other such documentation acknowledged and accepted by CLSI as describing the Work.
- e. "Technical Contact" means the technical personnel appointed by each party for purposes of technical interaction within this Contract. The Client acknowledges that CLSI's Technical Contact has no authority to amend the Contract or vary the application of its terms.
- f. "Equipment" means any equipment provided by the Client to CLSI in connection with the Work.
- g. "Contract Price" means the amount to be paid by the Client to CLSI for the Work as outlined in CLSI's Contract Form, and unless otherwise specified is exclusive of, and CLSI may make additional charge for:
 - i. Taxes, duties and other governmental fees including the Goods and Services Tax, and applicable sales taxes; and
 - ii. Any costs incurred in destroying or returning Samples or returning Equipment to the Client inclusive of transportation charges, insurance, and packing; and
 - iii. Incidental out-of-pocket expenses; and
 - iv. Additional fees incurred as a result of a change in the scope, timing or order of the Work beyond the control of CLSI; and
 - v. Where the Facility is other than the Canadian Light Source, reasonable costs incurred by personnel attending at other Facilities for the performance of the Work.
- h. "Facility" means the synchrotron facility at which the Work is to be performed, situated on the lands of the University of Saskatchewan in Saskatoon Saskatchewan, owned by the University of Saskatchewan, and operated by CLSI.
- i. "Samples" means all materials or substances provided to CLSI by the Client in connection with the Work.
- j. "Special Conditions" means the special conditions outlined in Schedule C to these Conditions. In the event of any conflict between the Special Conditions and these Standard Terms and Conditions, the Special Conditions supersede the Conditions to the extent of such conflict.
- k. "Work" means the work and other services which in the reasonable professional opinion of CLSI are to be conducted by it so as to perform the scope of activities outlined in a Statement of Work or any similar document describing the scope of work and services and accepted by CLSI.

2. Payment.

The Contract Price shall be paid within thirty (30) days of invoice. CLSI will not invoice more frequently than monthly but may defer invoicing until completion or near completion of the Work. Any delay in payment by Client shall accrue interest at an annual rate of twelve (12%) calculated from due date to the date of payment, and CLSI at its option may suspend its performance of the Work.

3. Performance and Warranties.

CLSI shall perform the Work applying reasonable skill and ability and will use all reasonable efforts to complete the Work within the time schedule specified by this Contract. The Client acknowledges and agrees however that:

- a. There is no representation that the results of the Work will be successful or be as desired or anticipated; and
- b. If the Facility is not available or becomes unavailable for timely completion of the Work or the Work is otherwise delayed, CLSI shall not be liable for such delay but will inform and keep the Client informed as to any anticipated delays; and
- c. Save as expressly provided herein, there are no warranties or representations of any nature or kind, implied or otherwise, whether relating to performance, marketability, merchantability, any fitness for purpose, or title.

4. Exclusion and Limitation of Liability.

Notwithstanding any provision of this Contract, under no circumstances, including without limitation any breach by CLSI of this Contract or of any duty or obligation found to be owed by CLSI, will CLSI, the University of Saskatchewan, or any of their officers, employees or agents be liable to the Client or any other person for:

- a. Any anticipated or indirect loss or damage including loss of profits, revenues or future business; or
- b. Any damage to reputation or goodwill or arising from delay or business interruption; or
- c. Any liability incurred or loss suffered by the Client to third parties; or
- d. Any damage, loss, cost or expenses of an indirect or consequential or economic nature, caused by, arising from, associated with or attributable to the activities or obligations of CLSI under this Contract or the use of information or data generated by the Work.

Subject only to the foregoing exclusion of liability, the liability of CLSI for breach of its obligations under this Contract or damages arising from the negligence of CLSI shall be limited to the reasonable direct costs of remedying any such breach or compensating for direct damage but in no event shall the liability of CLSI exceed the Contract Price.

Notwithstanding anything to the contrary this Section 4 shall be governed by laws of the Province of Saskatchewan and the laws of Canada.

5. Intellectual Property Rights.

Except as otherwise herein provided, all analytical results, including data, analysis of data, patents or patentable subject matter relating to the materials subject of the Work generated by CLSI shall be, subject to the payment of the amounts due CLSI hereunder, the property of the Client and as required shall be assigned to the Client. Any intellectual property, analytical techniques or methodology, process or information generated in the course of the Work that relates to the conduct of the Work or operation of the Facility thereof is the property of CLSI.

6. Samples and Equipment.

Client shall be responsible for transportation and delivery of Samples and Equipment to the Facility at its own risk, cost and expense and in compliance with all laws including as to packaging relating to such transport. Prior to receipt by CLSI the Client shall notify CLSI in writing of the nature of the Samples, (including the provision of any required MSDS sheet) and the extent to which the same constitute a hazard including as to flammability, explosively, toxicity, and whether of a caustic, carcinogenic, radioactive or pathogenic nature, and any particular laws that specifically relate to the Samples. Upon completion of the Work or upon termination of this Contract, CLSI in accordance with the instructions of the Client shall destroy or return all Samples and return all Equipment to the Client. Risk in transit shall pass to the Client upon dispatch by CLSI.

7. Confidentiality.

Each party in regard to the Confidential Information disclosed by the other party, and CLSI in respect of all results generated in the course of the Work and owned by the Client, agrees not to use and to protect such information in the same manner as it protects its own information of like kind (but in no event with less than reasonable care) other than use in connection with the performance of the Work.

These restrictions do not apply to information:

- a. In the public domain or that comes into the public domain through no fault of the receiving party or that can be documented as previously known to it;
- b. Independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- c. Acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information;
- d. Required to be disclosed by a governmental agency or law, so long as, where permitted by law, the recipient party provides the other party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure;
- e. Three years after the expiration of this Agreement.

In this Agreement, Confidential Information, in addition to all results generated in the course of the Work and information pertaining to intellectual property, analytical techniques or methodology, process or information generated in the course of the Work that relates to the conduct of the Work or operation of the Facility, means

information that a disclosing party has identified in writing as confidential. Where Confidential Information was provided orally, it must be identified as confidential at time of disclosure and reduced to writing and designated as confidential within thirty (30) days of initial disclosure.

8. **Client Representations and Agreements.**

The Client agrees and represents that:

- a. To the best of its knowledge, the Samples and their employment in the performance of the Work or at the Client's direction will not infringe or otherwise violate the rights including proprietary rights of third parties; and
- b. This Contract has been executed by duly authorized officers on behalf of the Client and the Client has not entered into any agreement or other commitment inconsistent with the terms of this Contract.

9. **Insurance.**

CLSI will maintain a general liability policy relating to the performance by it of the Work, however, while CLSI will use reasonable efforts to safeguard the Samples and the Equipment, CLSI shall not be responsible to the Client for damage to or loss of property delivered to CLSI by the Client and in its care, custody or its control notwithstanding that damage may occur through the acts or omissions including negligence of CLSI.

10. **Indemnity.**

In addition to its other obligations and agreements hereunder, Client agrees to indemnify, defend and hold harmless CLSI, the University of Saskatchewan, or any of their officers, employees or agents from any and all loss, claims, damage or liability including, without limitation:

- a. 1) personal injury, death and property damage resulting from or in connection with the performance of this Contract, except to the extent that the same is a direct result of the negligence of CLSI, and
- b. 2) the subsequent employment of the results of the Work by any person.

The Client acknowledges that the benefit of this provision extends to such other persons.

Notwithstanding anything to the contrary this Section 10 shall be governed by laws of the Province of Saskatchewan and the laws of Canada.

11. **Termination.**

The Client may at any time prior to completion of the Work, elect to cancel this Contract, and CLSI in the event of a default or breach of this Contract may elect to cancel this Contract, in which event and in either circumstance:

- a. The Client shall pay CLSI for Work performed to date of cancellation as reasonably determined by CLSI; and
- b. The Client shall reimburse CLSI in respect of any commitments, or liabilities reasonably and properly incurred by CLSI as of the date of cancellation and those reasonably incurred by CLSI relating to winding up the Work

Provided that the aggregate of the foregoing shall not exceed the aggregate of the amounts otherwise payable to CLSI hereunder.

12. **General.**

- a. **Compliance with Laws.** Both parties shall comply in respect of their respective activities hereunder with all laws, by-laws, regulations, directions and orders of each governmental authority having jurisdiction (without limitation including any directives, or policies of the Facility), and shall not commit, suffer or permit any act or omission which shall breach any thereof.
- b. **Compliance with CLSI Policies and Procedures.** The Work performed under this Agreement shall be subject to and implemented in accordance with CLSI access regulations and procedures, including without limitation, those regulations and requirements relating to Health, Safety and Environment, security, access to information, hours of work and conduct. In the event that the Client fails to comply with CLSI policies and procedures, CLSI may without prejudice to any other legal or contractual rights, issue an order stopping all or any part of the Work and retract permission to participate in the Work or otherwise remain at CLSI.
- c. **Force Majeure.** Neither party shall be liable or determined to be in default for any delay or failure of performance resulting directly or indirectly from any act of God, strikes, lockouts and other industrial disturbance, acts of the Queen's enemies, sabotage, lightning, earthquakes, floods, storms, inclement weather, fires, nuclear and radiation activity or fall out, civil disturbances, explosions, breakage of or accident to machinery, delays in transportation, interruptions at the Facility or access thereto, the negligence or breach of contract of any person, firm or corporation other than the party seeking the benefit of this Section, any legislative, administrative or judicial action, unavoidable accidents and any act, omission or event (whether similar or dissimilar to those enumerated above) not within the reasonable control of such party. A party the performance of whose obligations are affected by force majeure shall notify the other party within a reasonable time after becoming aware of any event or circumstance which it reasonably anticipates may give rise to the application of this provision.
- d. **Entire Contract.** This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, communications, and understandings. This Contract may not be amended or otherwise modified nor may its application be waived or affected other than by amendment in writing executed with the same degree of formality by persons with appropriate authority as this Contract. The parties acknowledge that CLSI Technical Contact do not have such authority. For greater clarity, the terms and conditions of this Contract govern the relationship of the parties and supersede any conflicting terms and conditions of any purchase order or similar communication sent in connection with the Work. Notwithstanding the fact that the same is in writing any such purchase order or communication does not amend the terms and conditions of this Contract.
- e. **Applicable Law.** This Contract shall be governed by and interpreted in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable thereto, and the parties hereby agree to attorn to the jurisdiction of the Courts of Saskatchewan.
- f. **Assignment.** The rights and obligations hereunder except to the extent expressed as for the benefit of persons other than or in addition to the parties may not be assigned or transferred by either party without the prior written consent of the other party. The Client may request reporting be provided to other persons and CLSI may in its discretion do so, however such reporting or the fact that the results of the Work are provided to or for the benefit of other persons shall not give rise to benefits under this Contract in favor of such persons or give rise to any liability to such persons from CLSI.
- g. **Severability.** If any one or more of the provisions contained in this Contract shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and a court of competent jurisdiction is authorized to reduce the scope of any provision that would otherwise be unenforceable so as to render that provision enforceable.
- h. The parties hereto acknowledge that the Services for which this Agreement is being entered will be performed at the Facility except to the extent that CLSI determines that a portion of the Work would be more appropriately conducted under CLSI direction at another facility.
- i. **Counterparts and Electronic Transmission.** This Agreement may be executed in any one or more counterparts and, taken together, the counterparts shall constitute an original document, validly executed. Signatures to this Agreement transmitted by facsimile, by email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as physical delivery of the paper document bearing original signature