



# **HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION**

## **The Service Terms and Conditions of Biobank**

## Definitions

Applicable Laws	All laws (including laws relating to anti-bribery and anti-corruption), statutes, regulations, decisions, rulings, sanctions, governmental and regulatory policies and/or mandatory codes of practice which may from time to time be in force anywhere in the world and relevant to any rights and/or obligations under and/or the performance of the Services.
Biobank	The biobank that is funded and owned by HKSTP.
Client	A company or entity desirous of receiving the Services and which has been approved by HKSTP in writing and registered on the Biobank Client list.
Client Consumables	Any reagents and other consumables supplied or to be supplied by the Client to Biobank for storage and/or processing of the Samples or use otherwise in connection with the provision of the Services, as set out in Appendix III.
Client Default	Any act or omission by the Client (or its Users) which materially prevents HKSTP from performing the Services and/or the Deliverables (in whole or in part) or failure by the Client (or its Users) to perform any relevant obligation, including any failure to provide Input Materials and/or Samples in connection with the provision of the Services.
Client Materials	Any Materials provided by the Client to -Biobank in connection with the Services, including any Samples and associated data, but excluding any - Input Materials and any Client Consumables.
Client Responsibilities	The documents, materials, assistance, data and other information that the Client is required to provide in connection with the Services, as described in Part B of Appendix I and clause 3.
Confidential Information	All information of a confidential nature or which would be deemed confidential by a reasonable business person (however recorded and whether marked as confidential or not) belonging to a party which is disclosed to or received by the other party, whether before or after the Quotation Date, directly or indirectly, in connection with the subject matter of these Terms and Conditions, including the terms of these Terms and Conditions, confidential information and know-how relating to the Services, Samples, Deliverables and/or Products and any financial, technical, operational, commercial, employee, management and other information and/or data of whatever kind (including all information relating to trade secrets, operations, processes, plans,

	intentions, .developments, product information, know-how, designs, transactions, affairs and/or business) of the disclosing party and/or its customers, clients, suppliers and/or the parties' associates.
Customer Services	A customer services representative of HKSTP.
Data Protection	Biobank may process the Personal Data of customers and sample donors according to the Personal Data (Privacy) Ordinance in general and the data protection principles and rights of data subjects in particular.
Deliverables	The Materials which are to be created, developed and/or acquired by or on behalf of Biobank specifically for the Client in the course of providing the Services.
Equipment	Hardware, equipment including software, other tangible items, machinery and parts (or any of them) that are supplied by Biobank.
HKSP	Hong Kong Science Park, located at Shatin, New Territories, Hong Kong.
HKSTP	Hong Kong Science and Technology Parks Corporation.
Input Materials	Any documents, materials, assistance, data and/or other information required to be provided by the Client to BPL for the proper provision of the Services in accordance with these Terms and Conditions.
IP Rights	Means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;
Items	Any items utilized by HKSTP to provide the Services (including without limitation any computers, servers, equipment, tools, software, and/or facilities).
Losses	All costs, liabilities, damages, fines, losses, and/or penalties (including all interest and reasonable legal and other professional fees, costs and expenses) of whatsoever nature or kind and whether or not the same arise during or after the Term.

Materials	Documents, products, information and/or other materials in any form (including computer programs, designs, reports, specifications (including drafts), process maps, processing protocols, testing methods, test results and data).
Personal Data	Means: (a) any personal data (as defined in the Cap. 486 Personal Data (Privacy) Ordinance); (b) any health data (as defined in the Cap. 625 Electronic Health Record Sharing System Ordinance); and (c) any other data which relates to an individual who can be identified from that data.
Premises	Any premises belonging to either HKSP or HKSTP from which the Services (as defined in clause 1) are provided (including without limitation the Biobank).
Products	Any consumables, devices or other goods supplied or to be supplied by Biobank for purchase by the Client, together with any other products which Biobank provides or agrees to provide to the Client from time to time as listed in Appendix II.
Quotation	Any written quotation for Services provided by HKSTP to the Client (including for the procurement of Products).
Samples	Biological or other samples that are provided by or on behalf of the Client for the purpose of providing the Service.
Services	The services to be provided by BPL to the Client under a Quotation that shall comply with the provisions set out in Appendix I for the procurement of Products, the fulfilment of the Deliverables and any other services which BPL provides or agrees to provide to the Client from time to time.
User	An authorized employee of a Client whose service request is confirmed and authorized by HKSTP to use Services under this Terms and Conditions Agreement.

## Terms and Conditions

### 1. Services

- 1.1. Subject to other terms and conditions contained herein, HKSTP agrees to use its reasonable efforts to provide the Services to the Client.
- 1.2. Only Clients are eligible to use any of the Services.
- 1.3. The Client acknowledges that the Premises and all of the Items are, and shall at all times remain, the property of HKSTP and that the Client has no proprietary or other interest in any of the same. The Client shall have no right to license, sub-license or distribute any of the Items.
- 1.4. Where the Services include the storage of Samples by Biobank, Biobank shall store the Samples at the Premises. The Client acknowledges and agrees that Biobank may: (a) remove Samples from the Premises for transportation to third parties for the purpose of assay or as otherwise required for the provision of the Services; and (b) remove Samples from the Premises for backup in case of emergency.
- 1.5. The performance of any part of the Services which relates to the storage, handling or analysis of Samples shall be conditional upon the Samples, upon their arrival at the Premises, being fit for purpose in accordance with the requirements of paragraph 1 of Part B of Appendix I and any other requirements identified in Part B of Appendix I as being relevant to the Samples.
- 1.6. For any Equipment that is on loan to the Client, the Client and HKSTP shall enter into a separate Equipment Loan Agreement in the form shown in Appendix IV.

### 2. Service Requests

- 2.1. A Client shall only be entitled to enjoy the Services if the Client has submitted a Services request in advance by contacting Customer Services via the following URL: <http://www.hkstp.org>
- 2.2. HKSTP shall have the right and final discretion to confirm or decline any Services request. If HKSTP accepts a Services request, the request itself and the Services provided thereunder shall be governed by these Terms and Conditions. A Client and its Users: t: (i) acknowledge that they fully understand these Terms and Conditions; (ii) that once HKSTP has confirmed acceptance of their Services request they each agree to be fully and unconditionally bound by these Terms and Conditions; and (iii) renounce the use of their own purchase terms and conditions (if any). FOR AVOIDANCE OF DOUBT, THESE TERMS AND CONDITIONS, TOGETHER WITH ANY QUOTATION PREPARED AND ACCEPTED BY HKSTP, SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS THAT APPEAR IN A CLIENT'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN A CLIENT'S ORDER.

- 2.3. Any confirmed request of any Services is not transferable. Neither the Client nor its User(s) may at any time transfer (i) the Client's right to receive or use the Services under its confirmed request nor (ii) any confirmed request, to any other person or entity.

### **3. Client Responsibilities**

- 3.1. The Client shall, at its own expense and in accordance with any timescales necessary to enable Biobank to carry out its obligations under the Quotation and these Terms and Conditions, co-operate with Biobank, comply with and fulfill its Client Responsibilities without delay and to provide the relevant Input Materials to HKSTP in a timely manner. The Client hereby represents, warrants and undertakes to HKSTP that all Input Materials provided to HKSTP shall be complete, accurate and true in all material respects.
- 3.2. Biobank shall work collaboratively with the Client to provide good faith recommendations and suggestions in connection with the performance of the Services, provided always that the Client shall be solely responsible for any decision to act upon the same and the consequences of doing so.
- 3.3. In the event of a Client Default:
  - (a) Biobank shall, without limiting its other rights or remedies, have the right to cease its performance of any of its obligations to the extent the Client Default prevents or delays Biobank's performance of any of its obligations;
  - (b) the parties shall co-operate in good faith with a view to remedying the Client Default as soon as practicably possible (at the Client's cost);
  - (c) Biobank shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Biobank's failure or delay to perform any of its obligations due to any Client Default; and
  - (d) Biobank shall be entitled to invoice the Client for any costs or losses sustained or incurred by Biobank arising directly or indirectly from the Client Default, including any costs and expenses of retrieving and disposing of Samples and the Client shall pay such invoices immediately upon receipt.
- 3.4. The Client shall provide the Client Consumables (if any) to Biobank in accordance with the requirements set out in these Terms and Conditions.

If the Client is an existing tenant of HKSTP and the Client's lease agreement with HKSTP is coming to an end, any Samples that are stored by such Client at the Biobank must be removed by the Client, at its own cost (including but not limited to any shipping and refrigeration costs), by no later than TEN (10) working days prior to the expiry date of the lease agreement.

### **4. Premises Regulations**

The Client shall, and shall procure that its Users shall, when at or nearby the Premises, comply with all applicable HKSTP Premises regulations that are enforced by HKSTP from time to time.

## **5. Cancellation of the Services**

- 5.1. Any Services request application submitted by the Client to HKSTP is not cancellable or revocable by the Client without the Client having given HKSTP advance written notice and HKSTP having given its written consent to the Client. Any deposit paid by the Client for any cancelled Services is nonrefundable and HKSTP shall have the right to retain any deposit paid by the Client. HKSTP may, in its sole and absolute discretion, allow a Client to apply any deposit that the Client has paid for cancelled Services to be applied towards subsequent Services requests made by the Client. If the deposit is insufficient to cover any sums that have already been incurred by HKSTP in relation to providing such cancelled Services then the Client shall promptly pay the balance to HKSTP.
- 5.2. The minimum advance notice required by HKSTP from the Client for service requests is three (3) working day. If the Client cancels any of its confirmed service requests without serving the required (3) working days advance notice to HKSTP, the Client shall pay HKSTP the full charges for the reserved services or any lesser amount specified by HKSTP and HKSTP shall reserve all rights against the Client.

## **6. Termination and Cessation of the Services**

- 6.1. HKSTP may terminate the Client's right to use any or all of the Services without any reason by giving the Client not less than 24 hours prior written notice.
- 6.2. Upon expiry or termination of the Services howsoever arising, the Client shall forthwith remove all of its (or its Users') data, property and possessions at the Premises, failing which, HKSTP shall be entitled to dispose of such data, property and possessions in such manner as HKSTP deems fit, without any liability whatsoever to the Client or its Users, and to recover the expenses of such disposal from the Client.
- 6.3. If the Client does fails to comply with Clause 6.2 then, without prejudice to any other rights and remedies of HKSTP hereunder or otherwise, HKSTP reserves the right to charge, and the Client shall pay on demand, a service or license fee at such rate as HKSTP shall determine, until such time as the Client has fully fulfilled its obligations under Clause 6.2.
- 6.4. If HKSTP decides to cease the operation of Biobank for any reason whatsoever, , HKSTP shall give all Clients not less than one (1) month's prior written notice and will arrange with each Client for all Client Materials held by the Biobank to be returned to the Client before the expiry of the said one (1) month notice period. If, however, Biobank is unable to return any Client Materials to the relevant Client within the said one (1) month notice period due to any reason that is wholly or primarily attributable to the Client, HKSTP shall the right to

dispose of such Client Materials (including any Samples) in whatever manner HKSTP sees fit and charge the relevant Client for all costs and expenses that HKSTP may incur as a result thereof.

## **7. Consequences of cancellation or termination**

7.1. On termination or cancellation of Services for any reason:

(a) the Client shall immediately pay to Biobank all of Biobank's outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, Biobank shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) at the Client's sole risk and cost, the Client shall collect from the Premises or, if agreed in writing, Biobank shall deliver to an agreed location, all of its Samples and/or Client Consumables within 30 days after termination / cancellation, or by such other date agreed with Biobank;

(c) if the Client fails to collect all its Samples and Client Consumables from the Premises in accordance with clause 7.1(b), Biobank may retrieve and dispose of the Samples and Client Consumables as it sees fit, and until such collection or disposal, the Samples and Client Consumables shall be stored by Biobank at its Premises at the Client's risk and cost;

(d) Biobank may charge the Client for the costs and expenses of:

(i) storing the Samples and/or the Client Consumables from the date of termination of the Services until collection (or delivery) of the same in accordance with clauses 7.1(b) (as applicable); and/or

(ii) retrieving and disposing of the Samples and/or Client Consumables in accordance with clauses 7.1(c) (as applicable).

7.2. The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Services shall not be affected, including the right to claim damages in respect of any breach of these Terms and Conditions which existed at or before the date of termination or cancellation.

## **8. Fees**

8.1. In consideration of the provision of the Services (including the procurement of Products), the Client shall pay to HKSTP the fees as detailed on the Quotations (as may be issued from time to time) in accordance with any prescribed timeframes detailed therein.

8.2. Unless otherwise specified, only a Client on the credit list of HKSTP shall be given thirty (30) days credit and HKSTP shall at all times have the full and final discretion to determine which Clients are on the credit list. HKSTP shall invoice the Client for each requested Service (and any other service relating to the requested Services) and for ordered Products accordingly. The Client shall settle the full invoice amount to HKSTP within thirty (30) days from the date of such invoice.



- 8.3. HKSTP has the final discretion as to the credit terms / payment methods offered to each Client. For any service not included in Appendix I, the billing / payment method shall be based on a separate written agreement between the Client and HKSTP and as may be detailed in any Quotation. Without prejudice to the foregoing, HKSTP shall have the right, in its discretion, to require upfront payment for any Products in full if the Client has on a previous occasion failed to make payment or has made a late payment, or if HKSTP otherwise has a reasonable basis to believe that the Client represents a credit risk.
- 8.4. All payments made by the Client to HKSTP shall be in accordance with the currency stated in the invoice without any deduction or set-off.
- 8.5. If the Client fails to pay any service fees or charges by the relevant due date, all sums due will accrue interest at the highest rate of interest permitted by law or 2 % per month, whichever is the lower. Such extended payment interest shall accrue on a daily basis from the date following the day on which payment is due to be made and is inclusive of the day that such payment is received by HKSTP.
- 8.6. Without prejudice to clause 8.5 above, if the Client fails to pay any service fees or charges by their due date, HKSTP may (without incurring any liability) suspend or terminate all or any parts of the Services to the Client immediately on notice.
- 8.7. The Client shall be responsible for paying any taxes on the fees that may be payable from time to time and, in respect of all Products procured pursuant to these Terms and Conditions, shall be responsible for all applicable duties, imposts, levies, freight charges, insurance and delivery costs applicable to such procurement. The Client has the sole responsibility in respect of the procurement of insurance on all Products, including but not limited to test samples, relating to the delivery thereof to the Client or any third party designated by the Client. In any event, HKSTP shall not have any liability whatsoever relating to any loss or damage to all Products, test samples or any part(s) thereof due to or arising from the delivery thereof.

## **9. Force Majeure**

- 9.1. If HKSTP's performance of this Agreement is prevented, restricted or interfered with by reason of system or network breakdown, fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, the outbreak of an epidemic, cyclone, flood, earthquake, war, civil commotion, acts of God, blockade or embargo or any other acts whatsoever beyond the control of HKSTP, then HKSTP shall be excused from such performance to the extent of such prevention, restriction or interference.

## **10. Limitation of Liability**

- 10.1. The Services, Premises and Items are provided on an "as is" basis. To the maximum extent permitted by law, HKSTP disclaims and excludes all conditions, warranties and

representations whether express or implied as to: (a) title, fitness for a particular purpose, merchantability, availability, accuracy or standard of quality of the Services, Premises Equipment and Items (or any part thereof), software, tools, equipment or facilities; (b) the results or data that may be obtained from the use of the Services and/or Items; or (c) that the Services and the use of the Items will be uninterrupted, error free, virus free, reliable, secure or compatible with the Client's or its Users' software, tools or equipment.

- 10.2. To the maximum extent permitted by law, HKSTP disclaims all liabilities for any Equipment, Product and/or Item defect or failure, claims that are due to normal wear, product misuse, abuse, product modification, improper product selection, non-compliance with any codes, or misappropriation.
- 10.3. To the maximum extent permitted by law, HKSTP disclaims any and all responsibility, risk, liability and damages arising out of death or personal injury resulting from assembly or operation of any Equipment, Products and/or Items.
- 10.4. To the maximum extent permitted by law, in no event will HKSTP, its employees or agents, or its suppliers, licensors, licensees, vendors, or contractors be liable to a Client or any other party for any consequential, special or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity or loss of anticipated savings resulting from (i) errors, mistakes, or inaccuracies of content, (ii) such persons access to, or use of, or inability to use the Services, Premises or Items, (iii) any unauthorized access to or use of the secure servers and/or any and all personal information and/or financial information stored therein, (iv) any interruption or cessation of transmission to or from the Services, or (v) any viruses, bugs, worms, Trojan horses, malware, or the like, which may be transmitted to or through the Services by any third party, whether based on contract, tort, negligence or any other legal theory, and whether or not HKSTP knows of the possibility of such damage or loss.
- 10.5. Any claim by the Client against HKSTP arising in connection with these Terms and Conditions herein shall be notified in writing to HKSTP within two (2) weeks of the incident giving rise to such claim failing which the Client or User shall be deemed to have waived the Client's or User's rights in respect of such claim.
- 10.6. Subject to clause 10.5, the total liability of HKSTP and its employees and agents to a Client (and its Users) in respect of the Services shall not exceed the total service fees and charges paid by the Client to HKSTP for the Services for the immediately preceding two (2) months prior to any incident (or, in case of a series of incidents arising from a common cause, immediately preceding the first of such incidents) giving rise to a claim (if any).

## **11. Warranties and Indemnities**

- 11.1. The Client warrants, on an ongoing bases, that it will be solely responsible for the conclusions and results of its research projects that are wholly or partially generated and/or derived from the Services.

- 11.2. The Client warrants, undertakes and represents that:
- (a) it shall have obtained, in advance of any transfer, such consents as are necessary for the transfer to Biobank of all Samples and data provided by the Client to Biobank for the purposes of the Services (whether pursuant to the Electronic Health Record Sharing System Ordinance and the Personal Data (Privacy) Ordinance and any related guidelines;
  - (b) at all times whilst such Samples and data are in the possession, custody or control of Biobank pursuant to this Agreement, such consents referred to in clause 11.2(a) continue to be valid for the purposes of enabling Biobank to lawfully carry out its obligations under the Services and these Terms and Conditions in respect of such Samples and data.
  - (c) at all times whilst any Client Consumables is in the possession, custody or control of Biobank or otherwise at the Premises, all third party permissions and consents necessary to entitle Biobank to lawfully carry out its obligations under the Services and these Terms and Conditions (including consents from the legal or beneficial owners of such Client Consumables) have been obtained and continue to be valid;
  - (d) all Client Materials (including all Samples and data) are compliant and shall continue to be compliant with all Applicable Laws and ethical standards throughout the time that such Client Materials are under the custody of Biobank; and
  - (e) the possession and/or use of any Client Consumables by Biobank for the purpose of fulfilling its obligations under the Services and these Terms and Conditions in accordance with the Client's reasonable instructions and directions shall not breach any Applicable Laws (including any health and safety or environmental legislation) or otherwise invalidate the third party permissions and consents referred to in clause 11.2(c).
- 11.3. The Client shall fully indemnify and hold HKSTP, its employees or agents, or its suppliers, licensors, licensees, vendors or contractors harmless against all actions, liabilities, costs, claims, losses, damage, proceedings, expenses (including without limitation, legal costs on an indemnity basis) suffered or incurred by HKSTP arising directly or indirectly in connection with (a) any breach or non-observance of any of these Terms and Conditions (including any breach of any of the warranties under this Clause 11), or (b) any negligent act or omission, or (c) any infringement of third parties' intellectual property rights (including, without limitation, intellectual property rights in respect of any Client Consumables and/or Client Materials) or (d) any personal injury or death or property damage caused by the content provided, or (e) any violation of Applicable Laws or regulations, by the Client.
- 11.4. The Client acknowledges that any and all information the Client provided to HKSTP will be collected and may be used for the purposes of meeting any legal, governmental or regulatory requirements in Hong Kong or any other applicable jurisdiction, including disclosure or notification requirements. The Client shall indemnify and hold HKSTP, its employees or agents, or its suppliers, licensors, licensees, vendors or contractors harmless from and against any and all liabilities, damages, costs and expenses, including the legal

fees incurred by HKSTP, its employees or agents, or its suppliers, licensors, licensees, vendors or contractors in responding to such legal, governmental or regulatory requirements.

## **12. Change of Terms and Conditions**

- 12.1. HKSTP reserves the right at any time to amend or supplement to any of (a) these Terms and Conditions; or (b) the published fees of the Services; or (c) its policies and procedures. Client should refer to the Terms and Conditions posted on HKSTP's website (URL address: <http://www.hkstp.org> for the latest and most up-to-date version.)

## **13. IP Rights and Confidential Information**

- 13.1. Unless otherwise agreed in writing, the ownership of all IP Rights in any Items, hardware, components, test methodology, program codes, user interface and other items developed by or for HKSTP belong to HKSTP, or belong to its vendors, suppliers or licensors, as the case may be. The Client hereby irrevocably and unconditionally waives, and the Client shall likewise procure each of its Users to likewise irrevocably and unconditionally waive, any right or claim that it may have (now or in the future) to any of the aforementioned IP Rights.
- 13.2. The Client shall not, and shall ensure that its Users shall not, disclose to any third party any confidential information of HKSTP or its other Clients or Users which is disclosed or otherwise made available, directly or indirectly, to them in connection with the Services or these Terms and Conditions, except where the disclosure is required by law or any governmental authority. For the purposes of this provision, confidential information means all technical information, business information, knowhow and other commercially valuable information (whether in unrecorded or recorded form, and whether consisting of, or comprised in, documents, software, equipment or other materials) relating to the Services, the Premises, the Items and/or HKSTP.

## **14. Biobank Bearing Credit**

- 14.1. The Client acknowledges and accepts that if the work done at Biobank produces data that results in the publication of such data in the industry, Client undertakes to HKSTP that it shall give due credit to Biobank's role and contribution in generating the published data. Client further undertakes to HKSTP that if Biobank staff members provided significant experimental design, data interpretation and/or other intellectual contribution (as evaluated by the Client), Client shall ensure that such individuals will be given due recognition as co-authors of the relevant publication.

## **15. Tax Provisions**

- 15.1. Unless otherwise stated in the specific Quotation, all fees are in Hong Kong dollars and all fees shall be exclusive of any applicable duties, value added tax, goods and services tax, business tax and similar taxes and levies.
- 15.2. The Client shall comply with all relevant tax laws and regulations in respect of the performance of its obligations under the Quotation and the agreement relating thereto. All taxes arising from or as a result of the Quotation and/or such agreement (save and except the business and/or profit tax chargeable by Hong Kong SAR Government upon HKSTP, if any) shall be borne by the Client.
- 15.3. If the Client is required by the laws of the People's Republic of China to withhold business tax or similar taxes or corporate profits tax, the Client shall inform HKSTP in advance and negotiate with HKSTP in good faith the fees after withholding tax. The Client shall bear all taxes other than or above the percentage of withholding tax included in the fees and produce to HKSTP the relevant official tax receipt no later than two (2) months after the relevant due remittance date. The Client shall apply for tax exemption, where available; and the Client shall produce to HKSTP official adjusted or exempted tax certificate accordingly. The Client shall hold HKSTP harmless from and against such taxes.

## **16. Miscellaneous**

- 16.1. These Terms and Conditions are personal to the Client. The Client shall not assign, transfer, novate sublicense or otherwise dispose of any of Services or the Items or any part thereof or its rights and obligations under these Terms and Conditions whether wholly or partially except with the prior written consent of HKSTP. HKSTP shall be permitted to assign, transfer, novate, sublicense or otherwise dispose of its rights and obligations, under these Terms and Conditions, or any part thereof to any third party on notice to the Client.
- 16.2. Nothing in these Terms and Conditions shall be deemed to constitute or create a partnership, landlord and tenant relationship, principal-agent relationship or employer-employee relationship between HKSTP and the Client or its Users.
- 16.3. No failure or delay by HKSTP to exercise any right, power or remedy under these Terms and Conditions shall operate as a waiver thereof nor shall any single or partial exercise by HKSTP of any right, power or remedy.
- 16.4. If any part of these Terms and Conditions is held invalid, unenforceable or illegal for any reason, these Terms and Conditions shall remain in full force apart from such part which shall be deemed invalid, unenforceable or illegal.
- 16.5. Clause headings are for ease of reference only and shall not affect their interpretation.
- 16.6. These Terms and Conditions shall be governed by and construed in accordance with the laws of Hong Kong SAR.
- 16.7. Any dispute, controversy or claim arising out of or relating to these Terms and Conditions

or the Services, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force and as may be amended by the rest of this clause. The appointing authority shall be Hong Kong International Arbitration Centre ("**HKIAC**"). The place of arbitration shall be in Hong Kong at HKIAC. There shall be a panel of three arbitrators. The language of the arbitration shall be English.

- 16.8. These Terms and Conditions, together with any Quotation, shall constitute the entire understanding between HKSTP and the Client and its Users in respect of the Services, supersedes all prior representations, writings, negotiations or understandings with respect hereto and, except in respect of any fraudulent misrepresentation made by a party, the parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied other than as set out in these Terms and Conditions and the Quotation.
- 16.9. Severability. If a court finds any Terms and Conditions together with any Quotation to be invalid or unenforceable, such term of provision shall be ineffective only to the extent of such finding and such court's jurisdiction or affecting the validity or enforceability of any of the Terms and Conditions herein or of any Quotation in any other jurisdiction.

## Appendix I

### Services

#### Part A: Services

The Client acknowledges that the Services described in the Quotation are the full extent of the Services to be provided by Biobank pursuant to these Terms and Conditions.

1. None of the benefits to either Biobank or Clients as a result of the Services is subject to any requirement that either party procures, influences and/or makes any referrals to, or otherwise generate business for, the other party.
2. No Medical Advice
  - a. The Services are intended for research and development purposes only and is not intended to be a substitute for a healthcare professional medical advice, diagnosis, or treatment. Biobank does not directly or indirectly practice medicine, render medical advice, or dispense medical services via our services. Nothing contained in the Services should be intended to be a medical diagnosis or treatment directive or recommendation.
  - b. Biobank does not recommend or endorse any specific physician, product, procedure, opinion, service, or other information that may be mentioned or linked to through the Services. Reliance on any information provided by Biobank, employees of Biobank, or other users of the Services is solely at Client's own risk.

#### Part B: Client Deliverables

1. Safety:
  - a. The Client Deliverables must NOT contain:
    - i. WHO Risk Group 3 and 4 microorganisms cultured in the laboratory
    - ii. Creutzfeldt-Jakob disease (CJD) and variant CJD (vCJD), which linked to bovine spongiform encephalopathy, (BSE).
    - iii. High titre stocks of Risk Group 2 microorganisms of known significant risk.
    - iv. Clinical or environmental samples that have been confirmed to carry the above captioned microorganisms.

Definitions of WHO Risk Group:

**Risk Group 1** (no or low individual and community risk) - A microorganism that is unlikely to cause human or animal disease.

**Risk Group 2** (moderate individual risk, low community risk) - A pathogen that can cause human or animal disease but is unlikely to be a serious hazard to laboratory workers, the community, livestock or the environment. Laboratory exposures may cause serious infection, but effective treatment and preventive measures are available and the risk of spread of infection is limited.

**Risk Group 3** (high individual risk, low community risk) - A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another. Effective treatment and preventive measures are available.

**Risk Group 4** (high individual and community risk) – A pathogen that usually cause serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly. Effective treatment and preventive measures are not usually available.

**For updated information of pathogen in different risk groups, please visit the risk group database at [www.my.absa.org/riskgroups](http://www.my.absa.org/riskgroups)**

- b. Samples MUST be kept in closed tubes to prevent contamination for freezer storage.
  - c. Samples MUST be kept in closed cryogenic vials to prevent explosion hazard for liquid nitrogen tank storage.
2. To protect sample donor’s privacy, personal identifier shall be coded. “Coded” means that such information has been stripped of any direct or indirect identifiers, which are replaced by a numerical code.

### **Part C: Client Responsibilities**

1. Where the Services include the storage, handling and/or analysis of Samples, the Client shall:
  - a. ensure that the Samples are securely and properly packed, clearly labelled and identifiable, in such condition so as not to cause damage or injury (whether by leakage or otherwise), and in such condition as is required to enable Biobank to perform the Services and otherwise carry out its obligations under these Terms and Conditions;
  - b. ensure that the data provided to Biobank in relation to the Samples and the participants who provided the Samples is complete and accurate;
  - c. collect the Samples and accompanying data in accordance with all applicable laws (including those applicable in the Client's local jurisdiction and the jurisdictions in which the Samples and accompanying data are collected). In particular, the Client shall ensure that, where applicable, appropriate waivers and consents as required under the Personal Data (Privacy) Ordinance (Cap. 486) and the Electronic Health Record Sharing System Ordinance (Cap. 625) are obtained from each participant in respect of the use of their Samples for all purposes envisaged by the requested services and these Terms and Conditions (including assaying of their Samples by Biobank and its sub-contractors). The Client shall promptly provide Biobank with evidence of all consents upon request;
  - d. ensure that the Samples are fit for the purpose of the requested services and these Terms and Conditions on arrival at the Premises. The Client acknowledges that Biobank reserves the right to dispose of any Samples which Biobank reasonably considers to be unfit for their intended purpose, provided that Biobank shall consult with the Client in advance of any such disposal and consider the Client’s reasonable representations in respect of the same;
  - e. be responsible for obtaining and maintaining appropriate insurance cover in respect of the Samples. Biobank shall have no liability in respect of any loss of or damage to



Samples in transit (to or from the Premises) or in respect of non-delivery of Samples. Biobank shall have no liability in respect of any loss of or damage to Samples whilst at the Premises or any third party premises, save to the extent that such loss or damage is a direct result of Biobank's negligence and/or wilful misconduct.

- f. Client warrants that the sample(s) have not been:
  - (i) stolen or looted from their rightful owners or country of origin;
  - (ii) obtained by violent means;
  - (iii) obtained in violation of the legislation of their country of origin;
  - (iv) exported illegally or illicitly from their country of origin; or
  - (v) imported illegally or illicitly into the contributor's country.
- g. Client warrants that sample(s) was/were:
  - (i) collected under the relevant permits and licenses required by national law at the time of collection;
  - (ii) any suspected or confirmed infectious, transmissible disease(s) affecting the specimen from which the sample(s) originate has been reported to HKSTP; or
  - (iii) any reportable infectious diseases have been reported to the relevant authority prior to sample transfer.

## Appendix II

### Products

In these Terms and Conditions, “Product” means cryobox, cassettes, slides and/or any other lab products that the Client would like to purchase from Biobank.

All Products sold by Biobank to the Client as part of the Services shall be subject to the following Product warranty:

#### Product Warranty

1. The Client acknowledges and agrees that Biobank is not the manufacturer of the Products and, accordingly, if there are any defects in the material or workmanship of the Products, the Client shall be entitled to the benefit of any such warranty and/or guarantee that is given by the manufacturer or supplier of such Products that has been offered to Biobank (the “**Manufacturer Warranty**”) to the extent that the Manufacturer Warranty is assignable by Biobank to the Client. Biobank shall have no liability in respect of any defect in or damage to such Products. Client shall, without delay, notify Biobank of any such damage upon taking delivery of such Product.
2. The Client acknowledges that, in order to make a claim under the Manufacturer Warranty, it must comply with any conditions of the Manufacturer Warranty, which may, amongst other things, require the Client to give notice in writing of the defects and/or return such Products to the manufacturer’s place of business, the cost of which shall be borne solely by the Client.
3. To the extent that the Manufacturer Warranty is invalid or has expired notwithstanding the fact the Client has not delayed in notifying Biobank of the relevant defect and/or damage, Biobank shall, at its option, subject to clause 1.4, offer to repair or replace any such Products which would otherwise have been subject to the Manufacturer Warranty or refund the Price of such Products, provided that:
  - (a) the Client gives notice in writing within two (2) working days that some or all of the Products do not comply with the Manufacturer Warranty; and
  - (b) Biobank is given full and unfettered opportunity to examine and inspect the Products in question.
4. Biobank shall have no liability under clause 1.3 if:
  - (a) the Client continues to use such Products after giving notice to Biobank in accordance with paragraph 1.3(a);
  - (b) the defect and/or damage to the Product is primarily attributable to the Client’s failure to follow Biobank’s oral or written instructions as to the storage, installation, use and/or maintenance of the Products and/or good trade practice or lab protocol;
  - (c) the damage and/or defect arises as a result of Biobank following any specification(s) that

- are designated by the Client;
- (d) the Client alters or repairs such Products without the prior written consent of Biobank;  
and/or
  - (e) the defect arises as a result of fair wear and tear, wilful damage, recklessness, negligence  
and/or deploying the use of such Products in working conditions for which they are not  
originally intended by the manufacturer.
5. Except as provided in this Appendix II, Biobank shall have no liability to the Client in respect of  
any damage and/or defects relating to any Products.

## Appendix III

### Client Consumables

In these Terms and Conditions, “Client Consumables” include any reagents and other consumables provided to Biobank by the Client in connection with the provision of the Services.

If the Client provides Client Consumables to Biobank for storage and/or processing the Samples or for use in connection with the provision of the Services, the following provisions shall apply:

#### 1. Delivery and Acceptance

- 1.1. At the Client’s sole risk and cost, the Client shall deliver to the Premises the Client Consumables on a time and date agreed with Biobank.
- 1.2. Notwithstanding paragraph 3.1 below, upon delivery of the Client Consumables to the Premises, Biobank shall conduct the checks upon the Client Consumables. Biobank shall be entitled to reject delivery (or refuse collection) of the Client Consumables if any of the Client Consumables do not pass these checks.

#### 2. Biobank’s obligations

- 2.1. During the period in which the Client Consumables are utilized for the performance of the Services, Biobank shall:
  - (a) keep the Client Consumables at the Premises;
  - (b) subject to paragraph 3.1 below, use the Client Consumables to store or process the Samples (as applicable) or otherwise in connection with the provision of the Services in preference to any other similar equipment. Biobank shall not use the Client Equipment for the benefit of any third parties or for any other purpose without the Client’s prior written consent;
  - (c) inform the Client if it becomes aware (as a result of the checks carried out or otherwise) that there is a fault with the Client Consumables which, in the sole opinion of Biobank, is likely to damage the Samples or otherwise disrupt the provision of the Services. The Client shall be solely responsible for taking any necessary remedial action as a result of such information;
  - (d) ensure that the Client Consumables are kept and used in accordance with the Client’s reasonable instructions and connected to such utilities supplies as are necessary for the proper use of such Client Equipment in connection with the provision of the Services.

#### 2.2 Emergency Response

In case of cold storage equipment failure, Biobank staff will relocate client's samples to Biobank's backup storage facility.

### **3. Client Obligations**

- 3.1. The performance of any part of the Services which relates to or requires the use of Client Consumables, shall be conditional upon the Client (at no cost to Biobank) providing to Biobank Client Consumables which are fit for purpose and maintaining the same in good working order in accordance with the requirements identified in this Appendix III.
- 3.2. The Client shall:
  - (a) ensure that the Client Consumables are securely and properly packed for delivery to the Premises, clearly labelled and identifiable, in such condition so as not to cause damage or injury, whether during transit or installation or once in situ;
  - (b) be solely responsible for ensuring that, upon delivery to the Premises, the Client Consumables are in good condition and working order and are fit for the intended purpose;
  - (c) provide Biobank with clear, complete and accurate operational instructions relating to the Client Consumables upon delivery to the Premises and shall from time to time provide such further directions and/or training as requested by Biobank or required for the proper and safe use of the Client Consumables;
  - (d) ensure that the Client Consumables complies with all applicable laws and that use of the Client Consumables by Biobank in accordance with the Client's instructions and directions shall not breach any applicable laws (including any health and safety or environmental legislation);
  - (e) promptly repair and/or replace faulty, defective and/or unsuitable Client Consumables without delay and at its own cost (whether identified as a result of a communication from Biobank or otherwise); and
  - (f) if Biobank informs the Client that any Client Consumables requires replacing or has become obsolete, promptly collect from the Premises at its own cost (or, if agreed with Biobank, accept delivery of) such Client Consumables. Failure to do so may result in Biobank disposing of such Client Consumables and/or charging the Client for the disposal and/or continued storage of such Client Consumables.
- 3.3. The Client shall, at all times during and after Services have been completed or terminated (as the case maybe) , indemnify Biobank and keep Biobank indemnified on demand against all damage and/or losses suffered or incurred by Biobank arising out of or in connection with:
  - (a) any claim or action (including any claim relating to personal injury or property damage) brought against Biobank arising out of or in connection with the possession, transit and/or use of the Client Consumables; and/or

(b) any damage to any physical property of Biobank (including the Premises) arising out of or in connection with the possession, transit and/or use of the Client Consumables, in each case, save to the extent that such losses and/or damage are a direct result of Biobank's negligence or wilful misconduct.

## Appendix IV

### Equipment Loan Agreement

#### I. Lender Contact Information

A. HKSTP Biobank

Unit 103, 1/F, Building 15W, 15 Science Park West Avenue, Hong Kong Science Park

Lender's Representative:

[Name]

[Title]

[Contact number]

[Email]

#### II. Customer and Equipment Information

A. Customer Organization: \_\_\_\_\_ (the "Borrower")

[Address]

[Name of Borrower's representative]

[Contact number]

[Email]

B. Loan Period: From: \_\_\_\_\_ to: \_\_\_\_\_

C. Equipment description (hereinafter defined as the "Equipment") and serial/ID number:

D. Equipment Value (in HK\$):

We, in consideration of the Lender agreeing to loan us the Equipment, hereby signify our acceptance of the terms and conditions further below.

For an on behalf of [Name of Borrower]

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Name of Authorized Representative:

Title:

Date:

## **Terms and Conditions Governing the Loaning of Equipment**

The responsibilities as outlined hereunder are not transferable without the written approval of Lender. By executing this Agreement, the Borrower agrees to comply with all terms set forth herein and the guidelines associated with the loan of the Equipment.

### **A. INSURANCE**

The Borrower is responsible for the full cost of replacement of the Equipment that is damaged, lost, confiscated, or stolen from the time Borrower assumes custody until it has been returned to the Lender. If the Equipment is lost, stolen or damaged, Borrower must immediately notify the Lender's representative and Borrower undertakes to fully cooperate with the Lender in providing all details and information as well as to carry out all such follow-up actions and remedial measures as are instructed by the Lender.

### **B. USE/DISCLAIMER**

The Borrower undertakes to the Lender that the Equipment shall be used solely for the Purpose. The Borrower also agrees that it shall be responsible for the proper use and deployment of the Equipment. The Borrower shall be responsible for training anyone using the Equipment on the proper use of the Equipment in accordance with any Equipment use procedures. The Borrower accepts responsibility for operating the Equipment at its sole risk.

LENDER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES ASSOCIATED WITH THE EQUIPMENT AND ANY USE THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ITS CONDITION, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LENDER SHALL UNDER NO CIRCUMSTANCES BE LIABLE TO THE BORROWER FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFIT, LOSS OF USE AND/OR ANY LOSS OF BUSINESS OPPORTUNITIES.

Borrower agrees to use the Equipment for academic, research, government and/or non-profit use only and shall under any circumstances deploy the Equipment for any commercial use or application.

### **C. TRANSPORTATION AND LEGAL TITLE OF THE EQUIPMENT**

The Borrower shall be responsible for the safe packaging, export, shipping and receiving of the Equipment. Borrower shall collect the equipment at Lender with prior arrangement. The Equipment shall be returned by the date specified in Part II above.

The Borrower hereby acknowledges and accepts that the Lender has full, absolute and complete legal



and beneficial title over the Equipment and that no legal rights or interests shall be created in favour of the Borrower arising from the use of the Equipment by the Borrower hereunder. The Borrower also undertakes to return the Equipment to the Lender when due or if this arrangement is terminated by the Lender, whichever is the earlier, in accordance and compliance with the terms and conditions hereunder.

In the event that Lender has to make arrangements for the return of the Equipment, the Borrower shall bear for all costs arising from or associated with the safe return of the Equipment to the Lender including, without limitation, all labour costs, packaging, export and any shipping costs.

#### **D. MAINTENANCE AND REPAIR**

Equipment shall be returned to Lender in as good a condition as when received by the Borrower (fair, wear and tear excepted). During the Loan Period and prior to return, the Borrower agrees to assume all responsibility for maintenance and repair of the Equipment so as to maintain the Equipment in good merchantable quality and good working order. In order to confirm that the Equipment is in good working order upon return to the Lender, at the Lender's request, the Equipment shall be inspected by an approved service operation. The cost of inspection and any necessary parts, repairs or adjustments are solely the responsibility of the Borrower.

All maintenance and repair of Equipment shall be performed by approved personnel. Any unauthorized maintenance voids all original Equipment warranties. The Borrower shall be liable for the cost of purchasing a new warranty for the Equipment if unauthorized maintenance is performed on the Equipment.

#### **E. COMPLIANCE WITH LAWS**

Borrower shall comply with all applicable laws, ordinances, and regulations, if any, applicable to the transportation and use of the Equipment. Borrower shall secure all applicable licenses or permits required to use the Equipment.

#### **F. INDEMNIFICATION**

In consideration of the Lender agreeing to loan the Equipment to the Borrower, the Borrower agrees to indemnify, defend and hold the Lender harmless from any and all damages, losses, claims, causes of actions, expenses and liability of any nature whatsoever associated with its use of the Equipment. The

#### **G. TERMINATION**

The Lender reserves the right to terminate the loaning of the Equipment to the Borrower if the Borrower is in breach of any of the terms and conditions hereunder and fails to remedy such breach within three

(3) days after receiving written notice of such breach from the Lender. The Borrower shall, forthwith, upon early termination being exercised by the Lender under this clause, return the Equipment to the Lender return, at the Borrower's sole cost, in full good working order and merchantable quality (fair, wear and tear excepted). The Borrower hereby grants the Lender permission to use the Deposit to off-set any costs, expenses and damage in relation to the Equipment.

#### **I. GOVERNING LAW AND DISPUTE RESOLUTION**

These terms and conditions shall be governed by and construed in accordance with the laws of the Hong Kong SAR and that both the Borrower and Lender agree to submit to the exclusive jurisdiction of the courts of the Hong Kong SAR.