

The University of Warwick, Advanced Mass Spectrometry Research Technology Platform (AMS RTP) Standard Terms and Conditions

1. Definitions:

1.1. In this Agreement the following expressions shall have the following meanings:

“Agreement” means these Standard Terms and Conditions of Service and the accepted and agreed Sample Information Form, which are hereby incorporated into this Agreement;

“Background IP” means Intellectual Property Rights, excluding any Foreground IP, controlled or owned by a party which are made available to another party in connection with the Services and which are already in existence prior to the start of the Service Period or which come into existence after the start of the Service Period but are developed independently of the Services;

“Foreground IP” means any Intellectual Property Rights arising from and developed in the course of the Services by the AMS RTP; and

“Intellectual Property Right” means any patent, registered design, copyright, database right, design right, trade mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.

“Analyst” refers to the specific person or persons who deliver the service for the AMS RTP.

1.2. Capitalised terms used but not defined in these Standard Terms and Conditions shall have the meanings given to them in the Sample Information Form.

2. Scope of the Services

2.1. The University of Warwick, Warwick Scientific Services (the “University”), in the form of the Advanced Mass Spectrometry Research Technology Platform (AMS RTP) will provide the Services in accordance with the agreed Sample Information Form.

2.2. The AMS RTP shall take all reasonable steps to ensure that the Services will be performed with skill, care, and diligence in accordance with applicable professional standards, and will comply with all applicable health and safety standards in the provision of the Services.

2.3. The AMS RTP does not guarantee the outcome of any particular analysis but will ensure all reasonable efforts are made to deliver results within 20 working days following receipt of the sample(s). Sample arrival will be acknowledged by email. Larger than normal numbers of samples will need to be scheduled in according to the current demands for instrument time and personnel and will be discussed and agreed prior to running the samples.

2.4. The AMS RTP will endeavour to provide, upon request, basic descriptions and explanations of the methodologies used in the analysis and the results obtained. A description of the materials and methods that is suitable for use in a publication will also be provided upon request.

2.5. The AMS RTP provides the results as is and accepts no responsibility for subsequent use of the results provided, nor for any interpretations attached to the results. While the AMS

RTP staff can offer an informed opinion or personal interpretation of any results, these should always be tempered by the client's own judgement.

2.6. The AMS RTP will use in-house know-how and expertise to undertake the work. The work may involve use of third-party consumables and software but the AMS RTP does not provide rights for the customer to subsequently use such consumables and software in the future.

2.7. The AMS RTP requires that publications and presentations that use the results provided include an explicit acknowledgement of the use of the AMS RTP and of EPSRC grant EP/V007718/1. Such acknowledgment is critical for annual reports and therefore for further financial sustainability of the RTP.

2.8. Co-authorship is warranted when AMS RTP personnel make significant contributions to the research - defined as "the project would not have progressed, or progressed at a substantially slower pace, without the guidance of facility personnel." Such contribution is defined as a "*substantial input on the conception or design of the work; or the acquisition (i.e., development of analytical methods to acquire the data), analysis, or interpretation of data for the work*" – in compliance with the recommendations by the International Committee of Medical Journal Editors. In such cases, core personnel should have the opportunity to review/edit the appropriate sections of a manuscript before submission.

3. Payment

3.1. The Client agrees to pay the University for the provision of the Services in accordance with the prices provided by the University.

3.2. The Client agrees to pay VAT where applicable, in addition to the agreement price.

3.3. Payment under this Agreement shall be made by the Client to the University within thirty (30) days of receipt of an invoice. Invoices can only be issued in GBP.

3.4. If outside Warwick, the following information must be supplied before any work can commence:

3.4.1. a valid purchase order from the client's institution (electronic versions are sufficient)

3.4.2. the VAT registration number of the institution (if within the EU)

3.4.3. a contact name and the address of the institution's finance office to whom an invoice should be sent

3.4.4. any other information that is required for inclusion with the invoice (Please note that a charge must be made for re-issue of an invoice that is necessitated by customer changes or additional requests).

3.5. If inside Warwick, the charging structure varies by department, so initial consultation with RTP staff is needed to determine which charging model pertains, and charging conditions must be agreed prior to commencement of analysis.

3.6. Until payment of all sums due by the client to the University, all data or results arising during the course of the service will remain the property of the University. Upon such payment,

the ownership of such data, as relates exclusively to the services, shall become the property of the client.

3.7. VAT. The University is required to charge VAT on the supply of all contract services unless the services are being provided as part a University of Warwick grant or joint grant that involves funds provided entirely by a charity or from voluntary contributions, in which case the interaction will be outside the scope of VAT. In cases where a zero-VAT rating is requested, the Finance Office at the University of Warwick will have the final decision as to whether a zero-VAT rating is justified, and the client will agree to pay the appropriate level of VAT accordingly.

4. Specific Client instructions and obligations

4.1. Sample provision

The ideal quantity of sample provided from the client to the AMS RTP will vary according to the type of sample and the analysis required, therefore the AMS RTP staff will make a 'best guess' estimate of requirements during initial consultation. Analysis can be performed on less material, but data quality may be affected.

Samples provided should be shipped dry or frozen on dry ice to the following address:

Advanced Mass Spectrometry Research Technology Platform (AMS RTP)
c/o Dr. Meng Li
Chemistry Stores
Department of Chemistry
Gibbet Hill Road
University of Warwick
Coventry, CV4 7AL
United Kingdom

Samples from outside the UK should state that the **contents are of zero economic value and are research samples that are destroyed upon analysis** with the following words on the shipment **"Import under Goods for Test CPC 40 00 C33 – relief claimed"**.

4.2. Health and Safety Requirements

The client warrants that the material provided does not pose any health hazards and, if this is not the case, must provide full details of the potential risks and their mitigations before any samples are shipped.

4.3. Ethical implications

The client shall inform the AMS RTP of any potential ethical considerations directly or indirectly associated with the samples, for example any samples that comprise or relate to human tissues, animal experimentation, tobacco products, materials associated with or intended for use as weapons, or materials subject to export control laws.

5. Confidentiality

5.1. All information resulting from the Services undertaken by the University shall be disclosed to the Client. The University shall take all reasonable steps to ensure that all members of staff

maintain the confidentiality of information relating to the Services identified as confidential by the Client, including any information supplied by the Client.

5.2. The provisions of clause 5.1 shall not apply to any information which:

5.2.1. is publicly known at the time of disclosure to the receiving party;

5.2.2. after disclosure becomes publicly known otherwise than through a breach of this Agreement by the receiving party, its officers, employees, agents or contractors;

5.2.3. can be shown by reasonable proof by the receiving party to have reached its hands otherwise than being communicated by the other party including being known to it prior to disclosure, or having been developed by or for it wholly independently of the other party or having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry;

5.2.4. is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where practicable, the disclosing party is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purpose of such compliance; or

5.2.5. is approved for release, in writing, by an authorised representative of the disclosing party.

5.3. The Client acknowledges that the University is subject to the requirements of the Freedom of Information Act 2000. The Client agrees to assist and cooperate with the University to enable the University to comply with the requirements of this law.

5.4. The confidentiality obligations set out in this clause 4 shall remain in effect for the term of this Agreement and a period of three (3) years thereafter.

5.5. The Client acknowledges that the University is required by its funders to demonstrate its impact and the Client agrees to comply with all reasonable requests made by the University to provide such information (not including the Client's Confidential Information) as the University may reasonably require to address requirements placed on the University. Such information may include (in relation to the Services), but shall not be limited to, effects, changes or benefits to the economy, society, public policy or services, health and the environment.

6. Intellectual Property

6.1. All Background IP is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background IP has been derived) as of the start of the Service Period. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any Background IP of the other party except under the terms of this Agreement and each party acknowledges that nothing contained in this Agreement shall give it any such right, title or interest.

6.2. All Foreground IP arising from sample data produced as a result of the Services, whether or not solely produced by the University shall belong absolutely to the Client, as shall the right to apply for and obtain relevant intellectual property rights and protection in relation thereto, provided all sums due to the University have been paid. The Client hereby grants to the University a non-exclusive, royalty-free, fully paid-up, perpetual right and licence to use the Foreground IP for the purposes of performing the Services for the Client.

6.3. Any discoveries or improvements in the AMS RTP's background IP, such as experimental and data processing methodologies, arising from the provision of the services will belong to the University. The use of any intellectual property in the provision of the Services by the AMS RTP does not imply any rights for the Client to subsequently use any such intellectual property.

7. Restrictions

7.1. Nothing in this Agreement shall prevent or restrict the University or its employees from providing services of any kind to any other person or institution, or becoming or continuing to be a director, employee, agent, consultant or partner of, or holding other offices or positions with, any other person or from undertaking or being engaged, concerned or interested in or continuing to undertake or be engaged, concerned or interested in (whether directly or indirectly and whether during or at any time after the expiry or termination of this Agreement) any other business.

8. Liability

8.1. The following sets out the entire financial liability of the University (including any liability for the acts or omissions of the University's employees) to the Client in respect of any breach by the University of this Agreement; non or incomplete performance or contemplated performance by the University of this Agreement; negligence for which the University is liable; and any representation or statement arising under or in connection with this Agreement or by or on behalf of the University.

8.2. The aggregate liability of the University to Client for any: 7.2.1. breach; negligence; and/or liability arising in any other way out of the subject matter of this Agreement or the performance of the Services; will not exceed in total the amounts actually received by the University from Client in connection with the Services.

8.3. All warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

8.4. The University shall in no circumstances be liable to the Client for: any loss of profits, loss of business or production, depletion of goodwill, loss of or corruption to data; and/or any indirect loss.

8.5. The University will in no event be liable for: any statement or representation about the Client, its business, products or services made or communicated in or by any item, material or work approved by the Client; and/or any liability arising from or in connection with any goods, materials, property or information of or provided or approved by the Client.

8.6. The Client will fully indemnify the University from and against any and all liabilities the University may incur arising from or in connection with: breach of this Agreement by the Client; the University or its employees' use or possession of any goods, materials, property or information provided by the Client; and any claim, action or proceedings by any third party in connection with the Services.

8.7 Following the Service, remaining sample material will **not** be returned except at the discretion of the AMS RTP, and pre-agreed with the client.

8.8 The University reserves the right to decline to measure samples: (i) on health and safety grounds, (ii) that may cause damage to instrumentation, (iii) if there is insufficient instrument or personnel capacity, or (iv) conflict of interest.

8.9. For clarity, nothing in this Agreement limits or excludes either party's liability for:

8.9.1. death or personal injury caused by such party's negligence; or

8.9.2. any fraud or for any sort of liability that, by law, cannot be limited or excluded.

8.10. The provisions of this clause 7 shall survive expiry or termination of this Agreement.

9. Termination

9.1. This Agreement shall commence as of commencement of the Service Period and shall continue until the end of the Service Period unless earlier terminated in accordance with this clause 8.

9.2. Without prejudice to any remedy it may have against the University for breach or non-performance of any provision of this Agreement, the Client may by written notice to the University terminate this Agreement with immediate effect if:

9.2.1. the University commits any material breach of any of the provisions of this Agreement (and, in the case of a breach capable of remedy, shall not have remedied that breach within twenty eight (28) days of receipt of a notice from the Client specifying the breach and requiring its remedy);

9.2.2. the University fails to perform the Services to standards as defined in §2;

9.2.3. any order shall be made or a resolution passed for the liquidation, winding-up or dissolution of the University

(otherwise than for the purpose of reconstruction or amalgamation); or

9.2.4. a receiver, manager, administrative receiver is appointed over the University or any of its assets or any person takes any step to appoint an administrator of the University.

9.3. The University may terminate this Agreement immediately by notice in writing in the event that the Client shall have committed a material breach of this Agreement which, in the case of a breach capable of remedy shall not have been remedied within twenty eight (28) days of the receipt of a notice by the University specifying the breach and requiring its remedy or if a liquidator, administrator, administrative receiver, receiver or trustee in bankruptcy is appointed over any of the property or assets of the Client.

9.4. University agrees to notify the Client promptly if at any time the Analyst is unable or unwilling to continue the performance of the Services on behalf of the University. This includes without limitation where the Analyst ceases to be employed by the University. Within sixty (60) days after such incapacity or expression of unwillingness the University shall, if reasonably able, nominate a successor to replace the Analyst. The Client will not decline unreasonably to

accept the nominated successor. However, if the successor is not acceptable on reasonable and substantial grounds, or if the University has not found a suitable replacement, then this Agreement may be terminated by either Party by giving sixty (60) days' written notice to the other Party.

9.5. This Agreement may be terminated at any time by either party. Said agreement shall be made in writing and will be valid from the time of arrival and acknowledgment of said termination. Under such conditions, the client is still liable for payment for services rendered up to that point.

9.6. In the event of the termination of this Agreement pursuant to sub- clauses 8.2, 8.3, 8.4 or 8.5 above, the Client will only be liable to the University in respect of fees and expenses incurred for the Services provided up to the date of termination.

10. Law

10.1. This Agreement shall be governed by the laws of England and Wales.

11. Dispute

11.1. The Parties shall use good faith efforts to resolve any dispute, claim or proceeding arising out of or relating to this Agreement. In the event that any disputes cannot be resolved at this level then the senior executives of the relevant Parties who have authority to settle the same shall use good faith efforts to resolve the same. If the matter is not resolved through negotiation, it shall be settled as agreed either by:

11.1.1 mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure (the "Model Procedure"). To initiate mediation a Party must give notice in writing to the other Parties to the dispute requesting mediation pursuant to the Model Procedure. A copy of the request shall also be sent to CEDR. The mediation shall be before a single, jointly agreed upon, mediator; or

11.1.2 reference to the jurisdiction of the Courts in England. In this event, each of the Parties shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgement or order obtained from the Courts in England.

11.2 If the Parties are unable to select a mutually agreeable mediator or cannot agree on the forum in which any dispute is to be held within sixty (60) days of a dispute being notified, then the provisions of Clause 10.1.2 shall apply.

12. Force Majeure

12.1. Neither the University nor the Client shall be liable for any delays or omissions which result from force majeure. Such acts outside of control include, but are not limited to: strike action, epidemic, war, crime, civil unrest, natural disaster, or disruption to local power and communications systems. If practicable the term of this Agreement may be extended to cover such delays by mutual agreement in writing.

13. Relationship

13.1. University's relationship with Client is that of an independent contractor, and nothing in this Agreement is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship.

14. Notices

14.1. The University's representative for the purpose of receiving legal notices is:

Legal and Compliance Services,

University House, University of Warwick, Coventry CV4 7AL

14.2. The Client's representative for the purposes of receiving legal notices is the Client's registered business address.

15. Anti-Corruption Provision

15.1. The Client represents and warrants that it shall comply with all provisions of the Bribery Act 2010, and will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

16. Miscellaneous

16.1. No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties

by their duly authorised representatives. Additional Services to be performed shall be agreed in advance by the University and the Client and documented in writing through the submission of a Sample Submission Form which is subsequently accepted and agreed by the University..

16.2. This Agreement contains the entire agreement between the University and the Client and supersedes all prior agreements between them relating to the subject matter of this Agreement.

16.3. Without prejudice to clause 15.2 the Services shall be exclusively governed by the terms of this Agreement and the terms and conditions specified in this Agreement are hereby incorporated into any purchase order or other order document issued by the Client. Terms and conditions of any purchase order or other order document issued by the Client in connection with this Agreement shall not be binding on the University and shall not modify the terms of this Agreement.

16.4. If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

16.5. Nothing in this contract confers or purports to confer on any third party any right to enforce any term of this contract.

16.6. No party shall be entitled to use the name or trade mark of the other party in any publicity, advertising, or news release without the prior written consent of such other party.