

INDUSTRIAL BIOTECHNOLOGY INNOVATION CENTRE (“IBIOIC”)
SCALE-UP CENTRE TERMS AND CONDITIONS FOR SHORT DURATION PROJECTS

1. INTERPRETATION

- 1.1. In these terms and conditions some words have particular meanings. These are set out in Clause 12.
- 1.2. These terms and conditions and the IBioIC Invoice make up the whole agreement between the Parties and supersede any previous agreement between the Parties relating to the same subject matter. No other term or condition submitted, proposed or stipulated by the Client will apply to the agreement between the Parties.
- 1.3. If there is any conflict or inconsistency between the provisions of i) these terms and conditions; and ii) the IBioIC Invoice, the following order of precedence will apply: these terms and conditions; and then the IBioIC Invoice.

2. TERM

- 2.1. The Contract shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue in force thereafter until the Expiry Date when it shall automatically expire.

3. THE SERVICES

- 3.1. In consideration of the Client:-

- 3.1.1. paying Strathclyde the Charges; and

- 3.1.2. complying with the obligations of the Client under the Contract,

Strathclyde and HWU will provide the Services to the Client subject to the terms and conditions of the Contract.

Strathclyde and HWU are acting as contracting parties and are operating through IBioIC to provide the Services.

- 3.2. Each Party acknowledges and agrees that:

- 3.2.1. where the Services require the provision of a report or advice, and the report or advice contains quantities, measurements or calculations (“Figures”), the use of any such Figures shall be in accordance with industry or regulatory tolerances; and

- 3.2.2. the Services call for creative, intellectual, testing or research effort (some or all of which may be experimental) and it may therefore not be possible to achieve any or all of the results agreed by the Parties (including the delivery of the Deliverables).

- 3.3. Strathclyde and HWU shall start providing the Services on the Effective Date and Strathclyde and HWU will use reasonable endeavours to complete the Services within the Timescale.

- 3.4. The Services shall be performed by such employees or agents that Strathclyde and HWU may choose as most appropriate to carry out those Services and the provision of the Services will be supervised by the IBioIC Lead.
- 3.5. The Client acknowledges and agrees that, unless stated otherwise in the relevant Timescale, time is not of the essence for:
- 3.5.1. any dates or times when Services are due to be performed;
- 3.5.2. the length of time that any Services will take to perform; or
- 3.5.3. any date or time when any of the Services will be completed by or any of the Deliverables delivered by.
- 3.6. The Parties shall be entitled to amend any details of the Services and any other item that is set out in or referred to in the IBioIC Invoice at any time provided that any such amendment is recorded in writing and signed by an authorised signatory on behalf of the Client, Strathclyde & HWU.
- 3.7. For the avoidance of doubt, the Client hereby acknowledges and agrees that an IBioIC Invoice may not be used at any time to amend these terms and conditions which may only be varied in accordance with clause 11.12.
- 3.8. If Strathclyde and HWU are to perform the Services on Goods then:
- (a) the Client will deliver and unload the Goods free of charge to premises at the address specified by the IBioIC Lead, upon which risk of loss or damage to the Goods (except caused by negligence of the Client) shall pass to IBioIC;
- (b) the Client shall bail the Goods to IBioIC free of charge for the period from delivery pursuant to clause 3.8 (a) until delivery or disposal pursuant to clause 3.8 (e);
- (c) title to such Goods shall remain with the person having title thereto;
- (d) in the event that the Goods comprise biological or chemical material ("Material") then:
- (i) neither Strathclyde nor HWU shall analyse or attempt to determine the structure of any of the Material other than as expressly agreed is necessary to perform the Services;
- (ii) Strathclyde and HWU shall only use the Material for the purpose of the Services;
- (iii) neither Strathclyde nor HWU shall, save as necessary for the conduct of the Services, use the Material in any human or animal subjects;
- (iv) neither Strathclyde nor HWU shall provide any of the Material to any third party;
- (v) Strathclyde and HWU shall acknowledge that the Material is experimental in nature and provided "as is" and that the Client makes no representation or extends no warranty of any kind with respect to the Material and hereby disclaims all warranties, either express or implied, including, but not limited to, any warranty of merchantability, fitness for a particular purpose or that their use does not or will not infringe any patent rights of third parties; and
- (vi) Strathclyde and HWU shall use the Material at their own risk and in accordance with applicable laws and regulations and any safety instructions provided by the Client.
- (e) at the cost of the Client (unless the Parties agree otherwise in writing) and as soon as is reasonably possible following payment of any such costs, IBioIC will re-deliver the Goods

back to the Client or dispose of the Goods as agreed with the Client. In the event of re-delivery, such re-delivery shall be ex-works IBioIC and on such re-delivery risk of loss or damage shall revert to the Client. The Client will provide IBioIC with any packaging or container it requires to be used for re-delivery and will pay IBioIC for any special packaging or repackaging required which is not provided by IBioIC.

4. PAYMENT

- 4.1. IBioIC shall be entitled to invoice the Client for the Charges in accordance with the Payment Terms in the IBioIC Invoice.
- 4.2. The Client shall pay IBioIC the Charges (plus VAT if applicable) within 30 days of receipt by the Client of the IBioIC Invoice for the Charges.
- 4.3. All amounts in the Contract are stated exclusive of VAT and/or any other applicable taxes or levy, which shall be charged and payable in addition at the rate in force at the date that the relevant amount becomes payable.

5. OWNERSHIP OF BACKGROUND IP

- 5.1. All Background IP shall remain (as between the Parties) the property of the Party introducing such Background IP to the Services.
- 5.2. Each Party hereby grants to the other a royalty-free, non-exclusive licence to use its Background IP for the purpose of carrying out the Services, but for no other purpose.

6. OWNERSHIP OF IBIOIC TOOLS

All IBioIC Tools are and shall remain the exclusive property of Strathclyde. Strathclyde hereby grants to Client a non-exclusive, non-transferable, worldwide licence to use the IBioIC Tools solely to the extent necessary with the Deliverables for the Services. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, create derivative works or otherwise disassemble or modify any IBioIC Tools. In the event that IBioIC Tools are removed by Client from Strathclyde or HWU premises, Client shall return all IBioIC Tools to Strathclyde within thirty (30) days of completion of the Services.

7. OWNERSHIP OF FOREGROUND IP

- 7.1. No licence to use any Intellectual Property or any other rights in or to any Intellectual Property is granted or implied by the Contract except the rights expressly granted in the Contract.
- 7.2. Notwithstanding any other provision of the Contract, Strathclyde shall retain title to any equipment donated by the Client or purchased with funds provided by the Client under the Contract.
- 7.3. Subject to payment of the Charges by the Client to Strathclyde, all Foreground IP shall belong to the Client and Strathclyde and HWU shall ensure that all of its right, title and interest in the Foreground IP is assigned to the Client, and shall do, or procure the doing of, all such acts and things, and the signature of all such documents, at the cost of the Client, as the Client may reasonably require in order fully and effectively to vest such rights in the Client.

- 7.4. The Client hereby grants Strathclyde and HWU a royalty free, non-exclusive, perpetual, irrevocable licence to use the Foreground IP for the purposes of carrying out the Services.

8. CONFIDENTIALITY

- 8.1. No Party will use, publish or disclose any Confidential Information disclosed to it by another Party without the prior written consent of the disclosing Party.
- 8.2. Except as agreed in writing by the Parties, the Services shall be maintained on a confidential basis between Strathclyde, HWU and the Client.
- 8.3. The foregoing obligations relating to confidentiality shall not apply to information which is within or subsequently enters the public domain through no fault of a Party receiving such information under the Contract.
- 8.4. The Client shall not use any of the names: "IBioIC", "Industrial Biotechnology Innovation Centre", "University of Strathclyde", "Strathclyde", "Heriot-Watt University", "Heriot-Watt", "RapidBio" or "FlexBio" or any similar name in connection with the work undertaken under the Contract without the express written consent of Strathclyde and HWU which shall be sought on each occasion.
- 8.5. Notwithstanding any other provision of the Contract, where Strathclyde or HWU is in receipt of an information request pursuant to the Freedom of Information (Scotland) Act 2002 or any analogous regulations in respect of Confidential Information relating to the Contract or to the Services (the "Request") it shall make an analysis as to whether the Confidential Information or other information requested is capable of benefiting from an exemption from disclosure. In the event that Strathclyde or HWU considers that disclosure is legally required and makes the requested disclosure, no liability shall attach thereto.

9. LIABILITY

- 9.1. Strathclyde and HWU shall use reasonable endeavours to ensure the accuracy of the work performed by them and any information given by them but Strathclyde and HWU make no warranty, expressed or implied, as to accuracy and accept no responsibility for any use by the Client of any of the Deliverables, any of the Foreground IP or any of the Strathclyde or HWU's Background IP, nor for any reliance placed by the Client on any of the foregoing, nor for any advice or information given in connection with the Services.
- 9.2. The Client hereby indemnifies Strathclyde and HWU and shall keep Strathclyde and HWU fully and effectively indemnified in respect of all liabilities, costs, claims, demands, expenses, fines and other penalties (including legal fees and expenses) which Strathclyde and HWU may incur or sustain and which in any way relate to or arise from the Client's use of any of the Deliverables, any of the Foreground IP or any of the Strathclyde and HWU's Background IP or any other output from the Services. This indemnity does not apply to the extent that any claim arises as a result of Strathclyde or HWU's negligence or deliberate breach of the Contract.
- 9.3. Nothing in the Contract limits or excludes any Party's liability for:-
- 9.3.1. death or personal injury; or
- 9.3.2. any fraud or any sort of liability that by law cannot be limited or excluded.

- 9.4. Subject to clause 9.3, Strathclyde and HWU's maximum aggregate liability under or in connection with the Contract, whether in contract, delict (including negligence) or otherwise, will in no circumstances exceed the total remuneration received by from the Client under this Contract.
- 9.5. Subject to clause 9.3, Strathclyde and HWU shall not be liable (whether in contract, delict or otherwise) for any loss of profit, loss of revenue, loss of use, loss of anticipated savings, loss of good will, loss of reputation or opportunity, financial or economic loss or indirect or consequential damages or losses, costs or expenses whatsoever and however arising out of or in connection with the Contract, even if the Client has advised Strathclyde and HWU of the possibility of those losses or if they were within Strathclyde and HWU's contemplation.
- 9.6. Each of the Parties acknowledges that, in entering into the Contract, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Contract, and any conditions, warranties or other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 9.7. The Client shall be liable for and shall indemnify Strathclyde and HWU against all liability in respect of personal injury to or the death of any person, loss of or damage to property and any loss or expense in consequence of or in any way arising out of the installation, presence, use or removal of the Goods on or from Strathclyde or HWU premises provided that this indemnity shall not extend to liability resulting from the negligence of Strathclyde or HWU's own servants or agents or failure of Strathclyde or HWU to:-
- 9.7.1. follow the detailed instructions provided by the Client under Clause 9.10; and/or
- 9.7.2. carry out the agreed Services in accordance with the IBioIC Invoice.
- 9.8. The Client shall insure against its full liability under Clause 9.7 and such insurance cover shall be in the minimum sum of £100,000 in respect of any one incident.
- 9.9. The Client upon request shall produce to Strathclyde and HWU documentary evidence that the insurance required under Clause 9.8 is properly maintained. Should the Client default in insuring, Strathclyde and/or HWU may themselves effect insurance and may charge the cost together with an administrative charge of 5% to the Client.
- 9.10. The Client shall provide Strathclyde and HWU with detailed instructions in the use of the Goods and detailed instruction manuals, where available, shall be supplied to Strathclyde and HWU.

10. TERMINATION

- 10.1. The Parties may agree to terminate the Contract at any time by written agreement signed on behalf of the Client by an authorised signatory, on behalf of Strathclyde by an authorised signatory and on behalf of HWU by an authorised signatory.
- 10.2. Any Party may terminate the Contract at any time with immediate effect by notice in writing to another Party (the "Other Party") if:
- 10.2.1. the Other Party is in material breach of the Contract, and, in the case of a material breach that is capable of remedy, that breach has not been remedied within 14 days of the Other Party receiving notice specifying the breach and requiring its remedy; or

- 10.2.2. the Other Party becomes insolvent or unable to pay its debts as and when they become due;
 - 10.2.3. an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction);
 - 10.2.4. a liquidator, administrator, administrative receiver, receiver or trustee is appointed in respect of the whole or any part of the Other Party's assets or business;
 - 10.2.5. the Other Party makes any composition with its creditors;
 - 10.2.6. the Other Party ceases to continue its business; or
 - 10.2.7. the Other Party takes or suffers any action similar or analogous to any of the foregoing in any jurisdiction.
- 10.3. If any material detail of the Services that are to be set out or referred to in the IBiolC Invoice is not set out or referred to in the IBiolC Invoice at the Effective Date any Party may terminate the Contract with immediate effect by giving written notice to that effect to the other Parties.
 - 10.4. The Services and the licences granted by Strathclyde and HWU under the Contract shall terminate automatically on termination or expiry of the Contract (howsoever occurring).
 - 10.5. In the event of early termination of the Contract, IBiolC shall be reimbursed by the Client for all expenses properly incurred on the Services, including expenses falling due for payment after the date of termination which arise from commitments reasonably and necessarily incurred by Strathclyde or HWU for the performance of the Services. Strathclyde shall be entitled to invoice for such costs and expenses at any time following termination of the Contract and the Client shall pay such costs and expenses within 30 days of receipt by the Client of the relevant invoice.

11. GENERAL

- 11.1. During the term of the Contract, and for the period of six months after termination of the Contract, the Client will not, directly or indirectly, solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any employee of Strathclyde or HWU who is then, or was at any time during the preceding six months, involved in the performance of the Services or otherwise engaged in the Services.
- 11.2. No Party shall be deemed to be in breach of the Contract if it is unable to carry out any provision of it (other than payment provisions) for any reason beyond its control including acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.
- 11.3. The Client shall not be entitled to assign, subcontract or otherwise transfer any or all of its rights and/or obligations (in whole or in part) under the Contract (or purport to do so) without the prior written consent of Strathclyde and HWU.
- 11.4. Any notice to be given under the Contract shall be in writing and shall be sent by first class recorded delivery post and email as follows:-

- 11.4.1. where given by Strathclyde or HWU, to the address and, where applicable, marked for the attention of the individual, to which the IBiolC Invoice is addressed; and
- 11.4.2. where given by the Client, to Strathclyde's address as set out in the IBiolC Invoice and marked for the attention of the IBiolC Lead and copied to the Director, RKES, The University of Strathclyde, Graham Hills Building, 50 George Street, Glasgow G1 1QE and emailed to rkes@strath.ac.uk; or
- 11.4.3. in either case, to such alternative address and/or individual(s) as the relevant recipient Party may have intimated in writing to the other for that purpose.
- 11.5. All notices shall be deemed effective upon the earlier of:
- 11.5.1. receipt by the Party to which notice is given; and
- 11.5.2. the third day following mailing.
- 11.6. Except as otherwise expressly provided in the Contract none of the terms and conditions of the Contract shall be enforceable by any person who is not a Party to it.
- 11.7. Each provision of the Contract shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and, notwithstanding that any provision of the Contract may prove to be unenforceable by law, the remaining provisions of the Contract shall continue in full force and effect.
- 11.8. No waiver by any Party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed on behalf of that Party by an authorised signatory and no forbearance, delay or indulgence by any Party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that Party nor shall any waiver by any Party of any of the requirements hereof or any of its rights hereunder release the others from full performance of their obligations stated herein.
- 11.9. Nothing in the Contract shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in the Contract shall be deemed to constitute one of the Parties as the agent of the others.
- 11.10. Those provisions of the Contract which by their nature or implication are required to survive expiry or termination of the Contract (including the provisions of clauses 1, 3 and 7 to 12) shall so survive and continue in full force and effect, together with any other provisions of the Contract necessary to give effect to such provisions.
- 11.11. The Contract shall be construed and interpreted in accordance with, and governed by, the Law of Scotland, and the Parties hereby irrevocably agree that the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 11.12. No variation of these terms and conditions shall be valid unless it is in writing and signed on behalf of the Client, Strathclyde and HWU by an authorised signatory of each.

12. DEFINITIONS

12.1. In the Contract, unless the context otherwise require or permits:-

12.1.1. "Background IP" means any Intellectual Property, information, data, software and materials:-

12.1.1.1. belonging to a Party prior to the Effective Date; or

12.1.1.2. generated by any of the Parties independently of the Services;

that are provided by that Party to the other for use in the Services (whether before, on or after the Effective Date);

12.1.2. "Charges" means the charges to be paid by the Client for the Services as set out or referred to in the IBioIC Invoice;

12.1.3. "Client" means the person, company or other legal entity to which the IBioIC Invoice is addressed;

12.1.4. "Confidential Information" means each Party's confidential information disclosed by that Party to the other Parties for use in the Services and identified as confidential before or at the time of disclosure or which may reasonably be supposed to be confidential from the nature of the information and the manner of its disclosure;

12.1.5. "Contract" means the contract for the supply of the Services concluded between Strathclyde, HWU and the Client made up of these terms and conditions and the IBioIC Invoice;

12.1.6. "Deliverable" means each deliverable, if any, set out or referred to in the IBioIC Invoice to be delivered by Strathclyde and HWU to the Client, in the form and media specified in the IBioIC Invoice;

12.1.7. "Effective Date" means the date of commencement of the Services to be delivered;

12.1.8. "Expiry Date" means the date on which Strathclyde and HWU has delivered all of the Deliverables or otherwise completed the Services;

12.1.9. "Figures" has the meaning given to it in clause 3.2.1;

12.1.10. "Foreground IP" means all Intellectual Property, information, data, software and materials identified, created or first reduced to practice or writing in the course of the Services including the Deliverables and all Intellectual Property therein and excluding the Strathclyde Tools;

12.1.11. "Goods" mean goods which are to be provided by or to the specification of the Client for the purposes of the carrying out the Services;

12.1.12. "HWU" means Heriot-Watt University, a higher education institution incorporated by Royal Charter and Scottish Registered Charity (with Charity Number SC000278), having its principal address at Riccarton, Edinburgh EH14 4AS;

12.1.13. "IBioIC Invoice" means the invoice issued by IBioIC to the Client in relation to the Services;

- 12.1.14. "IBioIC Lead" means the individual identified in the IBioIC Invoice as the lead person or such other individual appointed to this role and notified to the Client by Strathclyde and/or HWU from time to time;
- 12.1.15. "IBioIC Tools" means:
- 12.1.15.1. all know how, tools and techniques developed and/or utilized by Strathclyde or HWU in performing the Services, including without limitation pre-existing and newly developed bioprocess methodologies including scale up of chemical- and bio-processes, laboratory analytical and validation techniques, application of experimental design in process development (including computational Design of Experiment or DoE) ; technology transfer for scale up, and integration of process chemistry with synthetic and micro-biology;
 - 12.1.15.2. all preparatory work including, but not limited to, experimental design, workflows, or other alternate or experimental set-up procedures, characterization methods and preparation of working cell bank & cell lines developed by Strathclyde or HWU and which may or may not be shared with and or delivered to Client for consideration,
- but which in each case do not form part of the Deliverables;
- 12.1.16. "Intellectual Property" means any patents, trade marks, registered designs, copyright, unregistered design right, database right or semi-conductor topography right, rights in and to trade or business names, Know-how or Confidential Information, and any similar or analogous rights or forms of protection in any part of the world;
- 12.1.17. "Know-how" means technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions);
- 12.1.18. "Parties" means the Client, Strathclyde and HWU and "Party" shall be construed accordingly;
- 12.1.19. "Payment Term" means the payment terms set out or referred to in the IBioIC Invoice;
- 12.1.20. "Services" means the services to be provided by Strathclyde and/or HWU to the Client as set out or referred to in the IBioIC Invoice;
- 12.1.21. "Strathclyde" means the University of Strathclyde, incorporated by Royal Charter, a charitable body registered in Scotland with registration number SC015263 and having its Principal Office at 16 Richmond Street, Glasgow, G1 1XQ, contracting on behalf of its Industrial Biotechnology Innovation Centre ("IBioIC"); and
- 12.1.22. "Timescale" means the timescale for the provision of the Services as set out or referred to in the IBioIC Invoice.

- 12.2. In these terms and conditions, unless the context otherwise requires:
- 12.2.1. words importing any gender include every gender;
 - 12.2.2. words importing the singular number include the plural number and vice versa;
 - 12.2.3. words importing persons include firms, companies and corporations and vice versa;
 - 12.2.4. references to numbered clauses are references to the relevant clause in these terms and conditions;
 - 12.2.5. any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
 - 12.2.6. the headings in these terms and conditions are not to affect the interpretation;
 - 12.2.7. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 12.2.8. where the word 'including' is used in these terms and conditions, it shall be understood as meaning 'including without limitation'.