

TCAG Core Facility Terms and Conditions (The “Terms & Conditions”)

Services

1. All Services are provided for research purposes and non-commercial use only. YOU ACKNOWLEDGE AND AGREE THAT SERVICES ARE CARRIED OUT IN A RESEARCH LABORATORY (THE “FACILITY/FACILITIES”) WHICH MAY NOT BE AN ACCREDITED OR LICENSED CLINICAL LAB. AS SUCH, SICKKIDS WILL NOT PERFORM SERVICES NOR WILL IT PROVIDE ANY RESULTS, DATA, OR PRODUCTS (“DELIVERABLES”) FOR THE PURPOSES OF OBTAINING INFORMATION FOR DIAGNOSIS, PROPHYLAXIS OR TREATMENT IN HUMANS.
2. All Services are provided on a fee-for-service basis. At our discretion, SickKids may bill You for the cost of the service-related materials, such as reagents (if applicable) upfront. Upon issuance of an invoice to You, payment shall be made within the terms specified on the invoice.
3. All experiments that are carried out by SickKids will be billed. SickKids will work with You in good faith should problems arise during the course of the experiment. Any quotation provided by SickKids to You will be incorporated into this Agreement and shall be binding upon You.
4. SickKids reserves the right, in its sole discretion, to advise You that SickKids declines to accept Your request to perform the Services; and SickKids shall not be required to provide any reasons for such decision.
5. SickKids is not responsible for any interpretation or use of Deliverables by You.

SickKids Premises and Equipment

6. **Attending SickKids Premises:** Should the Services require You or Your officers, employees and agents (“Your Designates”) to attend on SickKids premises, You agree to comply and cause Your Designates to comply, with all occupational, environmental, privacy, health, fire and safety laws, and all SickKids policies, rules and regulations, including the SickKids Code of Conduct (“Applicable Laws and Policies”) as may be established by SickKids, or any policies, rules, regulations, or guidance SickKids may be subject to, all of which apply to or affect the use of the Facilities. SickKids reserves the right to refuse access to the Facilities should You or Your Designates contravene any of the Applicable Laws and Policies. Should you become aware of contravention of the Applicable Laws and Policies by a SickKids staff members, employee, or agent, You shall promptly notify SickKids at: facility.feedback@sickkids.ca
7. **Working on SickKids Premises:** Notwithstanding the foregoing, should You be granted access to perform any part of the Services on SickKids premises, You agree to be subject to and shall comply with all SickKids security, privacy and occupational health policies and procedures and shall ensure that each of Your permitted personnel performing any activity on SickKids’ premises signs a confidentiality agreement, should it be applicable. You will also comply with all requirements of the WSIB (Ontario) and obtain and maintain during the term of performance the necessary coverage for Your employees if applicable, unless You are exempt from the requirements of WSIB; and shall provide SickKids with proof thereof upon request. You or Your personnel may only perform the permitted activity on SickKids premises in direct supervision of SickKids staff.
8. **Working with SickKids Equipment:** In addition to the foregoing, should You or Your personnel be permitted the use of SickKids equipment, You agree to indemnify SickKids for any damage caused to SickKids’ equipment as a direct consequence of your use.

Sample submission and handling

9. You represent and warrant that all samples and related information provided by You to SickKids ("Samples") have been collected in a lawful manner.
10. You represent and warrant that, where applicable, Samples have been collected under approved Research Ethics Board ("REB") and/or Animal Care Committee ("ACC") protocols, as applicable, or the equivalent human research ethics boards and animal care committees for Your jurisdiction, and that any changes to your approved REB and/or Animal Care Committee protocols, or changes in consent status, will be communicated to SickKids promptly. Should an REB or ACC not be available to you, you represent and warrant that you have sought and received approval from an independent review board. Approval shall be provided to SickKids upon written request.
11. ANY SAMPLE DELIVERED PURSUANT TO THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE AND IS PROVIDED "AS IS". THE RECIPIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE MATERIAL MAY CONTAIN ONE OR MORE INFECTIOUS AGENTS AND MAY HAVE ADDITIONAL UNKNOWN AND HAZARDOUS PROPERTIES. THE RECIPIENT SHALL USE MATERIAL WITH PRUDENCE AND APPROPRIATE CAUTION AND SAFEGUARDS SINCE NOT ALL OF ITS CHARACTERISTICS ARE KNOWN. SICKKIDS MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WHATSOEVER IN RESPECT OF THE MATERIAL, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SAFETY, EFFICIENCY, POTENCY, IDENTITY, COMPOSITION, PURITY AND ACTIVITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIAL, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
12. You represent and warrant that, where applicable, the Services requested conform to the approved use of any Samples under the REB protocol and/or ACC protocol, as applicable, or protocols approved by an equivalent human research ethics board and/or animal care committee for Your jurisdiction.
13. Upon written request by SickKids, You will provide documentation of approvals by the REB or ACC, or the equivalent human research ethics boards and animal care committees for Your jurisdiction.
14. You represent, warrant and covenant that you will not use any Deliverables for diagnosis, prophylaxis, or treatment of humans.
15. Human biological Samples must be submitted without any identifying information.
16. Samples (and any derivatives) may be destroyed by SickKids three months after completion of the requested Service. If requested by You, SickKids will return the Samples to You upon completion of the service, at Your sole cost. If Samples are of the nature that it cannot be returned to You, SickKids will destroy the Samples at Your sole cost. Should the Samples need to be stored at SickKids, You and SickKids shall enter into a separate agreement governing the storage terms and fees of the Samples. SickKids retains the right to refuse storage of the Samples following completion of the Services. It is your responsibility to provide SickKids with your current contact information. At the end of the three-month period, should SickKids contact you regarding storage or destruction of the Samples but receive no response from You within thirty (30) days, SickKids retains the right to destroy the Samples at its discretion.

17. You represent and warrant that any instructions given by You to SickKids with respect to the Services and/or Deliverables supplied hereunder shall be given under appropriate legal authority and in accordance with all necessary REB/ACC or equivalent approvals.

Data and Deliverables

18. Any data generated in the course of the Services ("Data") will not actively be destroyed by SickKids after completion of the requested Services, for a period of three months after the completion of the Service. It is Your responsibility to ensure the Data has been retrieved from the SickKids servers and backed up. SickKids takes no responsibility for loss of Data following completion of the Services if destruction of Data was due to circumstances outside of its control.
19. Data transferred to SickKids by YOU shall not contain or deliver any (i) malicious code, virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, modify, delete, damage, deactivate or otherwise harm, any SickKids computer, systems, network, device, application, data or software; or (ii) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any person or entity. You will use reasonable efforts and generally accepted industry tools and practices to ensure that any Data transferred to SickKids under this Agreement does not contain any such malicious code, virus, trojan horse, worm, backdoor, time bomb, or drop-dead device.
20. You shall raise any concerns or questions regarding the Services as soon as possible, but in any event, within three months of the completion of the Services (i.e. before the Samples are destroyed and Data are deleted).
21. Deliverables will only be released to You. Deliverables can also be released to Your designate upon written request and approval by SickKids. SickKids retains the right to refuse transfer of Deliverables to any person other than You.
22. You understand and acknowledge that in the course of performing the Services, your Data may be uploaded, stored, or analyzed in a cloud-based environment (should the specific cloud-based environment be approved for use by SickKids). It is Your responsibility to clarify which cloud-based environment will be used in the performance of the Services and whether it conforms with Your own policies.
23. The core facility, in providing access to specialized technical platforms and scientific expertise, does not assume responsibility for the maintenance of data according to the end-users' data management plans. The integrity of data and adherence to such plans remain the sole responsibility of the end-users. Furthermore, the core facility shall not be held accountable for any consequences arising from the publication of data that may be deemed inadequate by the editorial board of journals. Lastly, the core facility is absolved from any liability related to the inappropriate use of data for clinical or regulatory applications. It is the end-user's obligation to ensure the proper use of data in accordance with all applicable standards and regulations.

Acknowledgment

24. You shall not use the name of SickKids or the Core Facility in any publication, news release, promotion, advertisement, or other public announcement, whether written or oral, that endorses services, organizations or products, without the prior written permission of SickKids' Director of Public Affairs. Specifically, You shall not use or permit others to use the name of SickKids or Core Facility or to refer to them for any sales or promotional purposes.

25. SickKids normally neither requires nor requests co-authorship on studies using Deliverables generated solely on a fee-for-service basis by its facilities. In cases where significant intellectual contributions have been made by SickKids scientists, co-authorship may be appropriate, following generally accepted scientific practice. Specifically, SickKids requires that all parties follow the Tri-Agency Framework for Responsible Conduct of Research with respect to acknowledgements, authorship, and publications.

Intellectual Property

26. SickKids shall be the owner of intellectual property developed by SickKids. You shall be the owner of intellectual property developed by You. Ownership of Inventions shall be consistent with inventorship and determined in accordance with the Canadian patent law.

Privacy

27. You will comply with all applicable federal and provincial privacy legislation including but not limited to the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 ("PIPEDA") and the Personal Health Information Protection Act, 2004, S.O. 2004, c. 3 ("PHIPA"). You shall be responsible for damage, loss or cost to the extent arising from your breach of the laws.

Indemnity & Limitation of Liability

28. You agree to assume your own liability for and to rely on your respective institutional and professional liability insurance(s) or professional protective association, as the case may be, to indemnify You against any direct liability, loss, damage and expense (including attorney's fees and reasonable legal costs) in connection with any claim or lawsuit, regardless of merit, brought against You for any and all damages alleged to have been caused pursuant to the Services.
29. You shall defend, indemnify and hold harmless SickKids and its officers, trustees, invitees, employees, agents, students and staff from and against any and all liabilities, claims, actions, suits, damages, costs and expenses (including legal fees and expenses) arising in connection with or arising out of the Services.
30. SICKKIDS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING ANY MATTER SET OUT HEREIN, AND SICKKIDS EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES, THE DELIVERABLES, OR ANY RELATED MATTER HEREUNDER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
31. SICKKIDS SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND EXPRESSLY INCLUDING LOSS OF DATA, PROFITS OR BUSINESS (EVEN IF SICKKIDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), IN CONNECTION WITH THE SERVICES, THE DELIVERABLES, OR ANY RELATED MATTER.
32. WITHOUT DEROGATING FROM THE FOREGOING, SICKKIDS' TOTAL AGGREGATE LIABILITY TO YOU IN RELATION TO ANY AND ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES ARISING OUT OF THE SERVICES, THE DELIVERABLES, OR ANY RELATED MATTER, SHALL NOT EXCEED THE LESSER OF: (A) ALL AMOUNTS PAID BY YOU TO SICKKIDS IN RESPECT OF THE SERVICES, AND (B) \$1,000.
33. THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY IN THIS SECTION SHALL BE APPLICABLE NOTWITHSTANDING THE NATURE OF THE CLAIM, WHETHER ARISING IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR OTHER BASIS.

General

34. Unless you are an employee of SickKids, You represent and warrant that:
 - i. You are requesting Services as a representative of Your institution or corporation and not in Your individual capacity.
 - ii. You have authority to agree to these Terms and Conditions; and
 - iii. You have been given the opportunity to obtain independent legal advice relating to these Terms and Conditions before submitting a request for Services.
35. **Independent Contractors:** You and SickKids are independent contractors. Nothing contained herein shall be deemed or construed to create between the parties a partnership or agency or joint venture or employment relationship. You do not have the authority to act on behalf of or to assume, create or commit SickKids in any manner.
36. **Assignment:** No part of this arrangement may be assigned, delegated, transferred or subcontracted by You to any third party without the prior written approval of SickKids.
37. **Amendments:** These Terms & Conditions shall not be amended or supplemented except in writing and signed by duly authorized representatives of You and SickKids.
38. **Waiver or Non-waiver:** Waiver of any term or condition of these Terms & Conditions shall not be binding on either party unless agreed to expressly in writing by both parties. Waiver of any provision of these Terms & Conditions shall not constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.
39. **Governing Law:** The Terms & Conditions shall be interpreted and governed by the laws in force and in effect in the Province of Ontario, without regard to conflict of laws rules therein. The parties agree irrevocably to attorn to the exclusive jurisdiction of the courts of the Province of Ontario, the federal courts of Canada and all courts competent to hear appeals in connection with any dispute or controversy arising out of or in connection with the services.
40. The Terms & Conditions shall enure to the benefit of and shall be binding upon and enforceable by the parties and their respective successors and permitted assigns.
41. **Entire Agreement:** The Terms & Conditions, and its associated addendum and Facility policies (if any), sets forth the entire understanding between the parties with respect to the services, and shall supersede all prior and contemporaneous agreements, understandings, negotiations, representations and warranties, whether written or oral.
42. **Severability:** In the event that any part, article, clause, paragraph or subparagraph of the Terms & Conditions shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire Terms & Conditions shall not fail on account thereof, and the balance of the Terms & Conditions shall continue in full force and effect.
43. **Survival:** Completion of the services shall not affect the survival and continuing validity of any provision which is expressly or by implication intended to continue in force or to be relied upon by any party after such termination or expiration.
44. No party shall be responsible for any failure or delay in the performance of the services resulting from causes beyond its reasonable control, including fire, explosion, flood, pandemic, war, riot, outbreak, acts of government, acts of terrorism, court order, civil unrest, sabotage, adverse weather conditions, labour troubles and unavoidable shortage of materials or services, or without prejudice to the generality, any other circumstance or occurrence beyond the reasonable control

of the party. The delayed party shall give timely notice to the other party of any such event of force majeure and shall endeavour to avoid or remove the causes and resume performance with minimum delay and with reasonable dispatch whenever such causes are removed.

45. SickKids recognizes the values of diversity, equity, and inclusion in the workplace and endeavours to establish a workplace that is inclusive and diverse. In its commitment to diversity principles, SickKids has established and maintains practices that ensure fairness and equity for all employees in all stages of employment, including its hiring practices.
46. Any additional terms and conditions provided by SickKids as "Addendum Terms and Conditions" are incorporated into these Terms and Conditions, and you agree to be bound by the Addendum Terms and Conditions as you are by these Terms and Conditions.