

# Tcag Facilities Terms and Conditions

**By submitting an order (either online or otherwise) to The Centre for Applied Genomics at The Hospital for Sick Children ("SickKids") for any services, including the performance of experiments, the creation of products, results, or data, or interpretation of the same ("Services"), you ("You") acknowledge and agree that the following Terms and Conditions shall govern the provision of such Services:**

## Services

- All Services are provided for research purposes only. YOU ACKNOWLEDGE AND AGREE THAT SERVICES ARE CARRIED OUT IN A RESEARCH LABORATORY WHICH IS NOT 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.
- All Services are provided on a fee-for-service basis. An invoice will be issued at the completion of the Services. For projects where the reagent cost is greater than \$25,000, You will be billed for the reagents upfront, with processing fees billed at the completion of the Services. Payment will need to be received prior to placing the reagent order.
- Experiments that fail for any reason other than technical problems caused by SickKids will be billed.
- 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.
- Services are performed on a first-come, first-served basis.
- SickKids is not responsible for any interpretation or use of Deliverables by You.

## Sample submission and handling

- You represent and warrant that all samples and related information provided by You to SickKids ("Samples") have been collected in a lawful manner.
- You represent and warrant that, where applicable, Samples have been collected under approved Research Ethics Board (REB) protocols.
- You represent and warrant that, where applicable, the Services requested conform to the approved use of any Samples under the REB protocol.
- You represent, warrant and covenant that you will not use any Deliverables for diagnosis, prophylaxis, or treatment.
- Human biological Samples must be submitted without any identifying information.
- Biological Samples and all derivatives will be destroyed by SickKids three months after completion of the requested Service. If requested by You, SickKids will return the biological Samples to You upon completion of the service, at Your sole cost.

## Data

- Data will be kept by SickKids for three months after notification by SickKids of the completion of the requested Service. It is Your responsibility to ensure the data has been retrieved from the SickKids servers and backed up.
- Concerns or questions regarding Services are to be raised within three months of the completion of the Service (ie. before the Samples are destroyed and data are deleted).
- Deliverables will only be released to You or Your designate upon written confirmation.

## **Acknowledgment**

- SickKids normally neither requires nor requests co-authorship on studies using Deliverables generated solely on a fee-for-service basis by our facilities. In cases where significant intellectual contributions have been made by SickKids scientists, co-authorship may be appropriate, following usually-accepted scientific practice.
- You shall not use the name of SickKids or TCAG 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 TCAG or to refer to them for any sales or promotional purposes.
- In order to satisfy reporting requirements of SickKids' funding partners, and to monitor SickKids' scientific impact, we require that customers acknowledge work performed by SickKids. You agree to acknowledge SickKids in either or both of the following ways:
  1. In the acknowledgments section of peer-reviewed publications. When SickKids personnel have been especially helpful (in study design, data interpretation, or technology selection), and where the author(s) feel that it is warranted, the following sentence should be incorporated. "The authors wish to thank [name of SickKids employee(s) and/or director(s)] of The Centre for Applied Genomics, The Hospital for Sick Children, Toronto, Canada for assistance with [activities or services performed]"
  2. In the body text of peer-reviewed publications (for example, in Methods and Materials or Results sections). When SickKids has provided a Service, the following language should be used. "[Service] was performed by The Centre for Applied Genomics, The Hospital for Sick Children, Toronto, Canada."

## **Indemnity & Limitation of Liability**

- 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.
- 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.

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.

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.

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.

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.

### **Intellectual Property**

- 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**

- 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.

### **General**

- **Unless you are an employee of SickKids, You represent and warrant that:**
  - **You are requesting Services as a representative of Your institution or corporation and not in Your individual capacity;**
  - **You have authority to bind Your institution or corporation to these Terms and Conditions; and**
  - **You have been given the opportunity to obtain independent legal advice relating to these Terms and Conditions before submitting a request for Services.**
- 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.
- 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.
- These Terms & Conditions shall not be amended or supplemented except in writing and signed by duly authorized representatives of You and SickKids.
- 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.
- 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.
- 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.
- The Terms & Conditions 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.

- 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.
- 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.
- 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, 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.