

## THE UNIVERSITY COURT OF THE UNIVERSITY OF GLASGOW

### CONDITIONS FOR ACCESS TO THE EQUIPMENT AND ANCILLARY SERVICES

#### 1. DEFINITIONS

##### 1.1 In these terms and conditions:

- Arising IP** means any IP that is generated or first reduced to practice by the University directly as a result of providing the Services but excluding all and any improvements or modifications to the University's Background IP.
- Background IP** means any IP excluding Arising IP owned or controlled by either party prior to commencement of or independently from the Project, and which the owning Party contributes or uses in the course of performing the Project or providing the Services.
- Facility** means the cryogenic transmission electron microscopy facility known, or to be known, as the Scottish Macromolecular Imaging Centre located at the Premises.
- IP** means intellectual property of any description including but not limited to all inventions, designs, information, specifications, formulae, improvements, discoveries, know-how, data, processes, methods, techniques and the intellectual property rights therein, including but not limited to, patents, copyrights, database rights, design rights (registered and unregistered), trade marks, trade names and service marks, applications for any of the foregoing.
- Premises** means the Medical Research Council-University of Glasgow Centre for Virus Research at the University.
- Price** means the price agreed between the University and the User for access to and/or use of the Facility and/or the Services with respect to a Project (plus VAT, where applicable).
- Project** means a project of non-commercial medical or veterinary academic research being conducted by the User.
- Scheduled Period** means the dates and times during for which access to and/or use of the Facility and/or the Services by the User has been agreed by the University.
- Services** means such services as may be agreed to be provided by the University from the Facility with respect to a Project.
- University** means The University Court of the University of Glasgow incorporated under the Universities (Scotland) Act 1889 and having its principal office at University Avenue, Glasgow G12 8QQ, a registered Scottish charity (Charity Number SC004401).
- User** means the person, firm, company, institution, or other legal entity to whom access to and/or use of the Facility and/or the Services has been agreed by the University with respect to a Project.

#### 2. ACCEPTANCE OF TERMS AND CONDITIONS

- 2.1 All contracts and transactions for access to the Facility and Services between the University and the User whether made orally or in writing are subject to these terms and conditions which shall be deemed to be incorporated in any such contract or transaction between the University and the User.
- 2.2 These terms and conditions shall constitute the whole agreement between the University and the User (hereafter together referred to as the "**Contract**") and may not be modified or varied unless specifically accepted on behalf of the University by an authorised signatory of the University in writing.

2.3 In the event of any conflict between these terms and conditions and the terms and conditions, if any, in any communication from the User (whether before or after the date of the University's offer) these terms and conditions shall prevail.

### **3. ACCESS TO THE PREMISES AND USE OF THE FACILITY**

3.1 The User shall ensure that its staff observe and comply with all reasonable health and safety, security policies and fire evacuation procedures which apply at the Premises of which they are notified.

3.2 The University may refuse access to the Premises (and the Facility) without liability where the University reasonably believes the User or any party representing the User represents a security risk, lacks appropriate training or where the University, in its sole discretion, has other reasonable grounds for doing so.

3.3 The User will ensure that the Facility is:

3.3.1 used during the Scheduled Period only, solely for the Project and not for any other purpose and, in particular, the User will not use the Facility for any commercial research unless with the prior written consent of the University; and

3.3.2 used in accordance with any operating instructions issued for it or otherwise as specified by the University.

3.4 The User will ensure that only authorised staff members have access to the Facility and, in particular but without limitation, shall not allow or provide access to the Facility to any other person without the prior written consent of the University.

3.5 The User will not alter or modify the Facility, remove any existing component from the Facility, or seek to make any repair to the Facility, and will not use the Facility with any third party component or sequence without, in each case, obtaining the University's prior approval.

3.6 Notwithstanding any approval obtained under condition 3.5, if the User makes any modification, removal, repair or introduces, or otherwise uses, a component or sequence with the Facility, the User shall be liable for any loss or damage resulting therefrom. The User shall ensure that any software code or sequence that it uses or introduces as aforesaid shall be free of any, viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful.

3.7 The User will keep the University fully informed of all material matters relating to the Facility.

### **4. DURATION AND DELIVERY OF SERVICES**

4.1 The University will use reasonable endeavours to provide the Services during the Scheduled Period and as agreed in writing between the parties. However, the University will not be liable for any loss, damage or expense not arising directly from any fault or negligence of University staff which results in any delay or failure to carry out the Services.

4.2 If the Services are delayed due to circumstances or conditions beyond the control of the University the obligations on the University shall be suspended for as long as such circumstances prevail.

4.3 Background IP used in connection with the Project and/or the Services shall remain the property of the party introducing the same. No licence under any intellectual property or other proprietary rights owned or controlled by the University is granted or implied by the Contract other than the right for the User to use the Facility in accordance with the terms of the Contract. Any improvements or modifications to the University's Background IP arising from the provision of the Services will be deemed to form part of the University's Background IP and will be retained by the University.

4.4 All Arising IP created by the University directly in the performance of the Services will belong to the User unless otherwise agreed in writing between the parties. The University hereby assigns to the User, and agrees to assign to the User, at the cost and expense of the User, the Arising IP. The University will, at the cost and expense of the User, execute such documents as the User may reasonably request to perfect the User's title to the Arising IP.

4.5 Where agreed with the User, the University will, as a convenience to the User, provide storage for one copy of the full raw dataset directly arising from the conduct of the Project using the

Facility for a period of six (6) months. Thereafter the dataset will be stored by the University in compressed format for a period of up to ten (10) years. Notwithstanding the foregoing, the User is responsible for the management, storage (including archiving and curation), security, and appropriate back-up of all data arising from the Project and the provisions of Condition 8.2.1 shall apply in respect of all such data which may be stored by the University.

## 5. PAYMENT

- 5.1 The User will pay the Price.
- 5.2 The University shall invoice the User in respect of the Price in accordance with the timetable agreed between the parties or, failing such timetable, monthly in arrears. The User shall make payment to the University of all sums due within 30 days following the date of the University's invoice.
- 5.3 Time of payment shall be a material condition and of the essence of the Contract and, unless otherwise agreed in writing between the University and the User, interest at the rate of four per cent (4%) per annum above the base rate from time to time of HSBC Bank plc will be due and payable (calculated on a daily basis) on all sums due to be paid by the User from the due date for payment until settlement in full.
- 5.4 The User shall not be entitled to withhold payment of any amount payable under the Contract to the University because of any disputed claim of the User in respect of the provision of the Facility or Services or in respect of any other alleged breach of the Contract, nor shall the User be entitled to set-off any amount payable under the Contract to the University against any monies which are not then presently payable by the University or for which the University disputes liability.
- 5.5 All sums due under the Contract will be paid in pounds sterling (£) or any currency replacing pounds sterling in its entirety in Scotland.

## 6. CONFIDENTIALITY

- 6.1 For the purposes of this Condition 6, "**Confidential Information**" shall mean, with respect to a party, information relevant to the business, research and development activities, affairs, plans, finances and strategies of that party which would reasonably be considered confidential including, without limitation, information about inventions, designs, processes, products, trade secrets, details of employees and officers and of the remuneration and other benefits paid to them, technical data, private web addresses or similar, know-how and other information relating to the business of the relevant party or any of its suppliers, clients, customers, agents, distributors, shareholders or management.
- 6.2 Subject to Conditions 6.3 and 6.4, each of the User and the University will not:
  - 6.2.1 divulge or communicate to any person, firm, business entity or other organisation;
  - 6.2.2 use for its own purposes; or
  - 6.2.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of,any Confidential Information of the other which comes to its attention in connection with the Contract or otherwise.
- 6.3 The obligations of confidentiality contained in Condition 6.2 will not apply to any information which the party under the relevant obligation can show:
  - 6.3.1 is in, or at any time comes into, the public domain, other than by a default of the relevant party, its employees, officers or agents;
  - 6.3.2 was known to it prior to entering into the Contract and which is not covered by any obligation of confidentiality or non-use owed by it to a party to the Contract or to a third party from whom the information was obtained;
  - 6.3.3 is made available to it during the period of the Contract or thereafter by a third party without any obligation of confidence; or

- 6.3.4 is required to be disclosed by (i) law (including, but not limited to, any information which requires to be disclosed under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004), (ii) any regulatory authority, or (iii) any court of competent jurisdiction.
- 6.4 Each of the University and the User will ensure that the Confidential Information of the other is disclosed to its employees, directors and/or officers on a need to know basis only. Each of the University and the User will ensure that its employees, directors and/or officers to whom the Confidential Information of the other is disclosed, are made aware of the confidential nature thereof and comply at all times with the terms of this Condition 6.

## 7. PUBLICITY

- 7.1 The User will acknowledge the support of and/or Services provided by the University through the Facility in all publications deriving from Projects that have utilised the Facility or Services. The University may stipulate a form of words to be used for this purpose.
- 7.2 If appropriate in accordance with normal scientific academic practice, University personnel engaged in the provision of the Services shall be appropriately acknowledged through authorship.

## 8. LIABILITY AND INSURANCE

- 8.1 The Facility is made available and the Services will be provided by the University on an 'as is' basis. The University makes no representation and gives no warranty, condition or undertaking in relation to the Facility or the Services. Without limiting the foregoing, the University does not warrant, undertake or represent that any particular result will be achieved or is achievable using the Facility or as a result of the Services or with respect to the use(s) to which any of the results of the Services may be put by the User or their fitness or suitability for any particular purpose or under any special conditions notwithstanding that any such purpose or conditions may have been made known to the University and the User will be deemed to have satisfied itself in this regard.
- 8.2 Subject to Condition 8.5, neither party shall be liable to the other for:
- 8.2.1 any indirect, consequential or special damages or losses; or
- 8.2.2 any loss of profits, loss of revenue, loss of data, or loss of contracts or opportunity, which arises directly or indirectly from that party's breach or non-performance of the Contract or from any liability arising in any other way out of the subject matter of the Contract, even if the other party has advised it of the possibility of those losses arising, or if such losses were within the contemplation of the parties.
- 8.3 The User shall be responsible for, and shall reimburse the University in full on demand in respect of:
- 8.3.1 any loss or damage (excluding fair wear and tear) which may be caused to the Facility by any act or omission (negligent or otherwise) of the User or any of its employees or any other person to whom it gives access to the Facility; and
- 8.3.2 any losses, damages, fines, costs (including legal costs), expenses, proceedings or claims which may be made against the University by any third party as a result of a negligent act or omission of the User or any of its employees or any other person to whom it gives access to the Facility or the User's failure to comply with the terms of the Contract.
- 8.4 Subject to Condition 8.5, the University's liability under the Contract or in connection with its subject matter shall not exceed a sum equal to the total Price payable to it under the Contract.
- 8.5 Nothing in the Contract limits or excludes liability for:
- 8.5.1 death or personal injury resulting from a party's negligence;
- 8.5.2 fraud or fraudulent misrepresentation; or
- 8.5.3 any liability which cannot be excluded or limited by law.

8.6 The User warrants and undertakes to the University that during such time as it is using the Facility and for a period of not less than one (1) year thereafter, it will effect and shall maintain an appropriate policy or policies of insurance in respect of any one occurrence to cover the loss, liability and damage incurred under the Contract in respect of each incident or series of connected incidents. The User shall at any time upon demand produce to the University proof that this insurance has been effected and is in force. If the University becomes aware that the User has failed to effect and/or maintain the insurance required under this Condition, the University may effect and maintain this insurance and the User shall be bound to reimburse the University for the cost of effecting and maintaining this insurance on demand.

## 9. CANCELLATION AND EXTRA COSTS

9.1 Should the Contract (or any Scheduled Period) be cancelled or terminated for whatever reason other than the fault or negligence of the University prior to expiry of the Scheduled Period, the University reserves the right to charge the Price in full. In the event of a delay in or suspension of the provision of Services in accordance with the User's instructions or due to lack of instructions from the User or any cause beyond the University's control, the User shall remain liable to the University for the Price and any additional expense thereby incurred by the University.

## 10. TERMINATION

10.1 The Contract may be terminated:

10.1.1 by either party providing 14 days' written notice to the other;

10.1.2 forthwith by each party giving written notice to the other party in the event of material breach by the other which is irremediable or, if remediable, within 14 days following notice of such breach being given if the party in breach fails to remedy same.

10.2 The University shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part the Contract or to suspend any further performances under the Contract forthwith in any of the following events:

10.2.1 the non-payment of any debt due by the User to the University on the due date thereof;

10.2.2 the failure by the User to accept performance of any of the Services under the Contract otherwise than in accordance with the User's contractual rights;

10.2.3 the Facility ceasing to function for any reason;

10.2.4 the User becoming apparently insolvent or compounding with its creditors or on the appointment of a Liquidator, Receiver or Administrator over all or on any of its assets or carrying out or undergoing any analogous act or proceeding under foreign law; or

10.2.5 the User threatening to cease trading on the sale of the whole or any part of the business or assets of the User or in the event of change of beneficial ownership thereof.

10.3 The University shall be entitled to exercise its aforesaid rights in Condition 10.2 of termination or suspension by notice in writing to the User at any time during the continuance of the event or default giving rise thereto and in the event of any such suspension the University shall be entitled as a condition of resuming performance under the Contract to require prepayment or such security as it may require for the payment of the price of any further performance.

10.4 Termination of these Conditions shall not affect the obligations of the User under Condition 5 (Payment – in relation to outstanding payments only), Condition 6 (Confidentiality), Condition 7 (Liability and Insurance), Condition 9 (Cancellation and Extra Costs), Conditions 10.4 and 10.5 (Termination), Condition 11 (Notices) and Condition 12 (General) which shall continue notwithstanding termination.

10.5 Termination of the Contract shall not affect the rights of either party against the other in respect of the period up to the date of termination.

## 11. NOTICES

- 11.1 Any notice required to be given under the Contract will be served personally or by first class post, courier or by electronic mail (provided that notices provided by electronic mail shall be followed up immediately by delivery by post or courier), if to the University to Head of Legal, Rm 241, Isabella Elder Building, University of Glasgow, University Avenue, Glasgow G12 8QQ and, if to the User, to the registered office or principal business address of the User or such other address or number as may be provided by the User to the University from time to time for the purpose. Any notice so given will be deemed to have been duly served if personally delivered or sent by electronic mail, on the day of delivery or, if sent by post or courier, forty-eight (48) hours after posting, and in proving service it will be sufficient to produce a copy of the notice properly addressed or numbered, or courier's evidence of delivery, or proof that the notice was transmitted by electronic mail to the e-mail address of the relevant party, as the case may be.

## 12. GENERAL

- 12.1 The User shall not be entitled to assign, transfer or sub-contract the Contract or any benefit thereunder whether in whole or in part. The University shall be entitled to sub-contract the performance of any part of the Contract but shall remain primarily responsible to the User.
- 12.2 Any delays in or failure of performance by either party of its obligations under the Contract shall not be considered a breach of the Contract if and to the extent that such delay or failure is caused by occurrences beyond the reasonable control of that party including, but not limited to acts of God; acts, regulations and laws of any government; strikes or other concerted acts of workers; fire; floods; explosions; riots; wars; rebellion; and sabotage; and any time for performance under the Contract shall be extended by the actual time of delay caused by any such occurrence.
- 12.3 No failure or delay by any party in exercising any right or remedy under the Contract will operate as a waiver of such right or remedy nor will any single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 12.4 The Contract does not create any partnership or agency relationship between the University and the User. The rights of third parties are expressly excluded.
- 12.5 The User hereby undertakes to comply with all applicable laws, regulations and statutes including those relating to anti-bribery as detailed in the Bribery Act 2010 and other analagous legislation.
- 12.6 If any term of the Contract is or becomes invalid, or is ruled illegal by any court of competent jurisdiction or is deemed unenforceable under then current applicable law from time to time in effect during the Term, it is the intention of the parties that the remainder of the Contract will not be affected thereby provided that the parties' rights under the Contract are not materially altered. It is further the parties' intention that in lieu of each such invalid, illegal or unenforceable term, there will be substituted or added as part of the Contract a valid, legal and enforceable term which in effect will be as similar as possible to the effect of the original invalid, illegal or unenforceable term.
- 12.7 The Contract shall be governed by and interpreted according to the laws of Scotland and all claims and disputes between the parties arising out of or in connection with the Contract (whether or not contractual in nature) shall be determined in accordance with the laws of Scotland. Insofar as practicable, the parties hereby prorogate the jurisdiction of the Scottish Courts.