

BIONIQUE TESTING LABORATORIES TERMS AND CONDITIONS FOR TESTING SERVICES AND STUDIES

Unless Client and Bionique have already entered into a Master Service Agreement or Quality Agreement, Client shall be bound by these Terms and Conditions for Testing Services and Studies ("Terms") upon Client's submission of a test article, a purchase order or signed quotation for a Study (as defined below). These Terms, together with the Protocol (as defined below), shall constitute the Agreement.

1. **STANDARD OF PERFORMANCE.** Bionique Testing Laboratories Inc. ("Bionique") will provide the Products or perform all testing and studies (each, a "Service") using due care in accordance with (a) the service protocol and/or SOP ("Protocol"), (b) generally prevailing industry standards, and (c) current Good Manufacturing Practices and/or other laws and regulations ("Regulations") applicable to the service being performed, as amended from time to time. Bionique will make commercially reasonable efforts to start and complete all Services in a timely fashion and will notify the Client if Bionique determines that there are likely to be substantial changes in the proposed start or completion dates of a Service. Any Products purchased from Bionique shall be used by the Client in a safe manner, and in accordance with applicable governmental rules and regulations. The purchase of any Products conveys to the Client the non-transferable right to use the Products and the components of the Products only in research conducted by the Client and specifically in accordance with the Product Information provided with the Product. Unless expressly agreed in writing by Bionique, the Client cannot sell or otherwise transfer to a third party the Products or its components for Commercial Purposes. If the Client fails to comply with the foregoing limitations, in addition to any other remedies available to Bionique, the warranty provided for the Products will be automatically voided.

2. **FEES AND PAYMENT.** Client shall make payment in full for all charges specified, with no right to set-off or reduction, to Bionique in accordance with the quotation issued to Client for the relevant Service or Product. Unless otherwise agreed in writing by Bionique, payment terms shall be net thirty (30) days from date of invoice. If Bionique does not receive payment by the due date, an interest charge may be added at the rate of 1.5% per month (18% per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof. Any discounts for providing the Product or performance of a Service must be expressly offered to client by Bionique in writing. Under no circumstances will Bionique honor any discounts automatically taken by client for any reason, even if client has informed Bionique in writing of the possibility of such discount. Bionique may charge the interest rates set forth above for any unpaid amounts owed to Bionique as a result of such unauthorized discount.

3. **SERVICE MATERIALS, DATA AND INFORMATION.** Client will provide Bionique with sufficient amounts of all compounds, materials, or other substances ("Test Article") with which to perform the Service, as well as all sufficient and comprehensive data and information, including but not limited to material safety and data sheets, concerning the stability of the Test Article, storage and safety requirements (collectively, "Data and Information"). In the event that the information supplied regarding the Test Article on the Sample Submission Form is missing or in error, the Client agrees to bear all reasonable costs related to such error or missing information, including but not limited to, assay repeats, project management time, and reasonably related costs and expenses. In the event Client becomes aware of any additions, deletions, or modifications to any such requirements during the course of the Service or any retention of any samples of Test Article, it shall immediately notify Bionique thereof. These additions, deletions and/or modifications may result in an amended quote or statement of work for the Service, at Bionique's sole discretion, and may result in additional charges and expenses to be paid by Client for work and services that are required outside of standard time lines and/or requirements stated in the Service quotation or Protocol. Promptly upon completion of the Services, Bionique shall dispose of any unused Test Article, unless the Client requests in writing that the remaining material be returned to it, then, in such event, Bionique shall return any remaining material to the Client at the sole cost and expense of the Client. The Client will be responsible to ensure that all Test Articles and materials shipped to Bionique for testing are categorized as Biosafety Level 1 or Biosafety Level 2 materials as recommended by the CDC and NIH (Biosafety in Microbiological and Biomedical Laboratories, (BMBL) 5th Edition (HHS Publication No. (CDC) 93-8395. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Institutes of Health; U.S. Government Printing Office: Washington DC; 2009). As per 21 CFR Subpart 1 – Laboratory Controls, Section 211.170-Reserve Samples. Client agrees to retain sufficient sample of each test material submitted for testing per cGMP guidelines. Bionique agrees to comply with all federal and state laws and regulations in the United States for the shipping, handling and use thereof.

If Bionique and the Client have mutually agreed, in writing, a starting date for the Service, the Client shall use reasonable endeavors to ensure that Bionique receives materials in a timely manner, consistent with any time estimates provided to Bionique. If there is any delay in the obtaining of such materials, then Bionique reserves the right to reschedule the Service to a new mutually agreed starting date based on Bionique's availability.

4. **CHANGES.** Client shall have the right to request reasonable changes in or modifications ("Changes") to a Client-specific Protocol of a Study which Bionique has agreed to conduct and which has not been completed. All such Changes in a Client-Specific Protocol shall be in writing and shall be signed by authorized representatives of Bionique and Client. If such Changes result in an increase in the cost of the Study, the fee shall be adjusted commensurate with such increase. If such Changes affect the projected completion date of the study, the completion and report due dates shall be adjusted commensurate with such affect.

5. **DATA.** Client shall be the exclusive owner of and shall have title to all documentation, records, raw data, specimens or other work product ("Data") generated during the performance of the Services. Client shall not own or have title to any Bionique protocols or standard operating procedures ("SOPs"). Unless otherwise agreed to by the parties, Bionique shall store and maintain all Data in accordance with internal SOPs and Regulations upon completion of the Services. All services for retrieval, return, disposal or storage beyond the period defined in Bioniques' Record Retention Requirement SOP shall be provided in accordance with all applicable Regulations and may incur additional charges. Bionique shall have the right to retain any documentation as Bionique deems necessary to comply with regulatory requirements.

6. **CONFIDENTIALITY.** During performance of the Services and for ten (10) years thereafter, Bionique will treat all Data and all information regarding such Data as proprietary and confidential and will not knowingly disclose the same to any person other than Client or its designated representatives.

Notwithstanding any other provisions, Bionique shall have no liability or obligation to the Client for nor be in any way restricted in, its disclosure of or use of any Data which:

- a) is already lawfully known to Bionique; or
- b) is or becomes publicly known by any means whatsoever, through no wrongful act of Bionique; or

- c) is received from a third party without breach of this Agreement; or
- d) is disclosed pursuant to an enforceable order of a court of competent jurisdiction; or
- e) is independently developed by or for Bionique.

Except as required for regulatory submissions, Client will treat any Bionique confidential information, including but not limited to quotes, protocols, SOPs, and the like, in accordance with the above.

7. REPORTS. Unless otherwise agreed in writing by Bionique and Client, Bionique shall deliver a report of findings for each Service performed. All reports will be prepared in the standard format of Bionique.

8. USE OF NAMES. Client shall not use Bionique's name or the names of Bionique's employees in any advertising or sales promotional material or in any publication without prior written consent of Bionique. Bionique will not use Client's name or the names of Client's employees in any advertising or sales promotional material or in any publication without prior written consent of Client. Notwithstanding the above, Client shall be permitted to use Bionique's name in any regulatory submission associated with the Service without prior written consent of Bionique, and Bionique shall be permitted to use Client's name to the extent necessary to comply with regulatory and, if in conjunction with a Confidentiality Agreement to be established between Bionique and a Financing institution, Financing institutions requirements without prior written consent of Client.

9. INVENTIONS AND PATENTS. Client shall become the exclusive owner of and Bionique hereby assigns to Client all concepts, inventions, improvements, designs, programs, formulas, know-how, methods, processes and writings, whether or not copyrightable or patentable, relating exclusively to the Test Article and discovered exclusively as a result of performing the Services (collectively, the "Inventions"). If requested by Client, Bionique shall, at Client's expense, do all things reasonably necessary to obtain patents or copyrights on any Inventions discovered exclusively as a result of performing Client's Study to the extent the same may be patented or copyrighted.

Notwithstanding the foregoing, "Inventions" shall not include, and Bionique is and shall continue to be the sole owner of, all concepts, inventions, improvements, designs, programs, formulas, know-how, methods, processes, and writings utilized or developed in conducting the Services to the extent relating solely and generally to the business, processes, practices, or services performed by Bionique for its customers.

10. CLIENT'S WARRANTY. Client represents and warrants that it will comply with all applicable laws and regulations governing use of Test Articles and any products related thereto, and agrees to use Test Articles and any products related thereto solely for the purposes set forth in, and in accordance with, any approved uses therefor. Client represents and warrants that it owns or possesses, has access to, or is licensed under all patents, patent applications, inventions, improvements, trademarks, trade names, copyrights, licenses, information, proprietary rights, processes and know-how necessary for the Test Article, and the performance of the Service will not result in any infringement, misappropriation, violation of any agreement, or conversion of or conflict with the rights of third parties. Client has not received, nor has any knowledge of, any conflict with the asserted rights of other individuals or entities with respect to any intellectual property rights used or to be used in connection with the Test Article. Client represents and warrants that it is sufficiently self-insured or possesses sufficient insurance coverage against any liability arising under this Agreement.

11. LIMITED WARRANTY, REMEDY, DAMAGES. The undertaking of Bionique to perform the Service is a contract for services only. The sole warranty is that it will perform the Service with due care in accordance with applicable SOPs, the Protocol, generally prevailing industry standards, and the Regulations. Bionique does not warrant or represent that the results of the Services will be acceptable to any regulatory or governmental agency to which they are presented nor that the results of the Services will enable the Client to further develop, market or otherwise exploit the Test Article or any other product or service. The warranty set forth in this paragraph is in lieu of any and all other warranties relating to the Services to be performed, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose or for non-infringement of a patent, trademark or other intellectual property right. Any claim by the Client for a breach of such warranty shall be made in writing to Bionique within ten (10) business days after the Products are delivered or the completion of Services, after which time the Services shall be deemed finally accepted. The sole remedy of the Client for breach of such warranty shall be to require Bionique to re-perform the Service (or such portions thereof as may reasonably be required to be re-performed), and, in such event Bionique shall diligently pursue the re-performance of the Service or portions thereof until completion. Under no circumstances shall Bionique be liable to the Client for any third party claiming by or through the client for any lost profits, incidental, indirect, consequential, special, or other damages. Bionique's liability to the Client for the breach of any Terms and Conditions of the Protocol or this Agreement (other than any breach of the warranty, which shall be governed by the exclusive remedy contained in this paragraph) shall be limited to direct damages in an amount not to exceed the fee paid or to be paid by the Client to Bionique in connection with the Service.

12. INDEMNIFICATION AND INSURANCE. Except where proximately caused by the gross negligence or willful misconduct of Bionique, the Client shall indemnify, defend and hold harmless Bionique, its parents, subsidiaries, and affiliates and their respective officers, directors, employees, and agents from and against any and all expenses (including, but not limited to, reasonable attorney's fees), damages, judgments, and losses incurred or suffered by any such indemnified party as a result of or in connection with any claim, demand, or cause of action asserted or brought by a third party (including, but not limited to, officers, employees, and agents of the Client) for (i) physical injury to or death of persons or physical damage to property arising out of or based upon the manufacture, sale, or use of any quantity of the Test Article, or any derivative thereof or product related thereto, by or on behalf of the Client, whether such manufacture, sale, or use took place prior to conclusion of the Services or thereafter and whether or not such manufacture, sale, or use took place in reliance, in whole or in part, on the Services or any portion thereof, or (ii) physical injury to or death of persons or physical damage to property arising out of Bionique's use of any quantity of the Test Article in accordance with the Protocol, Regulations, and/or other written or verbal instructions issued by Client; or (iii) infringement, unlawful disclosure or misappropriation of copyright, patent, trade secret or other intellectual property by reason of the performance of the Service on the Test Article. Client shall maintain adequate commercial general liability and product liability insurance in such amounts and with such scope of coverage as is customary in the life sciences industry with regard to the manufacture and sale of the products and deliverables hereunder.

13. NO SOLICITATION. During the term of this Agreement and for a period of one (1) year from the date the final report is delivered to the Client, the Client shall not directly solicit or recruit for employment, without prior written approval of Bionique, any personnel employed by Bionique who has in any manner been associated with the Service. The foregoing restriction shall not apply in the case of such employee being interviewed,

offered employment, and/or hired following that employee's response to a publicly posted position of the Client.

14. FORCE MAJEURE. It is mutually understood and agreed that Bionique shall not be responsible for failure or delay in performance of its obligations under or in connection with this Agreement due to causes beyond its reasonable control including but not limited to, acts of God, governmental actions, fire, labor difficulty, shortages, civil disturbances, transportation problems, interruptions of power or of communications, failure of suppliers or subcontractors, or natural disasters. This paragraph shall not apply to Client's obligation to make any payment to Bionique.

15. ASSIGNMENT. Bionique will not assign its rights or delegate its responsibilities hereunder without the prior written consent of Client. In the event Client assigns its rights or delegates its responsibilities hereunder to a third party, Client shall provide Bionique with written notice of such assignment as soon as possible after such assignment or delegation is made.

16. INDEPENDENT PARTIES. Nothing in this Agreement shall be construed as to create any relationship between Bionique and Client other than that of independent contracting parties. Neither party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

17. WAIVER. No waiver by either party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.

18. SEVERABILITY. If any part, term or provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and this Agreement shall otherwise remain in full force and effect.

19. CANCELLATION. Cancellation of a Service in progress will result in partial charge commensurate with percentage of work completed at time of cancellation, and payment of actual noncancellable costs incurred by Bionique in performance of the Service prior to cancellation.

20. ENTIRE AGREEMENT. This Agreement, including the sample submission form, the quotation of fees and charges, the Protocol and appendices, exhibits or other schedules, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes any conflicting terms that may be set forth on Client's purchase order, Bionique's invoice, or any other documentation of either party, unless agreed to in writing by authorized representatives of both parties. This Agreement is not intended to confer upon any person other than Bionique and Client any rights or remedies hereunder. There are no representations, warranties, understandings or agreements relating to this Agreement which are not fully expressed herein. No amendment, modification, waiver or discharge of any provision of this Agreement will be valid unless in writing and signed by an authorized representative of the party against which such amendment, modification, waiver or discharge is sought to be enforced.

21. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA without reference to its conflict of laws or choice of law rules. Both parties consent to the exclusive jurisdiction of such courts and expressly waive any objections or defenses based on lack of personal jurisdiction or venue.

22. TERMINATION. Either party may terminate this Service in the event of a material breach of these Terms and Conditions by the other party, provided such breach is not cured within thirty (30) days after receipt of written notice from the non-breaching party specifying the details regarding such breach. Either party may terminate the Services immediately by written notice to the other party if the other party abandons its operations, becomes insolvent, becomes the subject of voluntary or involuntary bankruptcy, arrangement, composition or other like proceeding, which is not dismissed within thirty (30) days of commencement thereof, makes an assignment for the benefit of its creditors, or consents to the appointment of a trustee, receiver or other fiduciary for all or a substantial part of its assets. Upon termination, neither party will have any further obligations, except that (i) the liabilities accrued through the date of termination and (ii) the obligations which by their terms survive termination, including the applicable confidentiality, record keeping, regulatory compliance, intellectual property and indemnification provisions of this Agreement, shall survive termination.

ADDITIONAL TERMS AND CONDITIONS AS APPLICABLE

For Bionique Production Services: Production Services include but are not limited to: antigen preparation, control slides, reference standards. Where estimates of quantities of the Product are provided by Bionique, the Client acknowledges that these are estimates only and any failure by Bionique to produce the estimated quantity of the Product shall not be deemed to be a breach of the contract and Bionique shall not be liable for any loss, damage, costs or expenses of any nature, whether direct or consequential, resulting from a failure to produce any specific quantity of the Product save where such a failure is due to Bionique's non-compliance with these terms. Bionique provides no warranties relating to the description or quality of the Product or its fitness for a particular purpose or use under any conditions whether or not known to Bionique except as may be specified in the contract, and the Client shall fully indemnify, and keep indemnified and hold harmless, Bionique against any and all claims, actions, costs, expenses or other liabilities whatsoever in respect of any liability under the Consumer Protection Act 1987.

Except where proximately caused by the gross negligence or willful misconduct of Bionique, the Client shall indemnify, defend and hold harmless Bionique, its parents, subsidiaries, and affiliates and their respective officers, directors, employees, and agents from and against any and all expenses (including, but not limited to, reasonable attorney's fees), damages, judgments, and losses incurred or suffered by any such indemnified party as a result of or in connection with any claim, demand, or cause of action asserted or brought by a third party (including, but not limited to, officers, employees, and agents of the Client) for (i) physical injury to or death of persons or physical damage to property arising out of or based upon the manufacture, sale, or use of any quantity of the Product, or any derivative thereof or product related thereto, by or on behalf of the Client, whether such manufacture, sale, or use took place prior to delivery of Product or thereafter and whether or not such manufacture, sale, or use took place in reliance, in whole or in part, of the Product or any portion thereof, or (ii) physical injury to or death of persons or physical damage to property arising out of Client's use of any quantity of the Product in accordance with the Protocol, Regulations, and/or other written or verbal instructions issued by Bionique; or (iii) infringement, unlawful disclosure or misappropriation of copyright, patent, trade secret or other intellectual property by reason of the use of the Product. Client shall maintain adequate commercial general liability and product liability insurance in such amounts and with such scope of coverage as is customary in the life sciences industry with regard to the manufacture and sale of the Products and deliverables hereunder.