

TERMS AND CONDITIONS

INDIANA BIOSCIENCES RESEARCH INSTITUTE METABOLIC PHENOTYPING CORE

1. Applicability.

(a) These terms and conditions for services (these "Terms") are the only terms that govern the services to be provided by the Indiana Biosciences Research Institute ("IBRI") at its Metabolic Phenotyping Core (the "Facility") for parties requesting services from the Facility ("Sponsor").

(b) The accompanying project description (the "Project Description") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Project Description, these Terms shall govern, unless the Project Description expressly states that the terms and conditions of the Project Description shall control.

(c) These Terms prevail over any of Sponsor's general terms and conditions regardless whether or when Sponsor has submitted its request for proposal, purchase order, or such terms. Provision of services to Sponsor does not constitute acceptance of any of Sponsor's terms and conditions and does not serve to modify or amend these Terms.

2. Services. IBRI shall provide the services to Sponsor as described in the Project Description (the "Services") in accordance with these Terms.

3. Compliance. Sponsor acknowledges that IBRI will submit the Sponsor's research protocol to the (i) IBRI's Institutional Biosafety Committee ("IBC"); and, (ii) because animal care services are provided to the IBRI by Indiana University ("IU"), IU's Institutional Animal Care and Use Committee ("IACUC"). (Without limitation, IBRI expenses incurred in applying for IBC and IACUC approvals are to be reimbursed by Sponsor regardless of outcome).

4. Scheduling of Service Delivery. Services will not be scheduled at the Facility until IBC and IACUC approvals have been received. Once IBC and IACUC approvals have been obtained, the Sponsor and Facility shall agree to a delivery schedule. IBRI shall take reasonable efforts to adhere to the schedule, but Sponsor acknowledges that circumstances may arise that could cause changes to the schedule. It is the policy of the IBRI to not schedule Services, including IBC and IUCUC review, until the Sponsor has issued a PO for Services.

5. Sponsor's Obligations. Sponsor shall:

(a) cooperate with IBRI in all matters relating to the Services;

(b) respond promptly to any IBRI request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for IBRI to perform Services in accordance with the requirements of this Agreement;

(c) provide such Sponsor materials or information as IBRI may request to carry out the Services in a timely manner and ensure that such Sponsor materials or information are complete and accurate in all material respects; and

(d) obtain and maintain all necessary licenses and consents and comply with all applicable federal, state and local laws and regulations including but not limited to the Public Health Service Policy on Humane Care and Use of Laboratory Animals, *Guide for the Care and Use of Laboratory Animals*, and the Animal Welfare Act.

(e) comply with all applicable IU and IBRI policies with respect to the Services and the Facility.

6. Termination. Upon written request at any time from Sponsor, IBRI will cease performing Services. Fees will be invoiced and are due and payable for any services performed prior to the notice of termination, and for services that cannot be avoided as of the termination date.

7. Fees and Payment Terms. In consideration of the provision of the Services by IBRI and the rights granted to Sponsor under this Agreement, Sponsor shall provide payment to the IBRI as set forth in the Project Description. Fees are due and payable when Services have been performed and invoiced. Sponsor agrees to provide payment within thirty (30) days from invoice date.

8. Confidentiality. IBRI policies on intellectual property and on research misconduct establish that research and research data at IBRI is to be protected from intentional and unintentional disclosure. Samples, products derived from samples, data obtained from the analysis of samples, and data and analyses obtained from Sponsor shall be considered confidential, and shall not be shared, published, reanalyzed, reprocessed, or in any other way shared or used for additional analyses without Sponsor's express written consent.

9. Publication and Intellectual Property Matters.

(a) Publications describing research that takes place at the Facility or containing assay results, data, images, or products generated at the Facility shall include the following statement in the acknowledgment section of the paper: "The author(s) acknowledge the use of the Metabolic Phenotyping Core, a core facility at the Indiana Biosciences Research Institute."

(b) Expectations for authorship for Facility personnel should be discussed with the manager of the Facility. While authorship is not required and will often be inappropriate for Facility personnel providing research input to the project, if there is intellectual and/or organizational effort of facility personnel to the work described in the manuscript,

authorship is warranted and expected. For example, expert data analysis from facility personnel that is required in support of claims in a manuscript or patent warrants authorship.

(c) IBRI acknowledges and agrees that the Services it provides to Sponsor are work for hire, and IBRI claims no ownership of any intellectual property arising from or related to its performance of the Services.

10. Data Retention. Project information and data generated from Services (“Data”) will be retained in accordance with the IBRI’s Data Retention Policy as it may be amended from time to time. Data from IBRI service cores are retained for a period of seven years.

11. Warranty and Limitation of Liability. IBRI represents and warrants to Sponsor that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. EXCEPT FOR THE WARRANTY SET FORTH IN THE PREVIOUS SENTENCE, IBRI MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. IN NO EVENT SHALL IBRI BE LIABLE TO SPONSOR OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFITOR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT IBRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL IBRI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO IBRI PURSUANT TO THE APPLICABLE PROJECT DESCRIPTION.

11. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

12. Governing Law. All matters arising out of or relating to the relationship between the parties shall be governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule.