

## 1. Application

1.1 These terms and conditions ("Terms and Conditions") shall apply to the provision of the services ("Services") by **E4Law Limited** trading as **Lextox** a company registered in England and Wales under company number 7501682 of **The Maltings, East Tyndall Street Cardiff CF24 5EA** ("Supplier") to you (the "Client").

1.2 Except for the Supplier's quotation ("Quotation") and the Supplier's Service Level Agreement ("SLA") no other terms and conditions, including the Client's purchase order, confirmation or terms and conditions shall apply to the provision of Services unless agreed otherwise in writing between the parties.

## 2. Interpretation

2.1 A "business day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

2.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2.3 Words imparting the singular shall include the plural and vice-versa.

2.4 A reference to 'in writing' shall include email but not fax.

2.5 A reference to a Clause is to a clause within these Terms and Conditions.

## 3. Services

3.1 In consideration of the Fees (as defined below) being paid in accordance with these Terms and Conditions, the Supplier shall provide the Services to the Client as set out in the Quotation.

3.2 The Supplier shall use reasonable care and skill in its performance of the Services and shall ensure compliance with relevant codes of practice.

3.3 The Supplier shall use its reasonable endeavours to complete its performance of the Services within a reasonable time from the date the sample is received at its laboratory, with all necessary information and with the Chain of Custody Sample Collection Kit (as defined in the SLA) correctly utilised. Any dates given by the Supplier for delivery of the Services are intended to be estimates and time shall not be of the essence for the performance of the Services.

3.4 If the Supplier's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay so caused.

3.5 The Supplier shall not be responsible for enforcing any workplace drug and alcohol policy that the Client may have in place and the Client expressly acknowledges that the Supplier and/or its representatives do not provide advice on enforcing workplace drug and alcohol policies as part of the Services or otherwise. The Supplier shall accordingly not be responsible where the Client seeks to rely on the opinions provided of Supplier representatives in such circumstances.

3.6 The Supplier reserves the right to conduct an initial examination of any sample to check its condition before analysis, in line with the industry recognised guidelines.

## 4. Client Obligations

4.1 The Client shall:

4.1.1 use its reasonable endeavours to provide the Supplier with access to any and all relevant information, materials, properties and other matters which are required to enable the Supplier to provide the Services. The Client must ensure the information on the Quotation is accurate and complete;

4.1.2 The Client shall ensure that it has any and all permissions, consents, licences or other matters which are required to enable the Supplier to provide the Services;

4.1.3 co-operate with the Supplier in all matters relating to the Services and with any Client requirements or obligations as set out in the Quotation;

4.1.4 notify the Supplier immediately and in writing if there is any change to the personnel nominated by the Client to receive invoices or financial information;

4.1.5 notify the Supplier, immediately and in writing, of the Client personnel who shall be entitled to receive test reports;

4.1.6 only send samples to the Supplier's laboratory that have been obtained using sample collection equipment or goods approved for use or supplied by the Supplier;

4.1.7 provide the Supplier with the nominated site location ("Call Out Location") that the Services are required to be delivered at;

4.1.8 notify the Supplier immediately, in writing if there is any changes or additions to the Call Out Location that the Services are required to be delivered at; and

4.1.9 ensure that a Client representative acting as site contact is present whilst all sample collections and test(s), carried out by the Supplier at the nominated Call Out Location, are in progress in order to safeguard both the donor and the Supplier's representative throughout the process.

## 5. Fees

5.1 The fees ("Fees") for the Services are set out in the Quotation and confirmed by the Supplier's invoice.

5.2 In addition to the Fees, the Supplier reserves the right to charge for collection appointments which the donor and/or Client does not attend or where the Supplier attends the Call Out Location, but the sample is not provided by the donor and any appointments which are cancelled on the day of the appointment by the Client. The Supplier reserves the right to charge for Chain of Custody Sample Collection Kits not returned to the laboratory within 30 days of receipt by the Client, postal and administration costs incurred by the Supplier due to the Client's delay in returning the Chain of Custody Sample Collection Kits, and for providing duplicate documents.

5.3 The Client shall pay the Supplier for any additional services provided by the Supplier, that are not specified in this Quotation or the SLA in accordance with the Supplier's then current rates in effect at the time of performance (as shall be notified by the Supplier to the Client in writing) or such other rate as may be agreed between the Supplier and the Client. All orders for additional services shall be subject to these Terms and Conditions.

5.4 The Fees are exclusive of any applicable VAT and other taxes or levies which shall be added by the Supplier or are imposed or charged by any competent authority at the appropriate time.

### 6. Quotation, Contract and Variation

6.1 The Client may request an estimate of Fees in respect of the Services by completing the Supplier's quotation request form available online at the Supplier's website.

6.2 On receipt by the Client of the Quotation, Terms and Conditions and SLA, the Client agrees to enter into a contract for the provision of Services (subject to the Terms and Conditions) by providing Supplier with written acceptance of the Quotation.

6.3 Where split invoices are requested between multiple Clients, each Client must accept their respective Quotation and liability for their share of the total Fees in writing before the Services will commence.

6.4 The Quotation is valid for a period of 30 days only unless expressly withdrawn by the Supplier at an earlier time.

6.5 The Supplier may cancel the order for the Services for any reason prior to the Client's acceptance (or rejection) of the Quotation.

6.6 If the Client wishes to vary any details of the Services ordered it must notify the Supplier in writing as soon as possible. The Supplier shall use its reasonable endeavours to make any required changes and the additional costs in respect of the variation of the Services shall be invoiced to the Client. If the Client refuses to accept delivery for any reason or if delivery is late because the Client has not provided necessary information or instructions, the Services will be deemed to have been completed and/or delivered (as applicable).

6.7 If, due to circumstances beyond its control, including receipt of a sample which is underweight or insufficient length, the Supplier has to make any change in the Services or the arrangements relating to the provision thereof, it shall notify the Client as soon as possible. The Supplier shall endeavour to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the Quotation as is reasonably possible in the circumstances.

### 7. Payment

7.1 Following the Client's acceptance of the Quotation, the Supplier shall invoice the Client for the Fees on the invoice dates set out in the Quotation or on completion of the Services, whichever is the earlier.

7.2 The Client shall pay the Fees due, without set off or counter claim, within 30 days of the date of the Supplier's invoice or otherwise in accordance with any credit terms agreed between the Supplier and the Client as part of the Quotation. Time for payment by the Client shall be of the essence.

7.3 If the Client fails to make payment within the period set out in Clause 7.2, the Supplier may charge the Client interest at the rate of 5% per annum above the HSBC base rate from time to time on the amount outstanding until payment is received in full, whether before or after judgement.

7.4 If the Client fails to make payment within the period set out in Clause 7.2, the Supplier may suspend the provision of the Services and cancel any future Services which may have been ordered by, or otherwise arranged with, the Client.

7.5 No payment shall be deemed to be received until the Supplier has received cleared funds. Receipts for payment will be issued by the Supplier only at the Client's written request.

7.6 All payments must be made in GBP unless specified in the Quotation or as agreed in writing between the Supplier and the Client.

### 8. Sub-Contracting

8.1 The Supplier shall be free to sub-contract the provision of the Services (or any part thereof) and Client agrees that any consent, authorisations and licenses given to the Supplier shall apply to such sub-contractor.

8.2 Where the Supplier sub-contracts the provision of the Services or any part thereof it shall ensure that any and all sub-contractors are skilled to the required standard in the relevant practices and shall not pass any additional charges that may be incurred through the Supplier's use of such sub-contractors on to the Client.

8.3 Where the provision of Services or any part thereof is supplied by an authorised sub-contractor that provision will be undertaken under the conditions of the sub-contractors own SLA.

### 9. Termination

9.1 Either party may terminate the provision of the Services immediately if:

- (a) the other party commits a material breach of its obligations under these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply
- (c) the other party is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) the other party convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof;
- (f) any documents are filed with the court for the appointment of an administrator in respect of the other party;
- (g) notice of intention to appoint an administrator is given by the other party or any of its directors or by a qualifying floating charge holder or a resolution is passed or petition presented to any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party;
- (h) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 9.1 (b) to (f) inclusive;
- (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (j) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier may terminate these Terms and Conditions with immediate effect by giving written notice to the Client if the Client fails to pay any amount on the due date for payment.

9.3 On termination of these Terms and Conditions for any reason:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Terms and Conditions which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### 10. Intellectual Property

10.1 The Supplier reserves and owns all intellectual property rights which subsist in the products of, or in connection with, the provision of the Services. The Supplier reserves the right to take such action as may be appropriate to restrain or prevent the infringement of such intellectual property rights.

10.2 Subject to the receipt of all Fees due to it, the Supplier grants the Client or shall procure the direct grant to the Client of a fully paid-up, worldwide, non-exclusive, royalty-free, irrevocable licence to copy and modify test reports delivered by the Supplier in connection with the Services for the purposes connected with the Client receiving and using the test reports in its business or in any legal proceedings or investigation connected with its business.

10.3 The Client may sub-license the rights granted in clause 10.2 on the same terms to third parties without the prior written consent of the Supplier, provided that those third parties have entered into appropriate confidentiality undertakings with the Client in respect of information contained within the test reports, equivalent to those obligations of confidentiality as are required of the Client under the terms of this agreement.

10.4 The rights granted in clause 10.2 shall cease immediately upon expiry of this agreement or where the Services cease to be provided.

### 11. Liability and Indemnity

11.1 The Supplier will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these Terms and Conditions, be liable, whether in contract, tort (including negligence) breach of statutory duty, or otherwise for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's employees, agents or otherwise) in connection with its provision of the Services or the performance of any of its other obligations under these Terms and Conditions or the quotation or with the use by the Client of the Services supplied.

11.2 Subject to Clause 11.1 and 11.4 the Supplier's total liability arising from performance of the Services in any 12 month period, commencing on the date on which the first of the Goods and/or Services are provided, and the anniversary thereof in each year shall be limited to the amount of the Fees paid by the Client in respect of the Services in respect of which the Supplier's liability has arisen within that 12 month period.

11.3 The Supplier shall not be liable to the Client or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if such delay or failure is due to the Client's failure to comply with clause 4 or any cause beyond the Supplier's reasonable control.

11.4 The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from any loss or damage to any equipment (including that belonging to third parties) caused by the Client or its agents or employees.

11.5 Nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, or for any other matters for which it would be unlawful to exclude or limit liability.

11.6 Except as set out in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms and Conditions.

11.7 This clause 11 shall survive termination of these Term and Conditions.

11.8 The Supplier and Client do not intend any term of this agreement to be enforceable by any other party under the Contract (Rights of Third Parties) Act 1999.

### 12. Confidentiality

12.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under these Terms and Conditions, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 12 shall survive termination of these Terms and Conditions.

### 13. Data Protection

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this *Clause 1*, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor and the Quotation and the SLA sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

13.3 Without prejudice to the generality of *Clause 13.1*, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

13.4 Without prejudice to the generality of *Clause 13.1*, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Client set out in the Quotation and the SLA (or as communicated by the Client in writing) unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13.4 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

13.5 The Client consents to the Supplier appointing approved sub-contractors for the provision of the Services which may result in the sub-contractor becoming a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 13 and which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.

#### **14. Force Majeure**

14.1 Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service or utility supplier failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

#### **15. Communications**

15.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

15.2 Notices shall be deemed to have been duly given:

- (a) on the date and time that the delivery courier's receipt is signed, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
- (b) the next business day after transmission, if transmitted by fax or email and a successful transmission report or return receipt is generated;
- (c) on the second business day following sending by pre-paid or first class post or recorded delivery; or
- (d) on the tenth business day following mailing, if mailed by airmail.

15.3 All notices under these Terms and Conditions shall be addressed to the most recent address, email address or fax number notified to the other party.

#### **16. No Waiver**

16.1 A waiver of any right under these Terms and Conditions is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.2 Unless specifically provided otherwise, rights arising under these Terms and Conditions are cumulative and do not exclude rights provided by law.

#### **17. General**

17.1 Severance: In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

17.2 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.3 Variation: Except as set out in these Terms and Conditions, any variation, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

17.4 Assignment: The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions, including by transferring its right and obligations to any third-party purchaser of its business

**18. Law and Jurisdiction**

18.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 Any dispute, controversy, proceedings or claim between the parties relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

**19. Client compliance with laws (the Client's attention is particularly drawn to this clause)**

19.1 The Supplier offers its services in compliance with laws in the UK. It is the Clients own responsibility to comply with all laws applicable to the Client and the operation of its business, including but not limited to:

- a) Data Protection Legislation and Applicable Laws;
- b) the Health and Safety at Work Act 1974; and
- c) employment laws.

19.2 The Supplier does not provide legal advice to its Clients or donors of samples. Clients and any donors should seek the advice of specialist legal advisors in connection with drug, and alcohol testing, including with regards to the development and enforcement of any organisational and/or employer policies relating thereto.

**20. Entire Agreement**

20.1 The Terms and Conditions set out herein, together with the Quotation and SLA constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this agreement.

20.3 Nothing in this clause shall limit or exclude any liability for fraud.