

## WICELL TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (“Terms”) shall apply to all characterization testing, cell banking services, and other services (the “Services”) that WiCell Research Institute, Inc., a nonprofit, nonstock Wisconsin corporation (“WiCell”), provides to you (“Client”).

### **1. Services.**

1.1 **Standard of Performance.** WiCell will perform the Services, using reasonable efforts and due care, and may utilize subcontractors of suitable expertise to assist in performing all or any part of the Services. Client is aware and acknowledges that methods of performing characterization and similar testing Services rely upon statistical sampling and it is therefore Client’s responsibility to verify the plausibility and validity of results, and if appropriate request retesting, possibly with a different confirmatory method.

1.2 **Sample Materials.** Client will provide WiCell sufficient quantities of the relevant biological materials, compounds, or substances (“Materials”) to WiCell for the performance of the Services. The Materials and all associated intellectual property rights will remain the exclusive property of Client. WiCell will use reasonable care in handling and storing the Materials, but shall not be held responsible for any loss or destruction thereof. WiCell may dispose of any unused Materials in accordance with its internal policies and in a manner it deems appropriate.

2. **Confidentiality.** During the performance of the Services and for a period of five (5) years thereafter, each party will treat all information provided by the other in connection with the Services as proprietary and confidential, and will not knowingly disclose the same to any person other than the disclosing party or its designated representatives and authorized subcontractors performing the Services. Excluded from the confidentiality obligations is any information that the receiving party can demonstrate was: (i) independently developed or discovered by the receiving party without the disclosing party’s confidential information; (ii) already known to the receiving party prior to the performance of Services; (iii) in the public domain, other than through breach or omission of these Terms or any of the receiving party’s obligations to the disclosing party; (iv) disclosed to the receiving party by a third party not in breach of a duty of confidentiality owed to the disclosing party; or (v) required to be disclosed by law, or court or administrative order; provided that the receiving party uses reasonable efforts to give prompt notice to the disclosing party and provides reasonable cooperation with the disclosing party’s efforts to seek confidential treatment for the information.

3. **Payment.** Client shall make payment in full for all invoiced charges, with no right to set-off or reduction. Unless otherwise agreed in writing by WiCell, payment terms shall be net thirty (30) days from date of invoice.

### **4. Representations and Warranties.**

4.1 Client represents that: (i) it owns or otherwise has the right to provide the Materials to WiCell for use in the performance of the Services, and obtained all required consents and permissions to use the Materials in the Services; (ii) the

Materials and WiCell’s receipt and use of the same for the Services, do not infringe any third-party intellectual proprietary rights and do not violate any applicable ordinance, law, or rule; (iii) the Materials are not hazardous and do not include or contain any defective, harmful, or hazardous properties or components; and (iv) the Services are being requested and performed for Client’s own benefit, and not resold or otherwise for the benefit of third parties.

4.2 Client agrees to rely solely on its own opinion and judgement as to whether the requested Services are suitable for Client’s Materials, the use and suitability of the Deliverables, and as to the quality and nature of the Materials themselves. EXCEPT FOR WICELL’S OBLIGATIONS TO PROVIDE THE SERVICES AS STATED HEREIN, WICELL DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION OR WARRANTY AS TO NONINFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY. Client agrees not to, and has not, relied upon any guidance or statement from WiCell, nor any expectation of guidance, support, or results from WiCell with respect to use of the Deliverables.

### **5. Liability and Disclaimer.**

WiCell will be responsible for performing the Services in accordance with this Agreement; provided however that WiCell is not responsible for: (i) the quality or properties of Materials provided by Client, (ii) any other information or materials provided by Client, or (iii) any tasks, activities, details or directives Client requests that deviate from WiCell’s Standard Operating Procedures. In the event that the Services (or any portion thereof) do not meet the requirements of these Terms or any other performance or quality criteria agreed to by WiCell and Client, then WiCell shall have the right, at WiCell’s sole option, to promptly re-perform such Services at WiCell’s cost as Client’s sole remedy.

WiCell shall not be liable to Client in any manner for any special, incidental, indirect, consequential, punitive, or exemplary damages (including, without limitation, loss of profits, business, or damage to goodwill) arising out of or related to these Terms, the Services, the Deliverables, or the transaction contemplated hereunder, regardless of the foreseeability of any of the foregoing and even if WiCell is informed in advance of the possibility of such damages. THIS LIMITATION WILL APPLY WHETHER OR NOT CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD REASONABLY ANTICIPATE A CLAIM FOR WHICH SUCH DAMAGES WOULD OTHERWISE BE POSSIBLE. WICELL’S CUMULATIVE LIABILITY TO CLIENT FOR ANY CLAIMS

ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE SERVICES WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY CLIENT TO WICELL RELATING TO THE SPECIFIC SERVICE AT ISSUE.

**6. Indemnification.** Client will indemnify, defend, and hold harmless WiCell and WiCell's employees, directors, officers, Board Members, and contractors (each an "indemnified party") from and against any damages, losses, liabilities and costs (including reasonable attorneys' fees) incurred in connection with any claim, demand, action, proceeding, or investigation (a "claim") arising from Client's breach of any provision of these Terms, use of the Deliverables, the Materials, or from Client's request for the Services performed hereunder; provided that Client will not be responsible to the percentage extent such claim is determined, by a court of competent jurisdiction, to be the result of any grossly negligent or willful misconduct of WiCell. Client may not settle any claim to the detriment of the indemnified party without the prior written consent of the indemnified party. The indemnified party may participate in any proceeding brought against the indemnified party with counsel of their choice and at their own expense. WiCell will promptly notify Client of any claim(s) under this section.

**7. Ownership and Use of Deliverables.** In the performance of the Services, WiCell will generate and provide to the Client certain Deliverables, which will be owned by the Client upon full payment of all associated fees to WiCell. In the case of testing Services, the Deliverable will be a final report summarizing the results of the Services; in the case of cell banking Services, the Deliverable will be the requested quantity of Client's Materials generated by WiCell; for all other Services, the Deliverable will be in a form customarily provided by WiCell to other clients or as agreed upon in writing by WiCell and Client.

Final reports will be in a standard format as regularly used by WiCell. Upon payment of all fees due to WiCell, Client may use and reproduce the final report for its own purposes, so long as: (i) no part of the final report or its contents are mischaracterized or misrepresented; (ii) the final report and its contents are not used in a manner that implies WiCell's endorsement of the Materials or their quality, or any partnership or other such arrangement between Client and WiCell; and (iii) Client does not inaccurately describe the Services, the scope or quality of testing performed, or the protocols or SOPs used in performing the Services.

**8. WiCell's Retained Rights.** WiCell shall retain and own all right, title, and interest in all of its systems, processes, protocols, techniques, methods, programs, equipment, samples, materials, technology, skills, technical information and know-how (including the intellectual property rights therein) that WiCell may use, modify, improve, develop, obtain, or use in connection with the performance and provision of the Services.

**9. WiCell's Use of De-Identified Data.** WiCell will retain copies of data relating to the Services in accordance with its

document retention policies, as WiCell sees fit. Client agrees that WiCell may retain and use de-identified and anonymized data obtained in the course of performing the Services (e.g., in a state that does not identify the Client or Materials) for purposes of internal process and systems improvement, scientific publication, in furtherance of WiCell's non-profit mission, and for non-commercial academic research and publication.

**10. Use of Name.** Client shall not use WiCell's name, trademark or logo, the name of any WiCell employee, or the name, trademark or logo of any WiCell-affiliated institution in sales promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

**11. Miscellaneous.**

**11.1 Independent Contractor.** The relationship of the parties shall be that of independent contractors and not joint venturers, partners, agents or representatives.

**11.2 No Waiver.** No waiver by either party of any breach of any provision hereof shall constitute a waiver of any other breach of any provision hereof. If any part, term, or provision of these Terms is determined to be invalid or unenforceable, the remainder of these Terms shall not be affected, and shall remain in full force and effect.

**11.3 Governing Law.** These Terms shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin, without regard to its conflict of laws principles. Any disputes arising under these Terms will be brought before the state or federal courts in Madison, Wisconsin.

**11.4 Integration.** These Terms constitute the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, made prior to or at the signing hereof, shall vary or modify these Terms. No terms or conditions stated by Client, either verbally or in any document acknowledging or otherwise accepting these Terms, shall be binding upon WiCell unless specifically agreed to by WiCell in writing.