

TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (“Terms”) shall apply to any cytogenetic testing 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 use reasonable efforts to successfully complete the Services, using due care in accordance with generally prevailing applicable industry standards, taking into consideration WiCell’s level of experience in the techniques required. Client is aware and acknowledges that methods of performing the 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 sample materials, compounds, or substances with which to perform the Services. WiCell will use reasonable care in handling and storing samples, but shall not be held responsible for any loss or destruction thereof. WiCell may dispose of any unused samples in a manner it deems proper.

2. Confidentiality. During the performance of the Services and for a period of ten (10) 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. Excluded from the confidentiality obligations is any information that the receiving party can demonstrate is (i) independently developed or discovered by the receiving party without the disclosing party’s confidential information; (ii) already known to the receiving party; (iii) in the public domain, other than through breach 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. If WiCell does not receive payment by the due date, an interest charge may be added at the lesser of 1.5% per month (18% annually) or the maximum allowed by law.

4. Warranties.

4.1 Client Representations. Client represents that (i) it owns or otherwise has the right to provide the samples to WiCell for use in the performance of the Services; (ii) the samples 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; and (iii) the samples are not hazardous and do not contain toxic materials.

4.2 DISCLAIMER. EXCEPT AS EXPLICITLY SET FORTH IN SECTION 1.1 HEREOF, WICELL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR RESULTS, AND WICELL HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PURPOSE, ACCURACY, NATURE OF THE CONTENT, AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES AND THE RESULTS. THE INFORMATION CONTAINED IN ANY RESULT IS INTENDED FOR INFORMATIONAL USE IN CONNECTION WITH, AND NOT AS A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF CLIENT. WiCell shall not be liable to Client in any manner for any special, incidental, consequential, or exemplary damages (including, without limitation, loss of profits, business, or damage to goodwill) arising out of or related to these Terms 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. WiCell’s total, aggregate liability under these Terms shall be limited to actual damages not to exceed the amount of fees paid to WiCell by Client.

4.3 Indemnification. Client will indemnify and defend WiCell and WiCell’s employees, officers, and contractors (each an “indemnified party”) from and against any liability 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 or from the Services performed hereunder; provided that Client will not be responsible to the extent such claim is determined, by a court of competent jurisdiction, to be the result of any grossly negligent or intentional 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. The contractual relationship shall be strictly between Client and WiCell. There shall be no third party beneficiary or collateral warranty.

5. Use of Final Report; Reliance Upon Results. Upon payment of all fees due to WiCell, Client may use and reproduce the final report only as follows: (i) in its entirety; (ii) quoting, verbatim, the section entitled “Results and Interpretation”; or (iii) as may otherwise be pre-approved in writing by WiCell in WiCell’s sole discretion; provided, however, that in the case of (i) or (ii), the names of all individuals listed on the report shall be redacted. Client acknowledges that silence, delay or inaction by WiCell with respect to approval under subsection (iii) will not constitute approval. The Services were conducted solely for Client. The results may not be relied upon by any other party, or used for any purpose other than research use, without the prior written consent of the WiCell.

6. Use of Name. Except as expressly provided above in Section 5, 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.

7. Miscellaneous.

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

7.2 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.

7.3 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, heard, and determined exclusively in the state or federal courts located in Dane County in the State of Wisconsin.

7.4 Proprietary Information. WiCell shall retain and own all right, title, and interest in all of WiCell’s processes, techniques, methods, programs, equipment, samples, materials, technology, skills, information and know-how of general application (including the intellectual property rights therein) that WiCell may use in connection with the performance and provision of the Services.

7.5 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.