

TERMS AND CONDITIONS

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I. LIMITATION OF WARRANTIES AND DAMAGES AND INDEMNIFICATION BY THE CONTRACTOR.

The parties specifically understand and agree that the analysis of the DNA in the Samples may not always result in accurate results. Many factors outside the control of Pfizer Animal Genetics, a business unit of Pfizer Animal Health, its Sales Agents or the Contractor affect the analysis, including factors such as accuracy and integrity of the Contractor's information systems, accuracy and completeness of collection of Samples from the animal, and the integrity of Samples during collection, shipment and storage.

Hence, **there is risk involved in the rendering of the Services**, and the parties agree that the following, which is a material part of this Agreement and the prices set forth in the Fee Schedule, shall govern:

- (a) **Limitation of Warranties.** Other than as expressly set forth in this Agreement, Pfizer Animal Genetics and its Sales Agents have not made any and hereby exclude all warranties, representations, terms, conditions or undertakings, whether express or implied, written or oral, statutory or otherwise, including any implied warranty of merchantability or of fitness for a particular purpose or intended use in respect of the Services.
- (b) **Limitation on Damages.** The Contractor's damages and remedies for any claim against Pfizer Animal Genetics or its Sales Agents arising out of the provision of Services, howsoever arising, (including arising under theories of breach of warranty express or implied, breach of contract, negligence, tort, strict liability, products liability, design defect, failure to warn, redhibition or statute) shall be limited, at Pfizer Animal Genetics' option, to:
 - (i) *the resupply of the Services claimed to be defective; or*
 - (ii) *the repayment of the fees paid by the Contractor for the performance of the Services proven to be defective.*
- (c) **Sampling Procedures.** Deviation from or failure to follow the collection procedures provided by Pfizer Animal Genetics may lead to error in analysis. Pfizer Animal Genetics shall not be responsible for or liable in any manner for any analytical error resulting from non-compliance with the Sample collection procedures.
- (d) **Adequacy of Sample.** Pfizer Animal Genetics may require submission of a further DNA Sample or Samples from the same test subject without charge, before proceeding with any DNA analysis specified in the Order.
- (e) **Sample Failures.** Samples may appear normal but are still unable to yield results. In this event, Pfizer Animal Genetics will request a replacement Sample at no additional charge. Pfizer Animal Genetics will not provide refunds for failed Samples.

2. ARCHIVING, OWNERSHIP AND USE OF SAMPLES

- (a) Pfizer Animal Genetics may, at its discretion, store Samples submitted to Pfizer Animal Genetics. At any time during this period, the Contractor may arrange for the Samples to be collected from Pfizer Animal Genetics at the Contractor's expense, with a minimum of thirty (30) days notice.
- (b) The Contractor agrees that Pfizer Animal Genetics has the right to use the Samples and data relating to them for the purposes of calculating group, breed and any other rankings and related analysis for comparative or contextual purposes to be used in reporting and analysis, for comparative and validation studies and for quality control in the commercialization of products or services. Pfizer Animal Genetics will own all data compilations and analysis, trade secrets or other Intellectual Property without compensation to the Contractor. Pfizer Animal Genetics will make all reasonable efforts to avoid knowingly compromising the ability of the samples to be used for future commercial testing, at the Contractor's discretion.
- (c) During any period in which the Contractor owns the Samples and data, all genetic information created or discovered by Pfizer Animal Genetics and specifically relating to a single animal or single Contractor will be kept strictly confidential unless otherwise agreed to, in writing, by both parties.

3. PAYMENTS; FEES FOR LATE PAYMENTS

- (a) **Method of Payment.** Payment shall be by check or credit card.
- (b) **Late Payments.** Payments are due promptly upon receipt of invoice. Payments will be considered late if Pfizer Animal Genetics does not receive payment within thirty (30) days of invoice date. The Contractor shall reimburse Pfizer Animal Genetics for all costs of collection, including attorney's fees and court costs. Pfizer Animal Genetics may hold all Samples and Services until the Contractor has paid all outstanding amounts in full.

4. AUTHORITY AND COMPLIANCE

The Contractor hereby represents and warrants that the Contractor has the full right, power, and authority to enter into and perform its obligations under this Agreement. Both Contractor and Pfizer Animal Genetics will perform all of its obligations under this Agreement in accordance with all applicable governmental laws, rules, and regulations.

5. COMPLETE AGREEMENT – MODIFICATIONS

This Agreement is the sole and complete agreement between Pfizer Animal Genetics, its Sales Agent and the Contractor regarding the Services, and supersedes all prior discussions, agreements or understandings. The terms of this Agreement may be modified only in a writing signed by both parties.

