

Genetic Testing Laboratory Terms and Conditions

Article 1: General

1.1 The words "we", "us", and "our" refer to SWBIC-GTL. You will deliver samples to us for analysis, accompanied, or preceded by, a signed Chain of Custody and Analysis Request defining the scope and timing of our work and stating either the testing criteria you require or identifying the agency to which the results will be submitted.

Article 2: Our General Responsibilities

2.1 We agree to provide the professional services described in this agreement. We will provide you with written reports containing analytical results. In performing our service, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality.

2.2 Test and observations will be conducted using SWBIC-GTL and/or AABB approved test procedures and laboratory protocols. If you direct a manner of making tests that varies from our standard or recommended procedures, you agree to hold us harmless from all claims, damages, and expenses arising out of your direction.

2.3 We will not release information regarding our services for you or any information that we receive from you, except for information that is in the public domain and/or required by law.

Article 3: Your General Responsibilities

3.1 On each Chain of Custody and Analysis Request you will designate a representative who has authority to transmit instructions, receive information, and make decisions relative to our work.

3.2 You will respond in a reasonable time to our request for decisions, authorization for changes, additional compensation, or schedule extensions.

Article 4: Reports and Records

4.1 We will furnish copies of each report to you as specified in the Chain of Custody and Analysis Request. We will retain analytical data for seven years and financial data for three years relating to the services performed following transmittal of our final report.

4.2 If you do not pay for our services as agreed, you agree that we may retain all reports and work not yet delivered to you. You also agree that you will not use our work for any purpose unless paid for.

Article 5: Delivery and Acceptance of Samples

5.1 Until we accept delivery of samples by notation on chain of custody documents or otherwise in writing accept the samples, you are responsible for loss of or damage to samples. Until so accepted, we have no responsibility as to samples.

5.2 As to any samples that are suspected of containing bio-hazardous substances, such that would make special handling required, you will specify the suspected or known substances. This information will be given to us in writing as part of the Chain of Custody and Analysis Request and will precede or accompany samples suspected of containing bio-hazardous substances.

5.3 Samples accepted by us remain your property while in our custody. We will retain samples for a period of 6 months following the date of our report. We will extend the retention period if you so direct and a fee may be incurred by you. Following the retention period we will dispose of samples. We may return bio-hazardous samples, sample containers and residues to you. You agree to accept them.

5.4 Regardless of prior acceptance, we may refuse acceptance or revoke acceptance of samples if we determine that the samples present a risk to health, safety, or the environment, or that we are not authorized to accept them. If we revoke acceptance of any sample, you will have it removed from our facilities promptly.

Article 6: Changes to Task Orders

6.1 No persons other than the designated representatives for each Chain of Custody and Analysis Request are authorized to act regarding changes to a Chain of Custody and Analysis Request. We will notify you promptly if we identify any activity that we regard as a change to the terms and conditions of a Chain of Custody and Analysis Request. Our notice will include the date, nature, circumstance, and cause of the activity regarded as a change. We will specify the particular elements of project performance for which we may seek an equitable adjustment.

6.2 You will respond to the notice provided in paragraph 6.1 promptly. Changes may be made to a Chain of Custody and Analysis Request through issuance of an amendment. The amendment will specify the reason for the change and, as appropriate, include any modified budgets, schedules, scope or work, and other necessary provisions.

6.3 Until agreement is reached concerning the proposed change, we may regard the situation as a suspension directed by you.

Article 7: Compensation

7.1 For non-contractual work, payment must be received in full prior to commencement of testing.

7.2 Our pricing for the work is predicated upon your acceptance of the conditions and allocations of risks and responsibilities described in this agreement. You agree to pay for services as stated in our proposal and accepted by you or according to our then current standard pricing documents if there is no other written agreement as to price. An estimate or statement of probable cost is not a firm figure unless stated as such.

7.3 For work performed under a separate contractual agreement: Unless otherwise agreed to elsewhere, you agree to pay invoices within 30 days of receipt unless, within 15 days from receipt of the invoice, you notify us in writing of a particular item that is alleged to be incorrect. You agree to pay the uncontested portions of the invoices within 30 days of receipt. You agree to pay interest on unpaid balances beginning 60 days after receipt of invoice at the rate of 1.5% per month, but not to exceed that maximum rate allowed by law.

7.4 For work performed under a separate contractual agreement: If you direct us to invoice another, we will do so, but you agree to be ultimately responsible for our compensation until you provide us with that third party's written acceptance of all terms of our agreement until we agree to the substitution.

7.5 You agree to compensate us for our services and expenses if we are required to respond to legal process related to our services for you. These services include hourly charges for all personnel involved in the response and attorney fees reasonably incurred in obtaining advice concerning the response, the preparation of the testifier, and appearances related to the legal process.

7.6 If we are delayed by, or the period of performance is materially extended because of, factors beyond our control, or if project condition or the scope or amount of work change, or if the standards or methods of testing change, we will give you timely notice of the change and we will receive an equitable adjustment of our compensation.

Article 8: Risk Allocation, Disputes, and Damages

8.1 Neither we nor you will be liable to the other for special, incidental, consequential or punitive losses or damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, or the cost of capital.

8.2 We will not be liable to you for damages unless suit is commenced within two years of injury or loss or within two years of the date of the completion or our services, whichever is earlier. In no event will we be liable to you unless you have notified us of the discovery of the negligent act, error, omission, or breach within 30 days of the dates of its discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating your damages.

8.3 In the event you fail to pay us within 90 days following the invoice date, we may consider the default a total breach of our agreement and we may, at our option, terminate all of our duties without liability to you or to others.

8.4 If it is claimed by a third party that we did not complete an acceptable analysis, at your request we will seek further review and acceptance of the completed work by the third party and use your best efforts to obtain that acceptance. We will assist you as directed.

8.5 You and we agree that disputes will be submitted to "Alternative Dispute Resolution" (ADR) as a condition precedent to litigation and other remedies provided by law. Each of us agrees to exercise good faith efforts to resolve disputes through mediation unless we both agree upon another ADR procedure. All disputes will be governed by the law of the place where our services are rendered, or if our services are rendered in more than one state, you and we agree that the law of the place that services were first rendered will govern.

8.6 If either of us makes a claim against the other as to issues out of the performance of this agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees. If we bring lawsuit against you to collect our invoiced fees and expenses, you agree to pay our reasonable collection expenses and attorney fees.

Article 9: Indemnity

9.1 You will indemnify and hold us harmless from and against demands, damages, and expenses caused by your negligent act and omissions and breach of contract and by the negligent acts and omissions and breach of contract of persons from whom you are legally responsible.

Article 10: Miscellaneous Provisions

10.1 This agreement constitutes the entire agreement between you and us, and it supersedes all prior agreements. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, purchase order conditions, or other agreement purporting to modify, vary, supplement, or explain any provision of this agreement is of no effect until placed in writing and signed by both parties subsequent to the date of this agreement. In no event will the printed terms or conditions stated in a purchase work order, other than an agreed upon Chain of Custody and Analysis Request, be considered a part of this agreement, even if the document is signed by both of us.

10.2 Neither party will assign this agreement without the express written approval of the other, but we may subcontract laboratory procedures with your approval, as we deem necessary to meet our obligations to you.

10.3 If any of the provisions of this agreement are held to be invalid or unenforceable in any respect, the remaining items will be in full effect and the agreement will be construed as if the invalid or unenforceable matters were never included in it. No waiver of any default will be waiver of any future default.

10.4 Neither you nor we will have any liability for nonperformance caused in whole or in part by causes beyond our reasonable control. Such causes included but are not limited to Acts of God, civil unrest and war, labor unrest and strikes, equipment failures, matrix interference, acts of authorities, and failures of subcontractors that could not be reasonably anticipated.

10.5 You may stop our work by giving a written suspension or termination directive, but once work has suspended, we need not resume work until we agree to change in scope, schedule, and compensation. Upon suspension or termination, we will use reasonable care to preserve samples provided that you agree to compensate us for any additional effort, but we will have no responsibility for meeting holding time limitations after the effective time of suspension or termination directive. We will be compensated for service rendered and expenses incurred prior to termination that cannot reasonably be avoided.