



## TERMS AND CONDITIONS

UPDATED JANUARY 1, 2010

### 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 or trace back of the Samples to the animal or herd of origin. 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 Pricing Guide, 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 by Pfizer Animal Genetics of the fees paid by the Contractor for the performance of the Services proven to be defective.*
- (c) **No Incidental or Consequential Damages.** Without limiting the generality of clauses 1 (a) and (b), Pfizer Animal Genetics and its Sales Agents will not be liable for any incidental or consequential damages, economic loss, damage to goodwill or reputation, special damages, punitive/exemplary damages, compensatory damage, loss of profit, loss of income, business interruption, attorney's fees or indirect damages arising under or pursuant to this Agreement or the rendering of the Services.
- (d) **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.
- (e) **Adequacy of Sample.** Pfizer Animal Genetics shall have the right in its sole discretion to determine and judge whether a given Sample is adequate to perform the testing and supply results or services specified in the Order. 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.
- (f) **Sample Failures.** Samples may appear normal but are still unable to produce results. In the event of a Sample failure, Pfizer Animal Genetics will request a replacement Sample at no additional charge. The customer may choose to send in a Sample from the same test subject or a different test subject. Pfizer Animal Genetics will not provide refunds for failed Samples.

**Indemnity of Pfizer Animal Genetics and its Sales Agents.** The Contractor shall fully indemnify and hold Pfizer Animal Genetics and its Sales Agents harmless from and against all damages, costs and expenses (including costs of defense such as attorney's fees or settlement) incurred or otherwise arising out of any actions, claims, proceedings, investigations or demands (including those brought by third parties, whether public or private) which may be brought against Pfizer Animal Genetics or its Sales Agents, whether brought only against Pfizer Animal Genetics or jointly with its Sales Agents, the Contractor or others, and whether at common law, in equity or pursuant to statute or otherwise arising out of this Agreement or the Services.

### 2. ARCHIVING, OWNERSHIP AND USE OF SAMPLES

- (a) Pfizer Animal Genetics shall store all Samples for the Contractor, at the Contractor's risk, for a period of three (3) years from the date they are 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 fourteen (14) days notice.
- (b) Subject to clause 2 (c), (d) and (e), all Samples and any related data submitted by the Contractor to Pfizer Animal Genetics under this Agreement remain the property of the Contractor.

- (c) Upon expiration of the storage period, the Contractor may, at his/her option:
  - (i) *arrange for the Samples, or any remaining Samples not collected pursuant to 2(a) above to be collected from Pfizer Animal Genetics at the Contractor's expense, with a minimum of 14 days notice;*
  - (ii) *request that Pfizer Animal Genetics continue to store the Samples, at the Contractor's risk, but at no additional cost and on such terms as Pfizer Animal Genetics may reasonably determine; or*
  - (iii) *grant ownership of the Samples and any data submitted by the Contractor to Pfizer Animal Genetics.*

**If the Contractor fails to contact Pfizer Animal Genetics within ninety (90) days of the expiration of the storage period, ownership of the Samples and data will be deemed to have transferred to Pfizer Animal Genetics.**

- (d) The Contractor agrees that Pfizer Animal Genetics has the right, including during any period in which the Contractor owns the Samples, 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, for quality control and for 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.
- (e) 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. TRADEMARKS**

- (a) Pfizer Animal Genetics authorizes the Contractor to use the trademark "GeneSTAR" ("Trademark") in the Contractor's own promotional and sales materials for animals, in connection with the Services, provided however, that the Contractor will use the Trademark only in accordance with Pfizer Animal Genetics' instructions provided to the Contractor.
- (b) Pfizer Animal Genetics will provide the Client with a copy of the Trademark of a quality suitable for reproduction.
- (c) When using the Trademark, the Client must not allow the appearance of the Trademark to be altered in any way (other than proportional size adjustment).

### **4. PAYMENTS; FEES FOR LATE PAYMENTS AND TAXES**

- (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.
- (c) Taxes. Charges set forth in the Fee Schedule shall be increased by any use or sales taxes levied or incurred and the Contractor shall pay the same to Pfizer Animal Genetics.
- (d) Fees After Termination. From the date of termination, the Contractor is liable for unpaid Fees for Service earned or incurred up to the date of termination. Prepayments of storage charges shall not be refunded, even though the Contractor wishes Samples destroyed prior to expiration of storage term.

### **5. 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 their obligations under this Agreement in accordance with all applicable governmental laws, rules, and regulations.

### **6. 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.

