

**INDUSTRIAL BIOTECHNOLOGY INNOVATION CENTRE (“IBIOIC”)**  
**TERMS AND CONDITIONS FOR ACCESS TO SCALE-UP CENTRES FOR DIRECT USE**  
**PROJECTS**

**1. INTERPRETATION**

- 1.1. In these terms and conditions some words have particular meanings. These are set out in Clause 12.
- 1.2. These terms and conditions and the IBioIC Invoice make up the whole agreement between the Parties and supersede any previous agreement between the Parties relating to the same subject matter. No other term or condition submitted, proposed or stipulated by the Client will apply to the agreement between the Parties.
- 1.3. If there is any conflict or inconsistency between the provisions of i) these terms and conditions; and ii) the IBioIC Invoice, the following order of precedence will apply: these terms and conditions; and then the IBioIC Invoice.

**2. TERM**

- 2.1. The Contract shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue in force thereafter until the Expiry Date when it shall automatically expire.

**3. ACCESS**

- 3.1. In consideration of the Client:-

- 3.1.1. paying Strathclyde the Charges; and

- 3.1.2. complying with the obligations of the Client under the Contract,

Strathclyde and HWU will allow the Client to have Access to the Scale-up Centres subject to the terms and conditions of the Contract.

Strathclyde and HWU are acting as contracting parties and are operating through IBioIC to provide the Client to have Access to the Scale-up Centres.

- 3.2. Strathclyde and HWU shall start providing the Access on the Effective Date.
- 3.3. The Access will be supervised by the IBioIC Lead.
- 3.4. If the Client has requested access to the RapidBio facility they will be required to comply with certain processes and procedures of Strathclyde in order to have access to the RapidBio facility..
- 3.5. If the Client has requested access to the FlexBio facility they will be required to comply with certain processes and procedures of HWU in order to have access to the FlexBio facility.
- 3.6. The Parties shall be entitled to amend any details of the Access and any other item that is set out in or referred to in the IBioIC Invoice at any time provided that any such amendment is recorded in writing and signed by an authorised signatory on behalf of the Client, Strathclyde & HWU.
- 3.7. For the avoidance of doubt, the Client hereby acknowledges and agrees that an IBioIC Invoice may not be used at any time to amend these terms and conditions which may only be varied in accordance with clause 11.12.

- 3.8 Access by Client Representatives to Strathclyde labs and equipment will be conditional upon such Client Representatives first going through the requisite Strathclyde procedures to be registered as visiting scientists of Strathclyde and the continued compliance of the Client and the Client Representatives with all terms and conditions of this Contract.
- 3.9 Access by Client Representatives to HWU labs and equipment will be conditional upon such Client Representatives first going through the requisite Strathclyde procedures to be registered as visiting scientists of HWU and the continued compliance of the Client and the Client Representatives with all terms and conditions of this Contract.
- 3.10 The Client shall ensure that its staff shall behave in a courteous and respectful manner while present within the Scale-up Centres during the Access period. Where Strathclyde or HWU considers conduct of Client staff to be inappropriate, Strathclyde or HWU reserves the right to cancel or suspend the Access with immediate effect.

#### **4. SAFETY AND USE OF RAPIDBIO**

- 4.1 All Client Representatives accessing Strathclyde laboratories must undergo applicable Strathclyde safety inductions, training and generic and specific risk assessments applicable to RapidBio at Strathclyde, and to the specific laboratories accessed and must sign off on appropriate paperwork to confirm such matters have been undergone. Other risk assessment documents, raised in standard Strathclyde templates for specific activities, may also be applicable.
- 4.2 In the event that the Client wishes to introduce new processes or materials not covered by existing risk assessments, the Client must provide adequate information to Strathclyde for an appropriate risk assessment to be completed. Strathclyde retains final discretion over the adequacy of any risk assessment process and its documentation.
- 4.3 All Client Representatives accessing Strathclyde laboratories must use such facilities in accordance with any laboratory handbooks and standard operating procedures provided by Strathclyde prior to the Access
- 4.4 The Client shall be responsible for all aspects of safety in respect of the Access it requests, including the completion of risk assessments and COSHH Forms in accordance with Strathclyde policy and shall at all times comply with the reasonable and lawful instructions and requests of Strathclyde.

#### **5. SAFETY AND USE OF FLEXBIO**

- 5.1 All Client Representatives accessing HWU laboratories must undergo applicable Heriot-Watt safety inductions, training and generic and specific risk assessments applicable to FlexBio at HWU, and to the specific laboratories accessed and must sign off on appropriate paperwork to confirm such matters have been undergone. Other risk assessment documents, raised in standard HWU templates for specific activities, may also be applicable.
- 5.2 In the event that the Client wishes to introduce new processes or materials not covered by existing risk assessments, the Client must provide adequate information to HWU for an appropriate risk assessment to be completed. HWU retains final discretion over the adequacy of any risk assessment process and its documentation.

5.3 All Client Representatives accessing HWU laboratories must use such facilities in accordance with any laboratory handbooks and standard operating procedures provided by HWU prior to the Access.

5.4 The Client shall be responsible for all aspects of safety in respect of the Access it requests, including the completion of risk assessments and COSHH Forms in accordance with HWU policy and shall at all times comply with the reasonable and lawful instructions and requests of HWU.

## **6. PAYMENT**

6.1 IBioIC shall be entitled to invoice the Client for the Charges in accordance with the Payment Terms in the IBioIC Invoice.

6.2 The Client shall pay IBioIC the Charges (plus VAT if applicable) within 30 days of receipt by the Client of the IBioIC Invoice for the Charges.

6.3 All amounts in the Contract are stated exclusive of VAT and/or any other applicable taxes or levy, which shall be charged and payable in addition at the rate in force at the date that the relevant amount becomes payable.

## **7. OWNERSHIP OF INTELLECTUAL PROPERTY**

7.1 For the avoidance of doubt all Background information and know-how used in connection with the Access shall remain the property of the Party introducing the same. For the purposes of this Contract, Background shall be defined as all information, know-how, designs and data made available by a Party hereto in order that the Access can be carried out but not that generated during the Access.

7.2 Foreground IP shall be owned by the Company and Strathclyde & HWU hereby assign to the Client all its rights and title to such Foreground IP. For the purposes of this Contract, Foreground IP shall be defined as all information, know-how, designs and data relating to the Client's Background identified, created or first reduced to practice or writing in the course of the Access.

## **8. CONFIDENTIALITY**

8.1 No Party will use, publish or disclose any Confidential Information disclosed to it by another Party without the prior written consent of the disclosing Party.

8.2 Except as agreed in writing by the Parties, the Access shall be maintained on a confidential basis between Strathclyde, HWU and the Client.

8.3 The foregoing obligations relating to confidentiality shall not apply to information which is within or subsequently enters the public domain through no fault of a Party receiving such information under the Contract.

8.4 The Client shall not use any of the names: "IBioIC", "Industrial Biotechnology Innovation Centre", "University of Strathclyde", "Strathclyde", "Heriot-Watt University", "Heriot-Watt", "RapidBio" or "FlexBio" or any similar name in connection with the work undertaken under the Contract without the express written consent of Strathclyde and HWU which shall be sought on each occasion.

8.5 Notwithstanding any other provision of the Contract, where Strathclyde or HWU is in receipt of an information request pursuant to the Freedom of Information (Scotland) Act 2002 or any analogous regulations in respect of Confidential Information relating to the Contract or to the Access (the "Request") it shall make an analysis as to whether the Confidential Information or other information requested is capable of benefiting from an exemption from disclosure. In the event that Strathclyde or HWU considers that disclosure is legally required and makes the requested disclosure, no liability shall attach thereto.

## **9. LIABILITY**

9.1 The Parties agree and declare that the obligations of Strathclyde & HWU shall cease upon expiry or termination of this agreement and that no liability, either direct or indirect, shall rest upon it for the effects of any product or process that may be produced by the Client or any other party.

9.2 No Party shall be liable to another in respect of any injury or death unless it is caused by the negligence of that Party or its representatives.

9.3 While reasonable care will be taken, Strathclyde & HWU accept no liability in respect of loss or damage to equipment and components belonging to the Company, which are left or stored on Strathclyde or HWU premises. Strathclyde & HWU shall not be responsible for transporting these items should they require moving for any reason.

9.4 Should the Client damage any Strathclyde or HWU equipment and/or facilities (including but not limited to the Scale-up Centres) during the term of this Contract, it shall make good such damage within a reasonable timeframe. In the event that it is not possible to make good such damage then the Parties shall meet in good faith to seek to agree an alternative solution.

9.5 The Client will be responsible for obtaining all relevant insurance cover for the activities of its Client Representatives during their Access to the Scale-up Centres, including Public/Employer's Liability, and will provide appropriate documentation confirming the extent of such cover when requested by Strathclyde or HWU.

## **10. TERMINATION**

10.1 The Parties may agree to terminate the Contract at any time by written agreement signed on behalf of the Client by an authorised signatory, on behalf of Strathclyde by an authorised signatory and on behalf of HWU by an authorised signatory.

10.2 Any Party may terminate the Contract at any time with immediate effect by notice in writing to another Party (the "Other Party") if:

10.2.1 the Other Party is in material breach of the Contract, and, in the case of a material breach that is capable of remedy, that breach has not been remedied within 14 days of the Other Party receiving notice specifying the breach and requiring its remedy; or

10.2.2 the Other Party becomes insolvent or unable to pay its debts as and when they become due;

10.2.3 an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction);

10.2.4 a liquidator, administrator, administrative receiver, receiver or trustee is appointed in respect of the whole or any part of the Other Party's assets or business;

10.2.5 the Other Party makes any composition with its creditors;

10.2.6 the Other Party ceases to continue its business; or

10.2.7 the Other Party takes or suffers any action similar or analogous to any of the foregoing in any jurisdiction.

- 10.3 If any material detail of the Access that are to be set out or referred to in the IBioIC Invoice is not set out or referred to in the IBioIC Invoice at the Effective Date any Party may terminate the Contract with immediate effect by giving written notice to that effect to the other Parties.
- 10.4 The Access and the licences granted by Strathclyde and HWU under the Contract shall terminate automatically on termination or expiry of the Contract (howsoever occurring).
- 10.5 In the event of early termination of the Contract, IBioIC shall be reimbursed by the Client for all expenses properly incurred on the Services, including expenses falling due for payment after the date of termination which arise from commitments reasonably and necessarily incurred by Strathclyde or HWU for the performance of the Access. Strathclyde shall be entitled to invoice for such costs and expenses at any time following termination of the Contract and the Client shall pay such costs and expenses within 30 days of receipt by the Client of the relevant invoice.

## 11. GENERAL

- 11.1 During the term of the Contract, and for the period of six months after termination of the Contract, the Client will not, directly or indirectly, solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any employee of Strathclyde or HWU who is then, or was at any time during the preceding six months, involved in the performance of the Access or otherwise engaged in the Access.
- 11.2 No Party shall be deemed to be in breach of the Contract if it is unable to carry out any provision of it (other than payment provisions) for any reason beyond its control including acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.
- 11.3 The Client shall not be entitled to assign, subcontract or otherwise transfer any or all of its rights and/or obligations (in whole or in part) under the Contract (or purport to do so) without the prior written consent of Strathclyde and HWU.
- 11.4 Any notice to be given under the Contract shall be in writing and shall be sent by first class recorded delivery post and email as follows:-
- 11.4.1 where given by Strathclyde or HWU, to the address and, where applicable, marked for the attention of the individual, to which the IBioIC Invoice is addressed; and
- 11.4.2 where given by the Client, to Strathclyde's address as set out in the IBioIC Invoice and marked for the attention of the IBioIC Lead and copied to the Director, RKES, The University of Strathclyde, Graham Hills Building, 50 George Street, Glasgow G1 1QE and emailed to [rkes@strath.ac.uk](mailto:rkes@strath.ac.uk); or
- 11.4.3 in either case, to such alternative address and/or individual(s) as the relevant recipient Party may have intimated in writing to the other for that purpose.
- 11.5 All notices shall be deemed effective upon the earlier of:
- 11.5.1 receipt by the Party to which notice is given; and
- 11.5.2 the third day following mailing.

- 11.6 Except as otherwise expressly provided in the Contract none of the terms and conditions of the Contract shall be enforceable by any person who is not a Party to it.
- 11.7 Each provision of the Contract shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and, notwithstanding that any provision of the Contract may prove to be unenforceable by law, the remaining provisions of the Contract shall continue in full force and effect.
- 11.8 No waiver by any Party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed on behalf of that Party by an authorised signatory and no forbearance, delay or indulgence by any Party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that Party nor shall any waiver by any Party of any of the requirements hereof or any of its rights hereunder release the others from full performance of their obligations stated herein.
- 11.9 Nothing in the Contract shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in the Contract shall be deemed to constitute one of the Parties as the agent of the others.
- 11.10 Those provisions of the Contract which by their nature or implication are required to survive expiry or termination of the Contract (including the provisions of clauses 1, 3 and 7 to 12) shall so survive and continue in full force and effect, together with any other provisions of the Contract necessary to give effect to such provisions.
- 11.11 The Contract shall be construed and interpreted in accordance with, and governed by, the Law of Scotland, and the Parties hereby irrevocably agree that the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 11.12 No variation of these terms and conditions shall be valid unless it is in writing and signed on behalf of the Client, Strathclyde and HWU by an authorised signatory of each.

## **12 DEFINITIONS**

12.1 In the Contract, unless the context otherwise require or permits:-

12.1.1 "Access" means access to the Scale-up Centres by Client Representatives to conduct experimental or research work which may include use of equipment under the guidance of the IBioIC Lead;

12.1.2 "Charges" means the charges to be paid by the Client for the Access as set out or referred to in the IBioIC Invoice;

12.1.3 "Client" means the person, company or other legal entity to which the IBioIC Invoice is addressed;

12.1.4 "Client Representatives" means the employees of the Client who will be allowed Access to the Scale-up Centres;

12.1.5 "Confidential Information" means each Party's confidential information disclosed by that Party to the other Parties for use in the Access and identified as confidential before or at the time of disclosure or which may reasonably be supposed to be confidential from the nature of the information and the manner of its disclosure;

12.1.6 "Contract" means the contract for Access concluded between Strathclyde, HWU and the Client made up of these terms and conditions and the IBioIC Invoice;

- 12.1.7 “Effective Date” means the date of commencement of the Access;
  - 12.1.8 “Expiry Date” means the date on which Access has been completed;
  - 12.1.9 “HWU” means Heriot-Watt University, a higher education institution incorporated by Royal Charter and Scottish Registered Charity (with Charity Number SC000278), having its principal address at Riccarton, Edinburgh EH14 4AS;
  - 12.1.10 “IBioIC Invoice” means the invoice issued by IBioIC to the Client in relation to the Access;
  - 12.1.11 “IBioIC Lead” means the individual identified in the IBioIC Invoice as the lead person or such other individual appointed to this role and notified to the Client by Strathclyde and/or HWU from time to time;
  - 12.1.12 “Parties” means the Client, Strathclyde and HWU and “Party” shall be construed accordingly;
  - 12.1.13 “Payment Term” means the payment terms set out or referred to in the IBioIC Invoice;
  - 12.1.14 “Scale-up Centres” means the Rapid Bioprocess Prototyping Centre (“RapidBio”) which is located on Strathclyde’s premises and the Flexible Downstream Bioprocessing Centre (“FlexBio”) which located on HWU’s premises; and
  - 12.1.15 “Strathclyde” means the University of Strathclyde, incorporated by Royal Charter, a charitable body registered in Scotland with registration number SC015263 and having its Principal Office at 16 Richmond Street, Glasgow, G1 1XQ, contracting on behalf of its Industrial Biotechnology Innovation Centre (“IBioIC”).
- 12.2 In these terms and conditions, unless the context otherwise requires:
- 12.2.1 words importing any gender include every gender;
  - 12.2.2 words importing the singular number include the plural number and vice versa;
  - 12.2.3 words importing persons include firms, companies and corporations and vice versa;
  - 12.2.4 references to numbered clauses are references to the relevant clause in these terms and conditions;
  - 12.2.5 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - 12.2.6 the headings in these terms and conditions are not to affect the interpretation;
  - 12.2.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
  - 12.2.8 where the word ‘including’ is used in these terms and conditions, it shall be understood as meaning ‘including without limitation’.