

Orchid Cellmark Ltd

# Standard Terms & Conditions

## for the Provision of Forensic Services

### 1 DEFINITIONS

In these terms and conditions (these "**Conditions**");

"**Client**" means the recipient of the Services;

"**Contract**" means the contract between Cellmark and the Client for the supply of the Services;

"**Materials**" means any documents, materials, data or information in any form (including computer programs, data, reports, specifications and drafts) provided by Cellmark in connection with the Contract;

"**Order**" means an order (oral or written) from the Client for the supply of Services, including instructions, information, submission documentation, supplied with, and relating to, the Sample or Samples being the subject of that Order;

"**Output Report**" means the written or oral reporting on the results of the Services;

"**Sample**" means any forensic evidence, exhibit, DNA or biological sample submitted by the Client;

"**Services**" means Cellmark's determination of any required forensic service and the implementation and reporting of results from forensic examination, testing and analysis of Samples;

"**Cellmark**" means Orchid Cellmark Ltd, a company incorporated in England and Wales (company number 04045527) whose registered office is at Unit G1 Valiant Way, i54 Business Park, Wolverhampton, Staffordshire, WV9 5GB, or its successors or assigns.

"**Data Protection Legislation**" means the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR) having the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018, the GDPR EU 2016/679, and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, and any successor legislation to the UK GDPR, GDPR or the Data Protection Act 2018.

### 2 INCORPORATION

2.1 These Conditions shall apply to the Contract and to the Services to the exclusion of all other terms and conditions and shall prevail over all terms that the Client seeks to apply to the Contract in the Order or otherwise.

2.2 Variations to these Conditions will only be effective if agreed in writing by a duly authorised representative as specified by a director of Cellmark.

### 3 SERVICES

3.1 Cellmark agrees to provide the Services using reasonable care and skill and in accordance with applicable legislation, regulations, guidance and good industry practice, and agrees to provide reasonable assistance to the Client in complying with relevant applicable legislation.

3.2 Any estimate or quotation provided by Cellmark to the Client shall be valid for a period of 30 days from its date, provided Cellmark has not withdrawn it.

3.3 Cellmark shall be entitled to correct any estimate or quotation it provides to the Client in the case of any error or omission in it without liability to the Client, provided that the Client is able to cancel or amend any Order based on that estimate or quotation within 48 hours of notification of such correction.

- 3.4 Time for performance of the Services shall not be of the essence and any time periods specified by Cellmark for the performance of the Services shall be estimates only. However, Cellmark will use its best endeavours to comply with any specified time periods.
- 3.5 Cellmark will only agree to carry out the Services when it receives from the Client an Order and Samples relevant to the purpose for which the Services are required and in accordance with the directions given by Cellmark.
- 3.6 Cellmark may request further Samples at the expense of the Client, or cancel any Order accepted, including without limitation, in cases where the quantity or quality of the Sample received, or the instructions or information received, is not, in the reasonable opinion of Cellmark, adequate or does not comply with the directions given by Cellmark, or if the Sample being examined poses an unacceptable health or safety risk.
- 3.7 Output Reports, and where appropriate the Samples submitted, will be delivered to the Client which has ordered disclosure of the Output Report and/or Samples or to any such organisation or authority who is legally entitled to the Output Reports or Samples as notified by the Client to Cellmark or as required by law.
- 3.8 The method and carrier of postage, packaging or other method of delivery will be determined between the parties to meet the chain of custody and continuity requirements relating to the Samples.
- 3.9 The Client will pay for all storage charges of the Samples, including without limitation those arising from the Clients request to delay delivery.
- 3.10 Unless otherwise specifically agreed in writing the Client must arrange for the collection of Samples, at the Client's expense, following completion of forensic examination and testing. Any required specialist Sample destruction will be charged to the Client. Cellmark will retain extracts and documentation relating to any tested Samples as is necessary to comply with applicable legislation.
- 3.11 At the Clients request, Cellmark may, but is not obliged to, provide technical assistance, advice and information with respect to the Services, if and to the extent that such advice, assistance and information is conveniently available. Such advice, assistance and information is provided without charge unless otherwise specified by Cellmark.

#### **4 CLIENT'S OBLIGATIONS**

- 4.1 The Client warrants that it is legally entitled, in accordance with the Human Tissue Act 2004 or any other applicable legislation, to perform any particular act either directly or indirectly in order to obtain the Samples and supply them to Cellmark for the Services and that the Client is legally entitled to possess and store the Samples provided to Cellmark.
- 4.2 The Client warrants that it will implement all necessary protection in relation to contamination prevention and continuity of chain of custody in relation to any Samples to be provided to Cellmark.
- 4.3 The Client shall provide to Cellmark all information and assistance which may at any time be necessary or desirable or expedient for the purpose of performing the Services. The Client shall ensure that all information it provides is accurate and adequate.
- 4.4 Where the Client provides access to premises, in each case to such extent and at such time and for such purposes as Cellmark shall reasonably specify, the Client shall ensure that the premises are a safe proper and suitable environment for Cellmark's personnel to perform the Services.
- 4.5 During the term of the Contract and for a period of 12 (twelve) months thereafter, the Client shall not, save as dictated by employment legislation from time to time in force, directly or indirectly, offer to employ or remunerate any employees or personnel of Cellmark.
- 4.6 The Client shall indemnify and keep Cellmark indemnified from and against any costs, claims, demands incurred or payable by Cellmark under or as a consequence of the application of the Transfer of Employment (Protection of Undertakings) Regulations 2006 to the Contract or otherwise connected with the termination or assignment of the Contract.

#### **5 CHARGES AND PAYMENT**

- 5.1 Unless otherwise agreed Cellmark shall charge for the Services (the "**Charges**") by reference to time spent by it and its employees in performing the Services and its then current standard rates. In

addition, Cellmark may recover from the Client any additional expenses including without limitation time spent in relation to any case conferences. Unless otherwise stated all Charges quoted by Cellmark are exclusive of VAT, which will be additionally payable by the Client. Unless otherwise agreed all charges are to be paid in Pounds Sterling.

- 5.2 Unless otherwise agreed the Charges are exclusive of any postage, packaging or other delivery charges.
- 5.3 In addition to the Charges the Client shall pay Cellmark the full amount of any disbursement (including VAT) incurred by Cellmark or its employees in the performance of the Services, including (but not limited to) travel expenses; hotel expenses; the costs of telephone calls and facsimile transmissions.
- 5.4 Any estimate of disbursements given shall constitute a non-binding estimate only and notwithstanding that an estimate may have been given, the Client shall pay the full amount of all disbursements properly incurred by Cellmark in the performance of the Services.
- 5.5 Cellmark will invoice the Client upon completion of the Services except where the Services are provided on an ongoing basis in which case Cellmark will invoice the Client at the end of each calendar month for the Services provided during that preceding month.
- 5.6 The Client shall pay Cellmark's invoices within 30 (thirty) days of the date of each invoice.
- 5.7 Cellmark may increase the Charges by giving the Client 1 (one) month's notice of such increase. In addition, Cellmark may increase its Charges between annual reviews if at any time its costs of supplying the Services increase as a consequence of any change in law if or if it transpires that the Services are more costly to perform than Cellmark expected because of any pre-contract information provided by the Client being inaccurate or incomplete; or if the scope of the Services increases or changes.
- 5.8 No payment shall be deemed to have been received until Cellmark has received in full cleared funds. The Client shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 5.9 If Cellmark is entitled to terminate the Contract under Condition 7 the Client shall immediately pay to Cellmark all sums payable to Cellmark and, in respect of Services supplied for which no invoice has been submitted, Cellmark may submit an invoice, which shall be payable immediately on receipt. Cellmark may, without prejudice to any other right it may have, set-off any liability of the Client to Cellmark against liability of Cellmark to the Client.
- 5.10 Without prejudice to any other rights or remedy that it may have, if the Client fails to pay Cellmark on the due date, Cellmark may:
  - 5.10.1 suspend all Services until payment has been made in full; and
  - 5.10.2 charge interest at 4% above Barclays TSB plc base rate from time to time on any payment not received by the due date until such sum is received both before and after judgement.
- 5.11 If the Client has not challenged the validity of an invoice within 7 (seven) days of its date it shall be deemed to have accepted that all amounts stated in it are properly due and payable. If the Client disputes part of an invoice it shall nonetheless pay the undisputed part and act in good faith to resolve any dispute.

## **6 LIMITATION OF LIABILITY**

- 6.1 Subject to Condition 6.2 and 6.3 Cellmark's total liability arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 6.2 Notwithstanding any other provision of these Conditions, save for clause 6.3, Cellmark will not be liable, for any loss of profits whether direct, special, indirect or consequential losses including, without limitation, loss of bargain, loss of anticipated savings, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of use, loss of goodwill, loss of anticipated saving, loss or corruption of data or information; nor any liability of the Client to any other person.
- 6.3 Nothing in these Conditions excludes or limits the liability of Cellmark for death or personal injury caused by its negligence fraud or fraudulent misrepresentation.
- 6.4 The Client agrees and acknowledges that Samples and other materials submitted by the Authority to Cellmark may be damaged as a result of cutting, sampling, extracting or other forms of testing and

Cellmark shall not be liable to compensate the Client or any third party for any such damage howsoever caused.

- 6.5 The Client indemnifies Cellmark from and against any liability of Cellmark to any person for any loss, damage, or liability incurred by that person for or arising out of (a) the negligence or breach of statutory duty of the Client or its officers, employees, agents, consultants, or any person for whom the Client is responsible in law, in each case in the cause of performance of or otherwise in any way arising out of or in connection with the Contract, (b) any warranties in this Agreement; (c) any failure to comply with any rules, laws or regulations pertaining to the samples, supplies or business described herein.
- 6.6 The Client agrees and acknowledges that the liability exclusions and financial limits set out in this Condition 6 are fair and reasonable.

## **7 TERMINATION**

- 7.1 Cellmark may terminate the Contract at any time, if the Client is in breach of any of its obligations under the Contract or any other contract or account with Cellmark; or becomes bankrupt, insolvent or enters into liquidation or receivership or is the subject of an application for an administration order or suffers an administrative receiver to be appointed in relation to the whole or any part of its assets or makes a composition or arrangement with its creditor or suffers any judgement to be executed in relation to any, of its property or assets or undergoes an equivalent or analogous procedure; or if the Client's financial or credit condition becomes unsatisfactory to Cellmark. Termination shall not affect the accrued rights or liabilities of either party.
- 7.2 Following termination Cellmark will, at its discretion, complete any Orders accepted by Cellmark prior to the date of termination, under these terms and conditions of the Contract. If Cellmark provides any Services after the termination of the Contract then the Client shall be liable to pay for them in accordance with Condition 5.
- 7.3 Subject to Condition 7.1, on termination, and completion of any Services in accordance with Condition 7.2, the Client will return to Cellmark any property or Materials provided by Cellmark.

## **8 REPRESENTATIONS AND WARRANTIES**

- 8.1 The Client warrants to Cellmark that the performance by the Client or Cellmark of their obligations under this agreement will not conflict with or be in violation of any decree, law, regulation or statute or other form of governmental edict currently in the United Kingdom and/or any other country which may apply under this agreement surrounding (a) data protection and the privacy of the information supplied hereunder; (b) quality and confidentiality of specimens; (c) import/export of the samples/specimens that are the subject of this agreement, including the shipment thereof; (d) patient consents; (e) any and all applicable registration and licensing requirements and/or government consents, as applicable; (f) applicable infectious disease (or other) reporting requirements.
- 8.2 The Client warrants that the individual signing the agreement is an authorized representative and has full power and capacity to act on behalf of the Client.
- 8.3 The Client agrees promptly to notify Cellmark of any change of facts which causes the foregoing warranties to become untrue in any respect.
- 8.4 Prohibited payments and business activities:

Pursuant to this agreement, each party represents that it has not and agrees that it will not violate the laws and regulations of the United Kingdom (including the UK Bribery Act of 2010), any local laws of the country of operation, the country in which business is being conducted, or any other relevant country as applicable pertaining to bribery, improper payments, and kickbacks.

- 1) Pursuant to this agreement, each party represents that it has not and agrees that it will not, either directly or indirectly, engage in bribery, or offer, or promise, or solicit, or make any "improper payment", or receive an "improper payment", including, but not limited to, cash, loan, gift, travel, entertainment, hospitality, facilitation payment, kickback, political or philanthropic contribution, anything of value for the benefit of the Client or its personnel or any entity or individual associated with the Client or its personnel, or for any other perceived benefit as an inducement to act or refrain from acting, or in order to improperly obtain or retain a business advantage in relation to this agreement.

- 2) Notwithstanding any other provision of this agreement to the contrary, each party shall comply with, and retain responsibility for its compliance with, all applicable export control laws and economic and trade sanctions programs relating to its respective business, facilities, and the provision of services to third parties (collectively, "trade control laws"). It shall be in the sole discretion of Cellmark to refrain from being directly or indirectly involved in the provision of goods, software, services and/or technical data that may be prohibited by applicable trade control laws.
- 3) The Client's breach of the representations or prohibitions described in this section shall constitute a material breach of this agreement, and in the event of such breach, Cellmark shall have the right to terminate this agreement in whole or in part, immediately upon written notice to the Client. regardless of whether Cellmark exercises its right to terminate the agreement, the Client shall indemnify customer for any claims made against Cellmark in connection with the Client's violation of the prohibitions described in this section and the Client agrees to release any claim for any unpaid and/or future compensation under this agreement.

8.5 In no event shall Cellmark be responsible for any punitive damages or any consequential, incidental, indirect, or special damages of the Client or of any third party.

## 9 INTELLECTUAL PROPERTY

9.1 All intellectual property rights in the Services and Materials belong to Cellmark, subject only to a licence which Cellmark may, in its absolute decision, grant in favour of the Client to make reasonable use of Materials (provided the scope of the licence is limited to the detection, prevention and prosecution of crime and is non-exclusive). The Client will grant a royalty free non-exclusive licence in favour of Cellmark to make reasonable use of the Client's intellectual property as may be reasonably required to enable Cellmark to perform its obligations under the Contract.

## 10 DATA PROTECTION AND CONFIDENTIALITY

10.1 Both parties confirm that they will comply with all applicable requirements of the Data Protection Legislation and acknowledge that the GDPR does not relieve, remove or replace a party's obligations under the Data Protection Act 2018.

10.2 The Client confirms that either: the Data Subject, as defined in the Data Protection Act 2018, ("the "DPA") has given their explicit consent to the processing of their personal data; or at least one of the other conditions in Schedule 2 of the DPA is met and, in the case of sensitive personal data, as defined in the DPA, at least one of the conditions in Schedule 3 of the DPA is also met.

10.3 Each party shall, and shall procure that its employees shall keep secret and confidential all business and trade secrets, know-how, specifications, processes, initiatives, methods of doing business, price lists and other confidential information and material disclosed by or obtained from the other ("Confidential Information"). Each party undertakes not to disclose the other's Confidential Information to any third party other than; its responsible employees to whom disclosure is in good faith necessary, for the proper performance of their duties in connection with the Contract, provided that the disclosing party procures that such employees or third party is aware of the obligation of confidentiality and undertakes to keep Confidential Information confidential in the same terms as this clause; or with the other party's consent.

10.4 The obligations of confidentiality under Condition 10.2, shall not apply to any information or material which: (a) was known to the recipient before its receipt from the disclosing party; or (b) is lawfully in the public domain other than by reason of breach; or is required to be disclosed by law or some other competent authority; or (c) Cellmark receives from the Client, if Cellmark becomes entitled to terminate the Contract under Condition 7.

10.5 The obligations of confidentiality under Condition 10.3 shall not prevent Cellmark using, exchanging and commercially exploiting the data and results that it obtains in connection with its Services to compile data bases of results for itself and third parties provided that in doing so it does not disclose the identity of the Client.

10.6 The Client hereby acknowledges that there may be circumstances where a Court of Law or other competent authority requires Cellmark to disclose any proprietary data and other information

concerning the Samples to be processed or the Materials provided and the Client hereby provide Cellmark with consent to comply with such requests.

## **11 FORCE MAJEURE**

- 11.1 Cellmark shall not be liable if it is delayed in or prevented from performing its obligations due to circumstances outside its reasonable control including, without limitation, acts of God, governmental actions, war blockade military operations or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes lock-outs or other labour disputes, failures in utility supply, supplier failures, systems interruption, power surges, network unavailability, equipment failures, virus attack and any comparable circumstances.
- 11.2 If Cellmark's performance of its obligations under the Contract is prevented or delayed by an act of omission of the Client, its agents, sub-contractors or employees Cellmark shall not be liable for any costs, charges or losses sustained or incurred by the Client as a consequence and Cellmark shall still be allowed to be paid as though it were performing normally.

## **12 GENERAL**

- 12.1 Any notice under the Contract shall be in writing sent by first class post to the correspondence address as a party shall notify to the other in accordance with this Condition. A notice delivered by hand is served when delivered; a notice sent by post is served on the second business day after posting.
- 12.2 These Conditions and the documents referred to in it constitute the entire agreement. The Client acknowledges and agrees that in entering into the Contract, that it has not and does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made).
- 12.3 Nothing in the Contract shall create an agency, partnership or employment relationship.
- 12.4 The Client may not assign or sub-contract the Contract or any part of it without the prior written consent of Cellmark, such permission not to be unreasonably withheld. Cellmark may assign and sub-contract its rights and obligations under the Contract or any part of it to any person, firm or company.
- 12.5 Each right or remedy of Cellmark under the Contract is without prejudice to any other right or remedy of Cellmark whether under the Contract or not.
- 12.6 If any provision (or part of) of the Contract is found to be wholly or partly unenforceable it shall to the extent of such unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision (or part of) shall continue in full force and effect with the minimum modification necessary to make it enforceable.
- 12.7 Failure or delay by Cellmark in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 12.8 Subject to Condition 12.4 neither party intends any of the terms of the Contract to be enforceable by any third party pursuant to The Contracts (Rights of Third Parties) Act 1999.
- 12.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

## **13 GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England and Wales, excluding application of its conflict of laws provisions. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, proceedings may be brought by Customer in any court of competent jurisdiction for the purpose of: (i) Customer obtaining preliminary or permanent injunctive relief, or (ii) impleading, joining or adding Service Provider as a third-party defendant in any legal action brought by a third party.