

# SERVICES PROVIDER TERMS & CONDITIONS

## 1 DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires or unless otherwise specified:

- 1.1.** “Agreement” means these terms and conditions and any addenda, documents or materials referred to herein.
- 1.2.** “Charges” means Fees and Expenses.
- 1.3.** “Computer Systems” means and includes
  - 1.3.1.** “hardware”, being any computer equipment owned or used by or for the benefit of the relevant Party at any time, including, without limitation, communication systems, servers, infrastructure and networks and components or elements of the foregoing such as handheld devices, servers, firmware, screens, terminals, keyboards, disks, cabling and other peripheral and associated electronic equipment, and
  - 1.3.2.** “software”, being any set of instructions for execution by a computer processor (including both source and object code) used by or for the benefit of the relevant Party at any time irrespective of application, language or medium and including for the avoidance of doubt any codes or sets of instructions that are embodied or incorporated in any firmware and related technical documentation.
- 1.4.** “Consultants” means the skilled consultants and/or employees of SERVICES PROVIDER provided and made available by SERVICES PROVIDER to MIAGEN pursuant to the terms of the Agreement and any reference to SERVICES PROVIDER servants or agents throughout the Agreement shall include the Consultants.
- 1.5.** “Data” means data, whether relating to the business of MIAGEN or their SERVICES PROVIDERS or otherwise held on MIAGEN or their SERVICES PROVIDER Computer Systems.
- 1.6.** “Data Protection Laws” means (i) the Irish Data Protection Acts 1988 to 2018 (and any successor or replacement to that legislation in Ireland); (ii) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, (and any successor or replacement to that legislation in Ireland); (iii) the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016) (the “GDPR”) and any consequential data protection legislation implementing or complementing the GDPR in Ireland; and (iv) any guidance and/or codes of practice issued by the Irish Data Protection Commission or other relevant supervisory authority, including without limitation the European Data Protection Board, in each case as amended, supplemented or replaced from time to time.
- 1.7.** “Data Subject” means an individual who is the subject of Personal Data.
- 1.8.** “Effective Date” is the date of the last signature to the first TOR agreed between the Parties.
- 1.9.** “Expenses” means the limited allowable expenses which are incurred by SERVICES PROVIDER and chargeable to MIAGEN pursuant to clause 6 hereof.
- 1.10.** “Fees” means such fees charged to MIAGEN for the provision of the Services pursuant to clause 6 hereof.
- 1.11.** “Fixed Price” means where detailed specifications are prepared by MIAGEN and agreed by SERVICES PROVIDER a fixed amount is charged for the Services.
- 1.12.** “Intellectual Property Rights” means all intellectual property rights of whatever nature including but not limited to patents, trademarks, trade names, goodwill associated with trademarks or trade names, get up, trade dress, business names, domain names, inventions, copyrights (including copyright in computer programs) and related rights, database rights, design rights, semi-conductor topography rights, know-how and trade secrets, inventions

and other patentable subject matter, whether registered or not, whether or not capable of registration and all applications and rights to make applications for registration of any of the foregoing rights throughout the world, together with all other rights of a similar or corresponding character which now or in the future may subsist in any part of the world.

- 1.13. "Material(s)" means any design, specification, instruction, information, data or other like documents supplied by either Party to this Agreement to the other for the performance of the Services.
- 1.14. "Personal Data" has the meaning given to that term in Article 4 of the GDPR and includes special categories of personal data and in the context of this Agreement, means the data which is provided to the Processor by the Controller or its authorised agents.
- 1.15. "Personal Data Breach" has the meaning given to that term in Article 4(12) of the GDPR.
- 1.16. "PID" means a project implementation document prepared in accordance with Clause 3.1 as amended from time to time by agreement
- 1.17. "Processing" has the meaning assigned to it in Article 4(2) of the GDPR and the term "process" shall be construed accordingly.
- 1.18. "Services" means those services required to be provided by SERVICES PROVIDER to complete the project plan.
- 1.19. "Standard Working Day" means the hours of 9:00am to 5:30pm UTC (inclusive of one hour lunch break) during the Standard Working Week.
- 1.20. "Standard Working Week" means Monday to Friday UTC inclusive excluding any public holidays.
- 1.21. "Terms of Reference" also "TOR" means the standard form for specifying Services in the form set out in Appendix A , or such other form as may be agreed.
- 1.22. "Time and Materials" also "T&M" means the Services will be charged based on the time and outlay incurred in providing the Services.

Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

## 2 AGREEMENT

- 2.1 SERVICES PROVIDER will provide to MIAGEN the Services and the Deliverables specified in any written Terms of Reference to this Agreement which, once executed by the Parties, shall be incorporated into and form a part of this Agreement.

## 3 GENERAL OBLIGATIONS OF SERVICES PROVIDER

- 3.1 On or prior to commencement of the Services SERVICES PROVIDER shall, if deemed appropriate by SERVICES PROVIDER or requested by MIAGEN, prepare and agree with MIAGEN a PID which will govern the manner, timing and delivery of the Services.
- 3.2 Inter alia, the PID shall include a plan for project governance, milestones, responsibilities, change management, reporting and, in the case of T&M services estimates of effort required to complete the project.
- 3.3 SERVICES PROVIDER shall use reasonable endeavours to ensure that the Services shall be provided to MIAGEN within the proposed effort estimates or timelines set out in the PID.
- 3.4 SERVICES PROVIDER shall use reasonable endeavours to procure that the Consultants shall devote such time as is necessary to ensure that the Services are provided within the timelines proposed within the PID.

- 3.5** SERVICES PROVIDER agrees to provide the Services to MIA GEN and make available to MIA GEN the services, skills and expertise of the Consultants for the duration of the Agreement on an 'as required' basis to ensure the timely provision of the Services to MIA GEN and otherwise in accordance with the terms of this Agreement at the Fees outlined in a TOR.
- 3.6** SERVICES PROVIDER shall provide the Services with reasonable care and skill to the best of the skill and ability of the Consultants.
- 3.7** SERVICES PROVIDER shall, and shall procure that the Consultants shall, liaise with MIA GEN representative (as advised to SERVICES PROVIDER by MIA GEN from time to time) both in the provision of the Services and Deliverables and in reaching mutual agreement as to the project management of the Services to be supplied pursuant to this Agreement.
- 3.8** SERVICES PROVIDER shall provide the Services at SERVICES PROVIDER offices or, if necessary, at MIA GEN premises, to ensure delivery of the Services.
- 3.9** For T&M Services all time spent by the Consultants in the provision of the Services shall be accurately and completely recorded by SERVICES PROVIDER. Individual timesheets and accurate records of the time spent in providing the Services in the SERVICES PROVIDER standard form shall be made available to MIA GEN by SERVICES PROVIDER upon request.
- 3.10** SERVICES PROVIDER shall, and shall procure that the Consultants shall, promptly give to MIA GEN all such information and reports as it may reasonably require in connection with any matter relating to the provision of the Services or the Agreement, provided such information is not financially or commercially sensitive in the reasonable opinion of SERVICES PROVIDER.
- 3.11** Unless it has or he/she has been expressly authorised to do so by MIA GEN in writing neither SERVICES PROVIDER nor the Consultants shall have any authority to incur any expenditure in the name of or for the account of MIA GEN; and SERVICES PROVIDER shall not, and shall procure that the Consultants shall not, hold itself or themselves out as having any authority to bind MIA GEN.
- 3.12** When providing the Services at the offices of MIA GEN, SERVICES PROVIDER shall procure that the Consultants shall comply with all reasonable standards of safety and comply with MIA GEN health and safety procedures from time to time in force at MIA GEN offices. SERVICES PROVIDER shall also procure that the Consultants shall comply with any MIA GEN harassment policy in place from time to time, together with any other policies as notified by MIA GEN to be applicable to the Consultants.
- 3.13** If SERVICES PROVIDER and the Consultants are provided with limited access to MIA GEN electronic communications systems in order to facilitate the provision of the Services, SERVICES PROVIDER shall and shall procure that the Consultants shall adhere to the usage policies and guidelines of MIA GEN computer, internet and electronic communication systems, including but not limited to the information security standards and any social media policy in place from time to time within MIA GEN, copies of which shall be provided to the Consultants.
- 3.14** SERVICES PROVIDER shall, as appropriate, provide all materials, equipment and facilities necessary for the proper performance of the Services.
- 3.15** If any Consultant assigned to provide any part of the Services under the Agreement is not performing to the reasonable satisfaction of MIA GEN then MIA GEN may, upon a request in writing to SERVICES PROVIDER, require that a suitable replacement be provided, which shall be effected by SERVICES PROVIDER as soon as is reasonably practical.

## **4 GENERAL OBLIGATIONS OF MIA GEN**

- 4.1** If MIA GEN, to support its own internal administration processes, requires that a purchase order is issued before payment of an invoice issued by SERVICES PROVIDER can be processed, then MIA GEN shall issue such purchase order(s) to SERVICES PROVIDER, in advance of the invoice milestones or dates agreed in a TOR or in a PID.

- 4.2** MIAGEN will provide SERVICES PROVIDER with all necessary co-operation, information, equipment, data and support that may reasonably be required by SERVICES PROVIDER for the performance of its obligations hereunder at such reasonable times as SERVICES PROVIDER requests.
- 4.3** Where any Services are to be carried out at MIAGEN premises then MIAGEN shall, subject to compliance by SERVICES PROVIDER personnel with MIAGEN reasonable security requirements, allow SERVICES PROVIDER full and complete access to the area(s) where Services are to be performed and will provide adequate office accommodation and facilities for any SERVICES PROVIDER staff working on its premises as required.

## **5 SUSPENSION OF SERVICES**

- 5.1** MIAGEN may suspend performance of the Agreement at any time on service of not less than fourteen (14) days' written notice to SERVICES PROVIDER (a 'Suspension Notice') for a period specified in the notice ('Suspension Period').
- 5.2** On receipt of a Suspension Notice, SERVICES PROVIDER shall, at MIAGEN discretion, either immediately cease all services in relation to this Agreement or continue providing services in accordance with the terms of this Agreement up to the date of suspension specified in the Suspension Notice (the 'Suspension Date').
- 5.3** MIAGEN shall pay all fees and expenses payable in respect of the Services that were scheduled to be completed under this Agreement up to the Suspension Date irrespective of whether MIAGEN elected to receive these Services or not.

## **6 CHARGES, PAYMENT AND TAXES**

- 6.1** Services shall be provided on a Fixed Price or on a T&M basis as specified in a TOR exclusive of incidental expenses.
- 6.2** The amount of the Fees and invoicing and payment terms will be set out in each TOR. If the terms are not set out in the TOR the Fees will be invoiced monthly in arrears based on the hours necessarily incurred in performing the Services.
- 6.3** The Consultants will be allocated to a rate band at the agreed fee rates set out in a TOR.
- 6.4** Time worked by Consultants outside the Standard Working Day will be by prior mutual agreement and will require the prior consent of MIAGEN and may be invoiced at the normal hourly rate for work undertaken between the hours of 8:00am and 9:00am and 5.30pm and 6.30pm and at a rate of time and a half for work undertaken between 6:30 pm and 8:00am calculated on the basis of the normal hourly rate set in a TOR.
- 6.5** Time worked by Consultants outside the Standard Working Week will be by prior mutual agreement and will require the prior written consent of MIAGEN and will be invoiced at time and a half on Saturdays and double time on Sundays and Public holidays calculated on the basis of the normal hourly rate set out in a TOR.
- 6.6** The fee rates and the rate bands set out herein shall be fixed for the duration of the Services specified in a TOR unless otherwise agreed.
- 6.7** SERVICES PROVIDER shall make such variations to the Services, whether by way of addition, modification, or omission as may be agreed by MIAGEN and confirmed to SERVICES PROVIDER by MIAGEN in writing.
- 6.8** For Consultants based in the same city as MIAGEN no expenses will be charged for attendance on MIAGEN sites in and around the city.
- 6.9** Where MIAGEN agrees that travel is required to other MIAGEN offices outside of Consultants base city and agreed in advance with MIAGEN, travel and subsistence

may be re-charged at agreed cost. Unless otherwise agreed in advance travel time will not be charged.

- 6.10** Other than the limited travel and subsistence expenses allowable pursuant to this clause 6, or otherwise agreed from time to time, SERVICES PROVIDER shall bear its own expenses incurred in the provision of the Services or otherwise in connection with the Agreement, including but not limited to any administrative costs, communications, equipment or other out of pocket expenses.
- 6.11** SERVICES PROVIDER shall issue a valid Value Added Tax "VAT" invoice, if applicable, to MIAGEN for the amount set out in a TOR or as otherwise agreed from time to time.
- 6.12** Invoices shall be payable within the number of days from the date of issue to MIAGEN as shown in an individual ToR ("Due Date") and shall be deemed overdue if they remain unpaid thereafter. If no date is shown in the ToR invoices shall be payable sixty days after date of invoice.
- 6.13** Any Services which SERVICES PROVIDER is normally obliged to provide, may be suspended while any invoices remain unpaid for more than forty five (45) days after the Due Date.
- 6.14** Fees for Services are, for the avoidance of doubt, exclusive of VAT. VAT may be charged in addition at the rate in effect at the date of invoice.
- 6.15** Payment in full or in part of the Charges under the Agreement shall be without prejudice to any claims or rights of MIAGEN against SERVICES PROVIDER or its servants or agents in respect of the provision of the Services or otherwise arising in connection with the Agreement.

## 7 DELAYS IN PERFORMANCE

- 7.1** In the event SERVICES PROVIDER is unable to complete its obligations under the Agreement by the dates agreed in a TOR due to MIAGEN non-fulfilment of obligations for which MIAGEN is responsible under a TOR or PID, SERVICES PROVIDER will promptly notify MIAGEN and the Parties will use reasonable efforts to develop a workaround that will allow SERVICES PROVIDER to complete its obligations.
- 7.2** The deadline for SERVICES PROVIDER performance shall be extended by the length of MIAGEN delay if MIAGEN fails to perform its obligations as listed in the applicable TOR or PID.
- 7.3** If MIAGEN continues the non-fulfilment of obligations for a period of more than thirty (30) days after notification by SERVICES PROVIDER, MIAGEN will be deemed to have suspended the Services and the provisions of clause 5.4 above will apply.

## 8 TERM AND TERMINATION

- 8.1** This Agreement shall commence on the Effective Date. It shall remain in force until terminated in accordance with this Agreement.
- 8.2** Either Party may terminate this Agreement if the other Party is in material breach of this Agreement following written notice specifying such breach and where a breach capable of remedy has not been cured within thirty (30) days of such notice.
- 8.3** Either Party may terminate this Agreement forthwith if the other Party becomes the subject of a voluntary arrangement, has a receiver, examiner or liquidator appointed over all or any parts of it, its assets or income, or passes a resolution for its winding up, has a petition presented to any court for its winding up or for an administrative order, or has anything analogous to the foregoing happen in relation to it in any jurisdiction.

- 8.4** MIAGEN may terminate this Agreement by giving thirty (30) days notice in writing to SERVICES PROVIDER.
- 8.5** MIAGEN remains liable to pay all Fees and Expenses corresponding to the Services actually rendered by SERVICES PROVIDER hereunder due to SERVICES PROVIDER up to the date such termination becomes effective and such amounts shall be in full satisfaction of any obligation or liability of MIAGEN to SERVICES PROVIDER for any Charges or other payments due to SERVICES PROVIDER under this Agreement.

## **9 EFFECT OF TERMINATION**

- 9.1** The Parties' rights and obligations under Clauses 6, 8, 9, 10, 11 & 12 shall survive termination of this Agreement. Termination of this Agreement shall not prevent either Party from pursuing any other remedies available to it, including but not limited to injunctive relief, nor shall termination relieve MIAGEN of its obligations to pay all Charges that have accrued prior to such termination.
- 9.2** Neither Party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a Party shall be without prejudice to any other right or remedy of such Party under this Agreement or applicable law.
- 9.3** Upon any termination of this Agreement or at any time upon MIAGEN request: (a) SERVICES PROVIDER shall promptly return to MIAGEN or destroy, at MIAGEN option, any and all Confidential Information (as defined in Clause 13 below) and other materials of MIAGEN (including any copies thereof), and provide MIAGEN with a certification by an officer of SERVICES PROVIDER verifying such return or destruction; and (b) SERVICES PROVIDER shall promptly deliver to MIAGEN all work product then in progress (whether completed or incomplete), and all SERVICES PROVIDER proprietary information required to be provided hereunder.

## **10 INDEMNITY, WARRANTY AND LIABILITY**

### **10.1 Indemnities**

- 10.1.1** Either Party to this Agreement providing Materials ("Provider") will defend and indemnify the other Party to this Agreement receiving such Materials ("Recipient") against a claim that any Materials furnished by the Provider and used by the Recipient as permitted by the terms of this Agreement infringes a third party's Intellectual Property Rights provided that (a) Recipient notifies Provider in writing within thirty (30) days of the claim; (b) Provider has sole control of the defence and all related settlement negotiations provided that any settlement intended to bind the Recipient may not be entered into without the Recipient's prior written consent, and the Recipient shall be permitted to participate in the defence of the claim with counsel of its own choosing at the Recipient's own expense; and (c) Recipient provides Provider with the assistance, information and authority reasonably necessary to perform the above. Reasonable out-of-pocket expenses incurred by Recipient in providing such assistance will be reimbursed by Provider.
- 10.1.2** In the event that some or all of the Materials is held, notified or is believed by the Provider to infringe a third party's Intellectual Property Rights, the Provider shall have the option, at its expense (a) to modify the Materials to be non-infringing (provided such modification does not adversely affect Recipient's use as reasonably determined by Recipient) or supply or substitute non-infringing Materials of equal or better performance to the Recipient; (b) to obtain for the Recipient the right to continue using the Materials; or (c) to require return of the infringing Materials or

part thereof from the Recipient and terminate all rights thereto. If such return materially affects either Party's ability to meet its obligations under this Agreement, then either Party may by written notice, terminate this Agreement. If MIAGEN is the Recipient then upon such termination MIAGEN shall be entitled to recover the Fees paid by MIAGEN for that portion of the Materials. If SERVICES PROVIDER is the Recipient, then upon such termination SERVICES PROVIDER shall be entitled to recover the Charges for Services ordered and actually performed up to the date of termination together with the costs of committed resources. This Clause 10.1 states the Parties' entire liability and exclusive remedy for infringement of any third party's Intellectual Property Rights.

- 10.1.3** The Provider shall have no liability for any claim of infringement resulting from (a) the Recipient's use of a superseded or altered release of some or all of the Materials if such infringement would have been avoided by the use of a subsequent unaltered release of the Materials which is provided or offered to be provided to the Recipient; or (b) any information, design, specification, instruction, software, data or materials not furnished by the Provider; or (c) use other than in accordance with this Agreement.

## 10.2 Warranties

- 10.2.1** SERVICES PROVIDER warrants that the Services will be performed with reasonable skill and care consistent with generally accepted computer software services industry practices. To the extent permitted by law, all other warranties and conditions or other terms, whether express or implied, are expressly excluded, including the implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose.
- 10.2.2** Both Parties warrant that where participation by their respective personnel is necessary in the execution or performance of this Agreement, such personnel shall possess the appropriate skills and experience for any tasks assigned to them.
- 10.2.3** SERVICES PROVIDER represents and warrants that the Services shall be free from any viruses, worms, Trojan horses or other harmful or malicious code or components, and free from any "self-help" code or other disabling code.
- 10.2.4** Both Parties warrant and represent that they have the full power and authority to enter into this Agreement.

## 10.3 Liability

- 10.3.1** Nothing in this Agreement shall limit SERVICES PROVIDER's liability for personal injury or death caused by the negligence of SERVICES PROVIDER.
- 10.3.2** Except for its gross negligence, wilful misconduct or breach of its confidentiality obligations and unless otherwise expressly stated in this Agreement, and whether or not SERVICES PROVIDER has been advised of the possibility of such loss, SERVICES PROVIDER shall not be liable in contract, tort or otherwise for:
- (a) Indirect or consequential loss;
  - (b) Loss of revenue;
  - (c) Loss of profits;
  - (d) Loss of business, reputation or good-will;
  - (e) Loss of damage to or corruption of data;
  - (f) Loss of availability or use;
  - (g) Special loss or damage;
  - (h) Loss of contracts;
  - (i) Loss of customers; or
  - (j) Loss of time or resources,

arising out of or in connection with or in relation to the provision of the Services or otherwise under, in connection with or in relation to this Agreement.

- 10.3.3** Except for its gross negligence, wilful misconduct or breach of its confidentiality obligations and subject to Clauses 10.3.1 and 10.3.2 above, SERVICES PROVIDER maximum aggregate liability in contract, tort or otherwise arising out of or in connection with the Services or otherwise under, in connection with or in relation to this Agreement shall be limited to the Fees paid for the Services provided under this Agreement in the immediately preceding twelve (12) months prior to the date on which such action or claim arises.

## 11 INTELLECTUAL PROPERTY

- 11.1** The Intellectual Property Rights created as part of the Services will vest in MIAGEN and SERVICES PROVIDER hereby agrees to execute all documents and do all acts necessary to ensure that the rights to all IP resulting from the Services vest in MIAGEN.
- 11.2** The Intellectual Property Rights provided by SERVICES PROVIDER to MIAGEN under the Services, which existed, and were vested in SERVICES PROVIDER, prior to the commencement of Services, will remain vested in SERVICES PROVIDER. SERVICES PROVIDER hereby grants a perpetual, limited, non-exclusive, non-transferable, non- licensable, royalty free license to MIAGEN with respect to such Intellectual Property Rights to use in their financial management systems for the application that is the subject of the Services.
- 11.3** The Intellectual Property Rights provided by MIAGEN to SERVICES PROVIDER in the course of the provision of Services, which existed, and were vested in MIAGEN, prior to the commencement of Services, will remain vested in MIAGEN.
- 11.4** The Intellectual Property Rights in any data will remain vested in MIAGEN or its clients.

## 12 DATA PROTECTION

- 12.1** SERVICES PROVIDER acknowledges that it may be acting as a processor in respect of data Processing activities carried out as part of the Services under this Agreement.
- 12.2** Each of SERVICES PROVIDER and MIAGEN shall at all times comply with the provisions of Data Protection Laws, including maintenance of all valid and up-to-date registrations or notifications under Data Protection Laws required in connection with the Services.
- 12.3** SERVICES PROVIDER shall comply with the following in relation to Personal Data it processes as part of the Services:
- 12.3.1** SERVICES PROVIDER shall not engage another processor to carry out processing activities on any Personal Data without the prior written consent of MIAGEN;
  - 12.3.2** SERVICES PROVIDER shall process the Personal Data only in accordance with the documented instructions of MIAGEN (and not for any other purpose), as is necessary for the provision of the Services;
  - 12.3.3** SERVICES PROVIDER shall not transfer the Personal Data outside of the European Economic Area without the prior written consent of MIAGEN;
  - 12.3.4** SERVICES PROVIDER shall ensure that any persons authorised to process the Personal Data by it (including its employees, contractors, agents and subcontractors) have agreed to comply with obligations of confidentiality or are subject to a statutory obligation of confidentiality;
  - 12.3.5** SERVICES PROVIDER shall implement appropriate technical and organisational security measures which ensure against (i) unauthorised access to, (ii)



unauthorised or unlawful alteration, disclosure, destruction or other unauthorised or unlawful Processing of, (iii) accidental loss or destruction of, or (iv) damage to, the Personal Data. For the avoidance of doubt, such measures include the implementation of file system level encryption, transparent data encryption and application level encryption;

- 12.3.6** SERVICES PROVIDER shall notify MIAGEN, without undue delay, and in any event within forty eight (48) hours, of any request made by a Data Subject to access Personal Data and shall at all times cooperate with MIAGEN and provide MIAGEN with any assistance it may require in order to execute MIAGEN's obligations under Data Protection Laws in relation to such Data Subject access requests;
- 12.3.7** in addition to its other obligations set out in Clause 12.3.6, SERVICES PROVIDER shall, to the extent necessary and insofar as reasonably possible, cooperate with and assist MIAGEN to execute MIAGEN's obligations under Data Protection Laws in relation to a Data Subject's rights;
- 12.3.8** in the case of a Personal Data Breach, SERVICES PROVIDER shall, without undue delay, and in any event within twenty-four (24) hours, notify MIAGEN of the Personal Data Breach and shall provide all reasonable assistance and information to MIAGEN in relation to same;
- 12.3.9** in addition to, and without prejudice to, any obligations set out at Clause 9.3, at MIAGEN's direction SERVICES PROVIDER shall delete or return all Personal Data to MIAGEN at the end of the provision of the applicable Services to which the Processing relates, and delete all existing copies held by SERVICES PROVIDER (unless applicable law requires the storage of such personal data by SERVICES PROVIDER); and
- 12.3.10** permit MIAGEN to take all reasonably necessary steps to ensure compliance with the obligations imposed by this clause under Data Protection Laws.

## 13 NON-DISCLOSURE

- 13.1** Each Party, in performing its obligations under this Agreement, may have access to or be exposed to, directly or indirectly, or the Parties may provide to one another information that is confidential and/or proprietary materials of the other Party ("Confidential Information").
- 13.2** Confidential Information shall be limited to information clearly identified as confidential.
- 13.3** In the case of MIAGEN, Confidential Information shall include all work product; all information concerning the operations, affairs, products, marketing, systems, technology, customers, end-users, and businesses, including financial affairs, of MIAGEN and/or any affiliate, and their respective relations with their customers, employees, agents, and service providers (including customer lists, customer data, transaction information, completed insurance forms, supplier data, know-how, third party software and/or products provided by MIAGEN to SERVICES PROVIDER for use by SERVICES PROVIDER and information regarding consumer markets); and any other proprietary and trade secret information of MIAGEN and/or any affiliate, whether in oral, graphic, written, electronic or machine-readable form.
- 13.4** In the case of SERVICES PROVIDER, Confidential Information shall include the SERVICES PROVIDER proprietary information and other SERVICES PROVIDER proprietary information designated in writing by SERVICES PROVIDER as Confidential Information.
- 13.5** Confidential Information shall not include information which (a) is or becomes part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third party without restriction on disclosure; (d) is independently developed by the other Party or (e) is disclosed by operation of law.

- 13.6** The Parties agree to hold each other's Confidential Information in strict confidence while the Services are being performed and for a period of five (5) years thereafter and shall not, without the express prior written permission of a member of the disclosing Party authorized by the disclosing Party to make such decisions, (a) disclose such Confidential Information to third parties (other than a regulatory authority having jurisdiction over the receiving Party) except as otherwise permitted by this Agreement or the PID; or (b) use such Confidential Information for any purposes whatsoever, other than the exercise of its rights or performance of its obligations hereunder.
- 13.7** Each Party shall disclose the other Party's Confidential Information only: (i) to those of its employees and agents who have a need to know such Confidential Information in order to exercise such receiving Party's rights or perform such receiving Party's obligations pursuant to this Agreement., (ii) to any court, government agency or regulatory authority having jurisdiction over the receiving Party, and (iii) as otherwise permitted under this Agreement.
- 13.8** Each Party shall use reasonable efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each Party shall immediately advise the other Party in the event that it learns or has reason to believe that any person who has had access to the Confidential Information of such Party has violated or intends to violate the terms of this Agreement, and shall cooperate in seeking injunctive relief against any such person.
- 13.9** SERVICES PROVIDER shall ensure that each of its employees and subcontractors performing Services hereunder comply with the provisions of this Section.
- 13.10** Nothing contained in this Section shall be construed as obligating either Party to disclose its Confidential Information to the other Party, or as granting to or conferring on either Party, whether expressly or by implication, any ownership interest in or any right or license to any Confidential Information of the other Party.
- 13.11** This Section shall survive termination or expiration of this Agreement for any reason for a period of three (3) years, except with respect to MIAGEN Confidential Information, MIAGEN Data and trade secrets, as to which the obligations set forth in this Section shall survive indefinitely.

## **14 RELATIONSHIP BETWEEN THE PARTIES**

- 14.1** SERVICES PROVIDER is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. SERVICES PROVIDER is not the agent of MIAGEN and is not authorized and shall not have any authority to make any representation, contract or commitment on behalf of MIAGEN, or otherwise bind MIAGEN in any respect whatsoever. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. SERVICES PROVIDER (and its employees and agents, including any of SERVICES PROVIDER subcontractors performing Services) shall not be entitled to any of the benefits MIAGEN may make available to its employees, such as group insurance, profit-sharing or retirement benefits.
- 14.2** MIAGEN agrees that it will not, whether directly or indirectly through another person, entity or agency, engage or solicit the employment or services of any person or entity engaged or employed by SERVICES PROVIDER who will have been assigned or worked under this Agreement, nor will it directly or indirectly induce such person or entity to terminate their employment or relationship with SERVICES PROVIDER. This Clause is enforceable throughout the entire term of this Agreement and for a period of twelve (12) months after expiration, cancellation or termination of this Agreement. Where MIAGEN breaches this Clause, it shall pay to SERVICES PROVIDER upon demand, as liquidated damages, a sum equal or equivalent to the latest gross annual remuneration or fees of the person or entity concerned.

- 14.3** SERVICES PROVIDER staff are not, nor will they be deemed to be at any time during the term of this Agreement, the employees of MIAGEN.
- 14.4** This clause shall not apply where it would cause MIAGEN to contravene any employment law.

## **15 GOVERNING LAW**

- 15.1** This Agreement and all matters arising out of or relating to this Agreement shall be governed by and interpreted in accordance with the laws of Ireland. The Parties agree to submit to the exclusive jurisdiction of the courts of Ireland.

## **16 NOTICE**

- 16.1** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be effective (i) when delivered personally to the addressee or (ii) upon receipt after being sent by commercial overnight carrier service with tracking capabilities.
- 16.2** Notices shall be sent to the address specified for each Party in the related TOR or PID.
- 16.3** Either Party may designate a different address by notice given in accordance herewith.

## **17 SEVERABILITY**

- 17.1** In the event any provision or part thereof of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, that shall not affect (i) the legality, validity or enforceability in that jurisdiction of any other provision or part of this Agreement, or (ii) the legality, validity or enforceability in any other jurisdiction of that provision or part of this Agreement.

## **18 WAIVER**

- 18.1** The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder or at law operate as a waiver of any right or remedy.

## **19 ENTIRE AGREEMENT**

- 19.1** This Agreement (including any Terms of Reference attached hereto, which are incorporated herein by reference) constitutes the final, complete and exclusive agreement between the Parties with respect to the subject matter hereof and supersedes (i) all previous or contemporaneous agreements, discussions, negotiations, conditions, communications and TORs or representations, written or oral, between the Parties concerning the Services and the Deliverables, (ii) all past courses of dealing or industry custom, and (iii) all terms of any "shrink-wrap" or "click-wrap" license, terms of service or terms of use or different or additional terms and/or conditions presented with or incorporated into any work product or invoice. The Parties warrant to each other that the complete agreement and understanding of the Parties related thereto is contained in the terms of this Agreement.

## **20 AMENDMENTS**

- 20.1** This Agreement may not be modified or amended except in writing signed by a duly authorised representative of each Party. It is expressly agreed that any terms and conditions

of a MIAGEN purchase order or otherwise, shall be superseded by the terms and conditions of this Agreement.

## 21 DISPUTES

- 21.1** Any disputes between the Parties, about any matter relating to the performance of this Agreement (other than in relation to the payment of fees or expenses) which cannot be resolved by the Parties within thirty (30) days of notice of the dispute being served on the other Party will be referred to the arbitration of a single arbitrator agreed between the Parties, or on the failure of the Parties to agree within thirty (30) days of a written request by one Party to the other, appointed on the application of either Party by the then President of the Law Society of Ireland at the time of the application in accordance with and subject to the provisions of the Arbitration Acts 1954 to 1998.
- 21.2** The decision of the arbitrator shall be final and binding on the Parties and may be made an order of court at the insistence of either Party.
- 21.3** The costs, fees, charges and expenses incurred in respect of the arbitration including the legal costs of each of the Parties will be at the discretion of the arbitrator.

## 22 ASSIGNMENT

- 22.1** Either Party to this Agreement shall be entitled to assign or transfer their rights, obligations and entitlements under this Agreement upon the written consent of the other Party which consent shall not be unreasonably withheld or delayed. MIAGEN irrevocably consents to any assignment of Charges payable to SERVICES PROVIDER to any third party.

## 23 EXCUSABLE DELAY

- 23.1** Neither Party will be liable for any delay or failure to perform due to causes beyond its reasonable control and without its fault or negligence, provided, however, that the Party whose performance is affected shall provide prompt written notice of such cause to the other Party, and further provided that if such cause continues to prevent or delay performance for more than thirty (30) days, the other Party, in its discretion, may terminate the applicable Service, the applicable Terms of Reference and/or this Agreement, effective immediately upon written notice to the non-performing Party.

## 24 PUBLICITY

- 24.1** SERVICES PROVIDER shall not use the name, logos or trademarks of MIAGEN in promotional and marketing material or publicity releases, without the prior written consent of MIAGEN.

## 25 CONSTRUCTION

- 25.1** This Agreement shall be interpreted fairly in accordance with its terms and without any construction in favour of or against either Party. As used in this Agreement, "include," "includes," "including," and "e.g." shall mean "including, without limitation." The captions, clause, section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.



## Appendix A

### FORM OF TERMS OF REFERENCE (TOR) SERVICES PROVIDER - ILLUSTRATIVE ONLY

TERMS OF REFERENCE

TOR No:

This is a Terms of Reference ("TOR") to the Master Services Agreement Between SERVICES PROVIDER Limited and [ ] dated [ ] (the "Agreement")

**Description of the Services subject of this TOR:**

**PID Reference and date:**

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<b>Fees:</b>				
<b>Category</b>	<b>Rate</b>	<b>Currency</b>	<b>Quantity</b>	<b>Total Price</b>
T&M				
Fixed Price				
Invoice terms:				
Payments terms:				

**Deliverables, Milestones, Timelines:**

<b>Deliverable</b>	<b>Milestones</b>	<b>Start Date</b>	<b>End Date</b>

**Special conditions:**

Signed on behalf of MIAGEN:

Signed on behalf of SERVICES PROVIDER:

\_\_\_\_\_

\_\_\_\_\_

Print Name:

Print Name:

Date:

Date: