

## BIORELIANCE® TERMS AND CONDITIONS FOR STORAGE SERVICES

Client shall be bound by these Terms and Conditions for Storage Services ("Terms") upon Client's submission to BioReliance Corporation, BioReliance Limited or SAFC Carlsbad, Inc. (Individually and collectively referred to herein as "BioReliance") of a purchase order, storage shipping agreement, quote, or its equivalent, for the Storage Services (as defined below) or portion thereof. These Terms shall constitute the Agreement.

**1. STANDARD OF PERFORMANCE.** BioReliance will perform storage services ("Storage Services") using due care in accordance with generally prevailing industry standards. Client shall comply with all applicable laws and regulations governing use of Materials (as defined below) provided under this Agreement, and agrees to use Materials solely for the purposes set forth in, and in accordance with, any such approved uses.

**2. FEES; TERM and AUTOMATIC RENEWAL.** Client shall be responsible for paying the fee set forth in the applicable storage and shipping agreement, proposal or quotation ("Fee"), in accordance with the payment terms set forth therein. Unless otherwise agreed in writing by BioReliance, payment terms shall be net thirty (30) days from date of invoice. Invoices will be automatically generated and mailed per the agreed upon terms and conditions. If BioReliance does not receive payment by the due date, an interest charge may be added at the rate of 1.5% per month (18%) per year or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof. Any discounts for such Storage Services must be expressly offered by an authorized representative of BioReliance in writing and in advance. The term for Storage Services is 12 months and such term will be automatically renewed annually for a minimum term of 12 months unless the Client provides a minimum of 30 days written notice before the end of the applicable term that the Client is terminating such Storage Services.

**3. MATERIALS.** Client will provide BioReliance with pre-labeled (appropriate for low temperature storage) vials ("Material") with which to perform the Storage Services, as well as all sufficient and comprehensive data and information, including but not limited to material safety data sheets, as may be required by BioReliance concerning the stability, storage and safety requirements of Material. In the event Client becomes aware of any additions, deletions, or modifications to any such requirements during the course of the Storage Services, it shall immediately notify BioReliance thereof. Upon completion of the Storage Services, any remaining samples of Material will be returned to Client, or discarded by BioReliance after thirty days prior written notice to Client. Client further represents and warrants that a) it has or has made arrangements for secondary storage site for its Material and not all quantities are stored with BioReliance, and b) it has sufficient insurance coverage for its Materials.

**4. MAINTENANCE RECORDS.** Client shall have access to equipment maintenance records generated during the performance of the Storage Services, in accordance with Section 6 below.

**5. CONFIDENTIALITY.** During performance of the Storage Services and for the (10) years thereafter, BioReliance will treat all Material and all information regarding such Material as proprietary and confidential and will not knowingly disclose the same to any person other than Client or its designated representatives.

Notwithstanding any other provisions, BioReliance shall have no liability or obligation to the Client for nor be in any way restricted in, its disclosure of or use of any Material which:

- a) is already lawfully known to BioReliance; or,
- b) is or becomes publicly known by any means whatsoever, through no wrongful act of BioReliance; or
- c) is received from a third party without breach of this Agreement; or
- d) is disclosed pursuant to an enforceable order of a court of competent jurisdiction; or
- e) is independently developed by or for BioReliance.

Except as required for regulatory submissions, Client will treat any BioReliance confidential information, including but not limited to the protocols, SOPs, and the like, in accordance with the above.

**6. WITHDRAWAL OF MATERIAL.** During performance of the Storage Services, BioReliance agrees to ship limited quantities of Material to the Client when requested in writing by a duly authorized representative. All costs and risk of loss for any shipment of Material shall be borne by Client.

**7. FACILITY VISITS.** Upon reasonable advance notice, BioReliance will permit Client representatives to visit BioReliance's facilities during normal working hours and with reasonable frequency, to observe or discuss the Storage Services with appropriate officials of BioReliance, and to inspect records and data relevant to the Storage Services.

**8. USE OF NAMES.** Client shall not use BioReliance's name or the names of BioReliance's employees in any advertising or sales promotional material or in any publication without prior written consent of BioReliance. BioReliance will not use Client's name or the names of Client's employees in any advertising or sales promotional material or in any publication without prior written consent of Client. Notwithstanding the above, Client shall be permitted to use BioReliance's name in any regulatory submission associated with the Storage Services without prior written consent of BioReliance, and BioReliance shall be permitted to use Client's name to the extent necessary to comply with regulatory requirements without prior written consent of Client.

**9. LIMITED WARRANTY; REMEDY; DAMAGES.** The undertaking of BioReliance to perform the Storage Services is a contract for services only. The sole warranty with respect to its Storage Services is that it will perform the Storage Services with due care in accordance with generally prevailing industry standards. THE WARRANTY SET FORTH IN THIS PARAGRAPH IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE STORAGE SERVICES TO BE PERFORMED, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL

BIORELIANCE BE LIABLE TO THE CLIENT OR ANY THIRD PARTY CLAIMING BY OR THROUGH THE CLIENT FOR ANY LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES. BIORELIANCE'S LIABILITY TO THE CLIENT FOR ANY BREACH OF THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE STORAGE FEE PAID FOR THE APPLICABLE MATERIALS UNDER CLAIM.

**10. CLIENT'S WARRANTY.** Client represents and warrants that it owns or possesses, has access to, or is licensed under all patents, patent applications, inventions, improvements, trademarks, trade names, copyrights, licenses, information, proprietary rights, processes and know-how necessary for the Materials, and the performance of the services will not result in any infringement, misappropriation, violation of any agreement, or conversion of or conflict with the rights of third parties. Client has not received, nor has any knowledge of, any conflict with the asserted rights of other individuals or entities with respect to any intellectual property rights used or to be used in connection with the Materials. Client represents and warrants that it is sufficiently self-insured or possesses sufficient insurance coverage against any liability arising under this Agreement. Client represents and warrants that it will comply with all applicable laws and regulations governing use of the Materials, and agrees to use the Materials solely for the purposes set forth in, and in accordance with, any such approved uses.

**11. INDEMNIFICATION; INSURANCE.** Except where proximately caused by the gross negligence or willful misconduct of BioReliance, the Client shall indemnify, defend and hold harmless BioReliance, its parents, subsidiaries, and affiliates and their respective officers, directors, employees, and agents from and against any and all expenses (including, but not limited to, reasonable attorney's fees), damages, judgments, and losses incurred or suffered by any such indemnified party as a result of or in connection with any claim, demand, or cause of action asserted or brought by or on behalf of a third party (including, but not limited to, officers, employees, and agents of the Client) for (i) physical injury to or death of persons or physical damage to property arising out of or based upon the manufacture, sale, or use of any quantity of the Material or any derivative thereof or product relating thereto, by or on behalf of the Client, whether such manufacture, sale, or use took place prior to conclusion of the Storage Services or thereafter and whether or not such manufacture, sale, or use took place in reliance, in whole or in part, on the Storage Services or any portion thereof, or (ii) physical injury to or death of persons or physical damage to property arising out of BioReliance's use of any quantity of the Material in accordance with the written or verbal instructions issued by Client. Client shall maintain adequate commercial general liability and product liability insurance in such amounts and with such scope of coverage as is customary in the life sciences industry with regard to the manufacture and sale of the products and deliverables hereunder and for the Materials used in the services contemplated herein.

**12. FORCE MAJEURE.** It is mutually understood and agreed that BioReliance shall not be responsible for failure or delay in performance of its obligations under or in connection with this Agreement due to causes beyond its reasonable control,

including but not limited to, acts of God, governmental actions, fire, labor difficulty, shortages, civil disturbances, transportation problems, interruptions of power or of communications, failure of suppliers or subcontractors, or natural disasters. This paragraph shall not apply to Client's obligation to make any payment to BioReliance.

**13. ASSIGNMENT.** Client will not assign its rights or delegate its responsibilities hereunder without the prior written consent to BioReliance.

**14. INDEPENDENT PARTIES.** Nothing in this Agreement shall be construed as to create any relationship between BioReliance and Client other than that of independent contracting parties. Neither party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

**15. WAIVER.** No waiver by either party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.

**16. NO SOLICITATION.** During the term of this Agreement and for a period of one (1) year from the date of completion of the Storage Services, the Client shall not directly solicit or recruit for employment, without prior written approval of BioReliance, any personnel employed by BioReliance who has in any manner been associated with the Storage Services. The foregoing restriction shall not apply in the case of such employee being interviewed, offered employment, and/or hired following that employee's response to a publicly posted position of the Client.

**17. SEVERABILITY.** If any part, term or provision of the Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected, and the Agreement shall otherwise remain in full force and effect.

**18. ENTIRE AGREEMENT.** This Agreement, including the quotation of fees and charges, the appendices, exhibits or other schedules, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supercedes any conflicting terms that may be set forth on Client's purchase order, BioReliance's invoice, or any other documentation of either party, unless agreed to in writing by authorized representatives of both parties. This Agreement is not intended to confer upon any person other than the BioReliance and Client any rights or remedies hereunder. There are no representations, warranties, understandings or agreements relating to this Agreement which are not fully expressed herein. No amendment, modification, waiver or discharge of any provision of this Agreement will be valid unless in writing and signed by an authorized representative of the party against which such amendment, modification, waiver or discharge is sought to be enforced.

**19. GOVERNING LAW.** For US based services, this Agreement will be governed by the laws of the State in which the storage services are being conducted, without regard to any provisions relating to the conflict of jurisdictional legal requirements. For UK based services, this Agreement shall be governed by and

construed in accordance with the Laws of Scotland and the parties shall submit to the jurisdiction of the Scottish Courts.

**20. TERMINATION.** Notwithstanding any other provisions herein, BioReliance's obligations to provide storage services shall terminate upon the happening of any of the following events (each, a "Termination Event"): Termination or expiration of the purchase order, storage shipping agreement, quote, or its equivalent, for any reason without the Client having elected to renew for an annual storage term; Written instruction of Client directing BioReliance to transfer all stored Materials to another storage facility; Written instruction of Client directing BioReliance to destroy all stored Materials;

Failure of Client to pay any storage fee within ten (10) days after the date of any notice of delinquency from BioReliance to Client, it being understood that termination for such non-payment shall not excuse Client of its obligation to pay delinquent fees; Termination by Client of storage services after thirty (30) days written notice of termination to BioReliance; Termination by BioReliance of storage services after thirty (30) days written notice of termination to Client. Upon the occurrence of any Termination Event, all obligations of BioReliance for storage of Materials shall cease. Client shall make arrangements for release, destruction or other disposition of any remaining Materials within thirty (30) days. IF CLIENT FAILS TO MAKE SUCH ARRANGEMENTS WITHIN SUCH TIME PERIOD, THE STORED MATERIALS WILL BE DEEMED ABANDONED AND BIORELIANCE MAY, AT ITS SOLE DISCRETION, DESTROY ALL STORED MATERIALS REMAINING IN STORAGE. CLIENT RELEASES AND BIORELIANCE ACCEPTS NO RESPONSIBILITY FOR LOSS OF STORED MATERIALS DESTROYED BY BIORELIANCE BECAUSE OF CLIENT'S ABANDONMENT. There shall be no refund of storage fees upon termination of BioReliance's storage services pursuant to the terms of this Termination section.