

TERMS AND CONDITIONS GOVERNING THE SUPPLY OF SERVICES OF MICROBESNG,

These Terms apply to and govern the supply of services by MicrobesNG, (MNG) to the Customer and are to the exclusion of all other terms and conditions. By ordering services from MNG the Customer accepts and acknowledges these terms and conditions exclusively govern the supply of the services of MNG

1. Interpretation

1.1 In these Terms the following words have the following meanings:

The Contract	The agreement between the Customer and MNG for the supply of Services	the Terms	means these terms and conditions
the Customer	means the person, company or organisation ordering the Services from MNG under the Contract	The White List	The list as updated on the MNG website from time to time of the microbial strains which the MNG may accept for analysis. This list does not include human tissue samples.
the Data Results	information and data extracted and generated by MNG from the Samples as part of the Service	1.2 Any reference in these Terms to a statute or regulation is to be construed as a reference to that statute or regulation as amended or re-enacted from time to time.	
Estimated Delivery Date	an estimated date for delivery of the Data Results	1.3 The Interpretation Act 1978 applies to these Terms as if these Terms were an enactment.	
Intellectual Property Rights	means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all pending applications for and rights to apply for or register such rights;	1.4 The definitions set out in the Data Protection Act 1998 apply to words and expressions with an initial capital letter appearing in condition 9 of these Terms.	
MNG	A BBSRC-funded collaboration between the University of Birmingham , a charity established by Royal Charter (co no. RC000645) with offices at Edgbaston, Birmingham, B15 2TT UK and the University of Sheffield a charity established by Royal Charter (co no X1089) with offices at Western Bank Sheffield S10 2TN	1.5 The headings in these Terms are for ease of reference only; they do not affect the interpretation or construction of these Terms.	
Payment	The cost of the Services as specified in the Quotation exclusive of VAT.	1.6 Any typographical, clerical or other error or omission in any sales literature, price list, Quotation, acceptance of offer, invoice or other document or information issued by MNG shall be subject to correction without any liability on the part of MNG.	
the QC Criteria	quality and quantity criteria of the Samples required for MNG to carry out the Services as set out on MNG's website and in information provided to the Customer	2. Contract Formation	
a Quotation	a written quotation issued by MNG specifying the cost of the Services and incorporating these terms by reference which shall remain valid for acceptance within 60 days of the date of the quotation;	2.1 These Terms will govern the provision of the Services to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation order, specification or other document) These terms will prevail over those of the online shop in the event of inconsistency or conflict.	
the Samples	Biological and non-biological samples (excluding human tissue samples), specimens, test items, formulated materials provided or to be provided by the Customer to MNG for the purposes of genetic analysis as specified in a Quotation	2.2 Following a request from a prospective Customer to provide the Services, MNG will issue a Quotation to that Customer which is open to acceptance by the prospective Customer for 60 days after its date.	
the Services	The genome sequencing of microbial strains or DNA, sequencing data or data analysis services to be supplied by MNG under the Contract.	2.3 The Customer is deemed to have accepted the Quotation by making a payment for any of the Services via the on line shop or alternatively by issuing a Purchase Order to MNG for the Services. If the Customer accepts the Quotation within the 60 day period, the Contract between the Customer and MNG will be formed for the supply of the Services.	
		2.4 If a prospective Customer does not accept MNG's quotation within a 60 day period, but later purports to accept it, the purported acceptance will be an offer to treat. If a prospective Customer places an order with MNG without MNG first having issued a Quotation, that order will be an offer to treat. In either of those circumstances a contract will only come into existence if and when MNG accepts the Customer's offer. MNG may decline the Customer's offer as MNG sees fit.	
		2.6 MNG may revise these Terms at any time by publishing new or revised Terms on its website. If a Quotation is accepted by the Customer after the new or revised Terms have been published on MNG's website, those new or revised Terms will apply to the supply of those services.	

2.7 If there is any conflict or inconsistency between these Terms and any Quotation these Terms will prevail.

3. Delivery Acceptance and use of the Samples

3.1 The Customer will provide MNG with the Samples and will deliver the Samples to MNG's premises at its own risk and cost.

3.2 The Customer will provide with the Samples all associated information and documentary evidence (including, without limitation, certificates of non-contamination and patient and ethical consents as appropriate) in relation to the Samples as MNG may reasonably require in order to perform the Services.

3.3 MNG may only accept strains submitted by the Customer in the United Kingdom and which appear on the White List. If the strains do not appear on the White List, or the Customer is based outside the United Kingdom, a DNA sample must be submitted.

3.4 The Customer will ensure that all containers, packaging and labelling of the Samples complies with the instructions of MNG and in particular MNG's instructions in respect of barcodes, concentrations and information to be provided on a sample spreadsheet.

3.5 After delivery of the Samples, MNG will carry out quality control checks on the Samples in order to ensure that the quality and quantity of the Samples meet the QC Criteria. If MNG in its sole discretion determines that the quality or quantity of a Sample does not meet the QC Criteria, MNG will notify the Customer of this by email within 90 days after receipt of the Samples by MNG.

3.6 If the Customer does not supply MNG with a Sample that meets the QC Criteria within 30 days after the date of MNG's notification under clause 3.4, MNG will be under no obligation to carry out the Services in respect of that Sample. The Customer will not be entitled to any refund of the Payment.

3.7 MNG may use the Samples for the purposes of performing the Services and subject to Clause 3.8 below, following the provision of the Services and the delivery of the Data to the Customer, MNG will retain the Samples in a strain repository and the Data will be uploaded onto a data base accessible to the public.

3.8 If the Services relate to an industrial project which the Customer has requested to be confidential, MNG will not use the Samples for any purpose except to provide the Services to the Customer. MNG will retain the Samples and store the Data Results for a period of 6 months after delivery of the Data Results and thereafter will destroy all DNA and DNA libraries derived from the Samples supplied to MNG and permanently delete the Data Results.

4. The Services and Data Results

4.1 MNG will use reasonable endeavours to carry out the Services with reasonable skill and care. MNG will endeavour to complete the Services and to deliver the Data Results by any Estimated Delivery Date, but any such Estimated Delivery Date is an estimate only, and MNG will not be liable for any delay or failure to deliver or perform in accordance with an Estimated Delivery Date.

4.2 The Services are provided as scientific testing and research services only and the Customer acknowledges that the Services and Data Results are not provided by MNG to the Customer for clinical use (including, without limitation, diagnostic, prognostic or therapeutic use) without further data analysis by the Customer.

4.3 Any delay by the Customer in providing Samples, or in making the Payment to MNG will give MNG the right to delay performance of the

Services by a reasonable amount of time taking into account the delay by the Customer and the availability of MNG's facilities.

4.4 Once the Services have been completed MNG will deliver the Data Results to the Customer through or on an accessible electronic medium.

5. Payment

5.1 The Customer will pay the Payment either at the time of order via the on line shop or by issuing a purchase order. An invoice will be generated by The University of Birmingham on behalf of MNG, following the issue of the purchase order. Unless otherwise agreed in writing, payment of all invoices will be made by the Customer to The University of Birmingham in full in Pounds Sterling as invoiced, no later than thirty (30) days from the date of an invoice.

5.2 All prices are exclusive of VAT unless otherwise stated and the Customer will pay any and all tax duties and other government charges payable in respect of the Services in accordance with UK legislation in force at the tax point and all other taxes and duties payable in connection with the supply of the Services to the Customer and its export and import into any territory.

5.3 In the event of late payment by the Customer MNG will be entitled, without limiting any other rights and remedies it may have:

5.3.1 to suspend the Services and/or cancel any of its outstanding obligations under the Contract;

5.3.2 to levy a service charge to cover administrative and other associated costs in relation to overdue accounts at the rate of 3% per month on all unpaid accounts; and

5.3.3 to charge interest on any outstanding amount accruing from time to time at the amount prescribed in the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the outstanding amount is paid in full.

5.4 The Customer will have no right to set off any amounts owing to it by MNG against unpaid invoices due to MNG.

5.6 Any claim or query by the Customer in respect of the invoiced price of the Services must be notified to MNG by the Customer within the period referred to in condition 5.1.

6. Intellectual Property Rights

6.1 Nothing in these Terms grants the Customer any licence to or any other rights under any Intellectual Property Rights of or used by MNG existing at the date of the Contract. The Customer will have no interest in any Intellectual Property Rights of or used by MNG relating to methods of analysing nucleic acids, methods of experimental design (such as sample preparation and probe design) genomic sequencing or data analysis tools.

6.2 If the Services relate to an industrial project which is performed on a confidential basis, the Intellectual Property Rights in the Data Results will be the property of the Customer and at the request and cost of the Customer MNG will execute documents and take all necessary actions to assign to the Customer the Intellectual Property Rights.

6.3 Save as set out above, the Intellectual Property Rights in the Data Results shall be owned by the Customer and MNG. MNG shall have unfettered rights to use and publish the Data Results

6.4 MNG grants to the Customer a non-exclusive, non-transferable licence to use and copy its MNG software solely for the purpose of accessing and using the Data Results, and only to the extent that such use and copying of

the MNG software is necessary for the Customer to access and use the Data Results provided that:

6.4.1 the Customer will not allow anyone except its employees to use the MNG Software and will not divulge the MNG software to any third party.

6.4.2 the Customer may not distribute any of the MNG software to any third party, or share its use with any third party (whether on a commercial basis, free of charge or otherwise), and Customer may not sub-license the use of the MNG software;

6.4.3 the Customer may not use the MNG software on behalf of, or for the benefit of, anyone else; and

6.4.4 the Customer may not modify, adapt, reverse engineer, decompile or disassemble the whole or any part of the MNG software for any purpose except for the purposes expressly permitted by and in accordance with section 50 of the Copyright, Design and Patents Act 1988 or any other directly applicable law.

7. Warranties and Indemnities

7.1 The Customer warrants that:

7.1.1 it has obtained all patient and/or ethical consents in respect of the Samples necessary to allow the Customer to submit the Samples to MNG and for MNG to comply with its obligations under the Contract;

7.1.2 that MNG's possession or use of the Samples to provide the Services or its holding of the Samples and Data Results in accordance with the Contract complies with all applicable laws and regulations and will not infringe the Intellectual Property Rights of any third party; and

7.1.3 it has provided MNG with all necessary information concerning the safe handling and storage of the Samples.

7.2 The Customer will indemnify MNG from and against any and all actions, claims, damages, losses and expenses (including, without limitation, legal and other costs and expenses) incurred by MNG as a result of or in connection with the Customer's breach of the warranty set out in clause 7.1.

7.3 The Customer warrants that it has not been induced to enter into the Contract by any representation or by any warranty (whether oral, or in writing, or in any other form) except those expressly made part of the Contract. The Customer waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by MNG fraudulently) which is not specifically set out in the Contract as a warranty.

7.4 The Customer acknowledges and agrees that the Services are scientific testing services and accordingly specific results or outcomes are not guaranteed or warranted.

7.5 The Data Results are supplied without any express or implied warranties, conditions or representations and all warranties, conditions, terms, undertakings and obligations on the part of MNG implied by statute, common law, custom, trade usage, course of dealing or in any other way are, to the extent permitted by law, excluded.

7.6 MNG makes no representations and gives no warranty that the use of the Data Results or the exercise of any other rights licensed under this Agreement will not infringe any Intellectual Property Rights or other rights of any third party.

8. Limitation of Liability

8.1 Nothing in these Terms limits MNG's liability for fraud, or death, or personal injury arising as a result of MNG's negligence or any other liability which may not, by law, be excluded.

8.2 Subject to clause 8.1, the maximum liability of MNG under or in connection with the Services whether caused by the negligence of MNG, its servants, agents sub-contractors or otherwise will not exceed the amounts which have been paid or which have become payable by the Customer. In the event of an error by MNG in providing the Services which renders the Data Results unusable by the Customer, the Customer's only remedy will be either:

8.2.1 the return of the amounts which have been paid to MNG by the Customer under the Contract ; or

8.2.2 to require MNG to repeat the whole or part of the Services at MNG's own cost

8.3 Subject to clause 8.1, the Customer accepts the risk of using the Data Results and MNG will have no responsibility or liability for any use which may be made of the Data Results by the Customer or any other person or for any loss arising from that use, whether caused by the negligence of MNG, its servants, agents, sub-contractors or otherwise.

8.4 Subject to clause 8.1, MNG will not be liable to the Customer for any of the following: loss of profit, loss of revenue, loss of savings, loss of opportunity, loss of business and loss of goodwill (in each case whether direct or indirect) or for any indirect loss, damage, costs, expenses and other claims (whether caused by the negligence of MNG, its servants, agents sub-contractors or otherwise) which arise out of or in connection with the Services or the Contract.

9. Confidentiality and Data Protection

9.1 Except where permitted under these Terms, neither MNG or the Customer will use (except for exercising its rights and performing its obligations under the Contract), and will keep confidential and not divulge to any third party any and all confidential information of the other party (whether oral, written or recorded or disclosed in any other form, and whether disclosed on, before or after the date of the Contract) concerning any of the following: the business, affairs, plans, technology, know-how, products and services of the other party and, in particular, any samples, information and material disclosed to them by the other party for purposes of the Contract without the other party's prior written consent.

9.2 The restriction contained in Condition 9.1 will not apply to any information which:

9.2.1 was already in the receiving party's possession or at its free disposal before its disclosure by the disclosing party;

9.2.2 is disclosed after the date of the Contract to the receiving party without any obligations of confidence by a third party who has not derived it directly or indirectly from the disclosing party;

9.2.3 is or becomes generally known anywhere in the world through no act or default on the part of the receiving party; or

9.2.4 is independently developed or discovered by the receiving party's personnel without use of or reliance upon information provided by the disclosing party.

9.3 Nothing in this Condition 9 will prevent:

9.3.1 MNG from disclosing in confidence to any MNG Affiliate any confidential information disclosed to it by the Customer and the Data Results in order to meet MNG's obligations under the Contract; or

9.3.2 Either party from making any disclosure required by law, or by the order of any court of competent jurisdiction or any regulatory authority.

9.4 If MNG processes any Personal Data on the Customer's behalf when providing the Services, the parties intend that the Customer will be the

Data Controller and MNG will be a Data Processor in relation to those Personal Data and agree that:

9.4.1 the Customer will ensure that it is entitled to transfer those Personal Data to MNG so that MNG may lawfully use, process and transfer those Personal Data in accordance with the Contract on the Customer's behalf;

9.4.2 the Customer will ensure that all Data Subjects have been informed of, and have given their consent to, such use, processing, and transfer as required by the Data Protection Act 1998;

9.4.3 MNG will process those Personal Data only in accordance with the Contract and any lawful and reasonable instructions given by the Customer from time to time; and

9.4.4 MNG will take appropriate technical and organisational measures against unauthorised or unlawful processing of those Personal Data or their accidental loss, destruction or damage, having regard to the state of technological development, the cost of implementing any measures, the harm which might result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and the nature of the data to be protected.

10. Force Majeure

If MNG is delayed or hindered in or prevented from performing any of its obligations under these Terms by reason of any event or circumstance beyond its reasonable control, MNG will have no liability to the Customer in respect of such non-performance and the time for performing the same will be extended until the event or circumstance has ceased.

11. Termination

11.1 Either party may terminate the Contract immediately by written notice to the other if the other party:

11.1.1 commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy that breach within 30 days after receipt of a written notice giving particulars of the breach and requiring it to be remedied;

11.1.2 has a receiver, administrative receiver or administrator appointed over all or any of its assets or undertaking or, except for the purposes of a solvent amalgamation or reconstruction, enters into liquidation, enters into any composition or arrangement with or for the benefit of its creditors or enters into any similar or analogous arrangement existing under the law of any country or ceases to carry on business.

11.2 The termination of the Contract, by either party in accordance with this clause 11 will be without prejudice to any other rights or remedies of that party accrued prior to termination.

11.3 On termination of the Contract for any reason the Customer will immediately pay to MNG any Payment or other amounts due under the Contract.

11.4 Clauses 1, 3.7, 4.4, 5.4, 6.2, 6.3, 7, 8, 9, 11.2, 11.3, 11.4 and 12 will survive the expiry or termination of this Agreement and will continue indefinitely.

12. General

12.1 No Partnership etc. - Nothing in these Terms creates, implies or evidences any partnership or joint venture between MNG and the Customer, or the relationship between them of principal and agent.

12.2 Third Party Rights - No third party is entitled to the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

12.3 Assignment and Subcontracting - The Customer may not assign or otherwise deal with the Contract or any part of it without obtaining the prior written consent of MNG. MNG may perform any of its obligations or exercise any of its rights under the Contract by itself or through an MNG Affiliate, provided that any act or omission of any MNG Affiliate shall be deemed to be the act or omission of MNG. MNG may also assign or transfer the Contract or any part of it to any other person.

12.4 Severability - If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

12.5 Notices - Any notice permitted or required under the Contract will be in writing and will be sent to the contact address, or e-mail address of the other party set out in the Quotation or any other address or e-mail address which that party may designate by notice given to the other party in accordance with this condition 12. Any notice may be delivered personally, or by first class pre-paid letter or by e-mail and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; and if by e-mail, on that e-mail being accessible by the intended recipient.

12.6 Waiver - No waiver or delay by MNG in enforcing its rights will prejudice or restrict those rights and no waiver of any right will operate as a waiver of any later right or breach.

12.7 Governing Law and Jurisdiction - The Contract shall be governed and construed in accordance with the laws of England. The English Courts will have exclusive jurisdiction to deal with any dispute which may arise out of or in connection with the Contract.