

## TERMS AND CONDITIONS

1. **Terms and Conditions.** These terms and conditions and the New Research Account Information form (collectively, the “Agreement”) govern the Services provided by or on behalf of VDX to the person contracting Services (the “Service Recipient”).

2. **Services.** VDX is a veterinary pathology laboratory providing consulting and interpretive services by its veterinary pathologist and support staff. VDX will provide laboratory processing and analytical services and generate slides and/or written reports (“Services”) based on the laboratory processing and analysis (“Deliverables”) on laboratory tissues and/or slides (“Materials”) delivered to VDX by Service Recipient. “Materials” also includes reports, data records, digital images, protocols, electronic or written communications, devices, prototypes, tissues, slides and blocks related to the Services, including the Deliverables. Deliverables are prepared on the basis that: (a) there is no responsibility to any person or body other than Service Recipient; (b) they are not carried out for any guaranteed result; (c) VDX is entitled to be paid for the Services irrespective of the results or conclusions reached in the Deliverables; and (d) any evaluation performed on human tissue is for research and development purposes only and under no circumstances are VDX professional interpretations to be used to diagnose or treat human patients. Service Recipient will identify a Primary Account Contact who will be responsible for all communications and other matters pertaining to Service Recipient’s account with VDX and will promptly and diligently respond to VDX requests for information, direction and materials related to the Services.

3. **Shipping.** “Shipping” includes all methods used to exchange Materials and Deliverables between VDX and Service Recipient or between VDX and third-party contractors VDX may use to produce the Deliverables for Service Recipient. Service Recipient will pay for all Shipping. Service Recipient will bear the risk of loss and damage resulting from Shipping. VDX bears no responsibility or liability for any loss or damage to Materials or Deliverables resulting from Shipping. VDX may ship Materials and Deliverables by any shipping or courier service of VDX’s choosing. VDX will insure any such shipment against loss or damage for a value of one hundred dollars (\$100) at Service Recipient’s expense, except if Service Recipient requests additional insurance in writing with sufficient amount of time before such shipment to allow VDX ample opportunity to obtain additional insurance, which additional insurance will be at Service Recipient’s expense. Service Recipient may arrange and purchase any insurance at its own expense for Shipping. Service Recipient will be responsible for any climate control during shipping of the Materials to VDX that may be appropriate or advisable. Service Recipient should ship Materials to VDX at the following address: 215 C Street, Suite 301, Davis, CA 95616 unless VDX notifies Service Recipient of another address in writing.

4. **Quality Control.** VDX is not responsible for the effect of Materials that do not meet VDX’s quality control standards (“Defective Materials”) on the results of the Services. VDX will use

commercially reasonable efforts to notify Service Recipient if VDX becomes aware that all or a portion of the Materials are Defective Materials. VDX may elect to discontinue Services if it determines all or a portion of the Materials are Defective Materials. Service Recipient may provide VDX with replacement Materials in the event all or a portion of the Materials are Defective Materials and any replacement Materials will be subject to the terms and conditions of this Agreement.

5. **Ownership of Materials and Deliverables.** Service Recipient will at all times retain all right, title and interest in and to the Materials. Notwithstanding the foregoing sentence, by shipping the Materials to VDX, Service Recipient grants VDX a non-exclusive license to test and use the Materials for the purpose of performing the Services. Service Recipient acknowledges that the Materials may be destroyed in part or entirely in connection with performance of Services. Upon VDX’s receipt of all payments due under the Agreement through finalization of written reports contemplated by the Services, Service Recipient is granted all right, title and interest in and to the Deliverables. Except as expressly agreed in writing by VDX, Materials are and remain at all times (including, without limitation, while at VDX’s facility and during transportation to and from VDX’s facility) at the entire risk of the Service Recipient who will be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Service Recipient that the charges of VDX do not include insurance.

6. **Fees; Payment Terms.** Service Recipient will pay VDX for the Deliverables in accordance with VDX’s then current fee schedule, which VDX may amend or update in its sole discretion from time to time. VDX will issue an itemized invoice for the Services. Service Recipient will remit payment for each invoice to VDX within thirty (30) days of the date of each such invoice. Late payments are subject to interest equal to 1.5% per month, from the original due date until the late payment is actually received by VDX. Service Recipient will pay VDX for all costs of collection (including without limitation, the actual costs and reasonable attorneys’ fees).

7. **Disclaimer.** All deliverables provided hereunder are provided “as is,” with all faults. VDX makes no representations and extends no warranties of any kind, either express or implied, including express or implied warranties of merchantability, fitness for a particular purpose, accuracy or utility, or non-infringement of a third party’s intellectual property rights.

8. **Limitation of Liability.** In no event will VDX or its agents or affiliates be liable to service recipient for any claims, damages (whether compensatory, consequential, including but not limited to damages for “delay to market”, “loss of market”, “loss of profit”, “loss of business”, “loss of contract”, or punitive damages), liabilities, costs, expenses or fees arising out of or relating to this agreement that, independently or in the aggregate, exceed the fees actually paid by service recipient to VDX under this agreement in the then current calendar year.

VDx's total aggregate liability under the agreement in any calendar year (whether in contract, tort or otherwise) arising out of or in connection with the performance or contemplated performance of services or any delay in performance or failure to perform by VDx or otherwise is limited to 100% of the value of the amount of fees paid by service recipient in that calendar year.

**9. Indemnification by Service Recipient.**

(a) The term "Legal Action" means any claim, suit or proceeding, whether administrative or judicial in nature.

(b) The term "Losses" means any and all claims, suits, actions, causes of action, liability (including, without limitation, strict liability), actions, proceedings, obligations, debts, damages, demands, losses, costs, expenses, fines and/or penalties (civil, criminal or administrative), court costs, charges, fees, judgments, awards, and all attorneys' fees, experts' fees and, consultants' fees actually incurred by an Indemnified Party (as defined in paragraph 9(c)), and all amounts actually paid by an Indemnified Party (as defined in paragraph 9(c)), in settlement of whatever kind or nature (including, but not limited to, damages, costs, attorneys' fees, experts' fees, consultants' fees, and other costs of defense).

(c) Service Recipient will indemnify, defend and hold harmless VDx and its agents, representatives and affiliates and their respective employees, officers, directors, shareholders, representatives and agents (each, an "Indemnified Party") from and against any and all Legal Action and Losses, which the Indemnified Party may incur, suffer or be required to pay resulting from or arising in connection with any claim asserted by Service Recipient or a third party arising out of or relating to (i) the Services, (ii) performance by VDx of its obligations under the Agreement, (iii) the breach or alleged breach by Service Recipient of any of its covenants, representations or warranties contained in this Agreement, (iv) Service Recipient's use of the Deliverables (iv) the infringement or alleged infringement of a third party's intellectual property rights resulting from VDx's use (as permitted herein) of the Materials, and (v) Service Recipient's manufacture, use or sale of any products or services resulting from its use or adaptation of the Deliverables provided by VDx under this Agreement. Service Recipient may not settle a claim or action related to any Legal Action or Losses without the written consent of any Indemnified Party who might or would be affected by such settlement.

**10. Communication Between Parties.**

Service Recipient acknowledges that communication with VDx is crucial to our ability to perform Services. VDx shall communicate with Service Recipient through the Primary Account Contact, by the methods requested on the New Research Account Information form. Service Recipient shall respond promptly to all VDx requests for reply or information and acknowledges that delays in communication may delay VDx's ability to perform Services in a timely manner and shall absolve VDx of any responsibility to meet any predetermined timelines or deadlines for Deliverables.

**11. Storage; Terminated Services; Destruction of Materials.**

(a) Storage of Materials. VDx will store Materials during the period required for VDx (as determined by VDx) to perform Services. All materials will be returned to the Service Recipient, or the archive location indicated by Service Recipient, when VDx no longer needs the Materials to perform its Services.

(b) Abandoned study. VDx shall, at its sole discretion, deem a study abandoned if Service Recipient: (i) fails to communicate with VDx (i.e. to provide requested response, comment, feedback, signatures or other input requested by VDx in connection with the study), (ii) fails to take required or requested action, or (iii) fails to provide for disposition of Materials, such that VDx may no longer make progress on or complete a study or return Materials.

(c) Study Inactivation. VDx may inactivate a study and terminate Services in respect of that study in the following circumstances: (i) VDx determines in its sole discretion that the Service Recipient has abandoned the study, (ii) Service Recipient's payment for Services is more than 60 days' past due, (iii) Service Recipient requests the study be inactivated, (iv) Service Recipient has not made arrangements for storage of Materials at the conclusion of a study; or (v) other reasons determined by VDx in its reasonable discretion.

(d) VDx May Take Action. VDx may on 14 days-notice to Service Recipient, at VDx's election and at Service Recipient's expense, take one or more of the following actions on an Abandoned study, (i) terminate performance of any Services, (ii) inactivate any studies and close any related files, (iii) deliver the Materials to Service Recipient, (iv) deliver the Materials to a specified archive location, (v) discard the Materials or (vi) destroy the Materials.

(e) Retention of records. Service Recipient acknowledges that VDx is required by FDA to retain certain records of Services performed for GLP studies submitted by Service Recipient to the FDA. VDx will retain records necessary to satisfy this obligation for a period of ten years following issuance by VDx of the final histology or pathology report, after which ten-year period VDx may discard or destroy any or all retained documents without any additional notice to service recipient. If Service Recipient submits, or plans to submit, any work performed by VDx to the FDA more than two years following issuance of the final pathology or histology report by VDx, Service Recipient will notify VDx in writing promptly of such intent, such that VDx may lengthen the time it retains such records to meet FDA's record retention obligations. In the absence of any notification by Service Recipient to VDx in respect of a study's submission to the FDA, Service Recipient agrees that VDx may assume that study has not been submitted to the FDA and releases VDx from any obligation to retain any such records for longer than ten years.

**12. General Provisions.**

(a) Representations and Warranties. Service Recipient represents and warrants to VDx that (i) it has the legal power, authority and right to enter into this Agreement and to perform its obligations set forth herein, and (ii) it will ship the Materials to VDx in accordance with all applicable law, rules and regulations.

(b) No Implied Licenses. No right or license under any patent, patent application, trade secret or other intellectual property is granted or will be granted by implication. All such rights or licenses are or will be granted only as expressly provided for in this Agreement.

(c) Force Majeure. No failure or omission by a party in the performance of any obligation of the Agreement will create any liability if the same arises from any cause or causes beyond the reasonable control of that party, including but not limited to, the following: acts of nature; acts or omissions of any government; any laws, rules, or regulations issued by any governmental authority or by any office, department, agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; invasion; act of terrorism; labor strike and lockouts; provided that the party so affected will use commercially reasonable efforts to avoid such causes of nonperformance and will continue its performance under the Agreement diligently whenever such causes have ceased.

(d) Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of California without giving effect to any choice or conflict of law provision or rule. The parties agree that any and all disputes arising out of or in connection with the Agreement will be litigated only in the Superior

Court for Yolo County, California (and in no other), and each party consents to the jurisdiction of said court.

(e) **Assignment.** Except as otherwise expressly agreed in writing between the parties, VDX may in its absolute discretion subcontract in whole or in part the Services. VDX may assign, delegate, or license all or any part of its rights or obligations under the Agreement. The Agreement is personal to the Service Recipient, which may not assign, delegate, license, or subcontract all or any of its rights or obligations under the Agreement without VDX's prior written consent.

(f) **Waiver.** The waiver by either party of any breach of any provision hereof by the other party will not be construed to be a waiver of any succeeding breach of such provision or a waiver of the provision itself.

(g) **Survival.** The completion of the services performed under the Agreement will not relieve the parties of any obligation accruing prior to completion of the services. In addition, and without limiting the foregoing, paragraphs 5, 6, 7, 8, 9 and 11 will survive the performance of the services.

(h) **Changes.** These Terms and Conditions may be amended and updated by VDX at its sole discretion. Service Recipient will be notified of changes being implemented in writing to the Primary Account Contact as indicated on the Research Account Information form. Service Recipient will be deemed to consent to any such amendments or updates by its receipt of services from VDX after the date of any such amendment or update. If service recipient does not wish to consent to the updated terms and conditions, they may close their account by submitting a request in writing to VDX.

(i) **Severability.** If any material provision of the Agreement is found to be invalid or unenforceable in any jurisdiction, then such term will be modified to the extent necessary to make it valid or enforceable and approximating the original intent of the parties and the remaining provisions of the Agreement will remain valid and enforceable to the fullest extent of the law.

(j) **Notice.** All notices, permissions and approvals will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the third business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email. Notices to VDX shall be addressed to: VDX – Preclinical, 215 C Street, Suite 301, Davis, CA 95616, attention: Preclinical Research Manager, Facsimile (530) 753-4055, email: RST@vdxpathology.com. Notices to Service Recipient shall be addressed to the Primary Account Contact at the address provided by Service Recipient on the VDX "New Research Account Information" form. Either party may change its Notice information (contact, mailing address, email address) by providing notice under this provision to the other. Service Recipient shall bear sole responsibility for updating Primary Account Contact information in the event that changes are required, and shall do so by submitting to VDX a new completed "New Research Account Information" form, which can be found at its website [www.vdxpathology.com](http://www.vdxpathology.com).

13. **Entire Agreement.** This Agreement, which consists of these Terms and Conditions, Research Account Information form, and any Statements of Work which VDX may issue, constitutes the entire understanding between the parties with respect to the subject matter contained herein and supersedes any and all prior agreements, understandings and arrangements whether oral or written between the parties relating to the subject matter hereof. The provisions of any purchase order, estimate or similar document delivered by Service Recipient to VDX in connection with the specific services

performed hereunder will not modify or supplement the provisions of the Agreement; any additional or different provisions in any such document(s) are rejected by VDX unless specifically agreed to by an authorized representative of VDX in writing.

14. **Professionals' Fees.** If any dispute between the parties results in litigation or arbitration in connection with the Agreement, the prevailing party or parties will be entitled, in addition to such other relief as may be granted, to recover the actual costs and reasonable attorneys' fees, experts' fees, and consultants' fees incurred therein from the other party or parties.

15. **Descriptive Headings.** The descriptive headings used in this Agreement are inserted only as a matter of convenience and for reference purposes and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.