

General Cooperation Conditions of Vienna Biocenter Core Facilities GmbH

1. Scope of Cooperations

The Vienna Biocenter Core Facilities GmbH, Companies Register No. 350396p, hereinafter “VBCF”, is an independent research and service organisation located at Dr.-Bohr-Gasse 3, 1030 Vienna, Austria, as part of the Campus Vienna Biocenter. VBCF operates a series of high end state of the art technical instruments and equipment (hereinafter “Facilities”) and appropriately trained scientific personnel for projects of fundamental research on the area of life sciences.

VBCF shares its Facilities with other university or extra-university research organisations and research enterprises (hereinafter “Partner”) in the framework of research cooperations. Research cooperations can take different forms, e.g. joint research projects, the provision of research services, the sharing of Facilities or the delivery of biotechnological products as specified by the Partner and designed for further research.

2. Project Agreement

Basis of each research cooperation is a Project Agreement concluded in writing between VBCF and the Partner and including the General Cooperation Conditions of VBCF, hereinafter “GCC”, as applicable at the time. Any research cooperation with VBCF shall be based exclusively on these GCC.

Initially a Partner sends VBCF a request containing a description of the project and the desired sharing of Facilities via the VBCF online portal or using the respective forms. VBCF will examine the request whether, within which timeframe and under which conditions VBCF is in a position to carry through the project. In general one or more meetings between VBCF and the Partner will be required to define the details of the cooperation and the precise specifications of services or products. VBCF will make best efforts for rapid implementation but it has to be taken into account that the timetable is subject to the criteria of priority applicable to the relevant Facilities.

The details of the cooperation and the precise specifications will be laid down in writing in the Project Agreement which is concluded by affixing legally valid signatures both of VBCF and the Partner.

Generally for each cooperation a separate Project Agreement is required. Modifications or extensions of existing cooperations require a written agreement in that regard between VBCF and the Partner.

3. Services and Deliveries

As the Facilities generally are used for several research projects the duration of which cannot always be precisely predicted, periods indicated in the Project Agreement as to the provision of services or the delivery of products are non-binding estimates only, unless otherwise agreed upon in writing.

Place of execution of cooperation services is the location of the relevant Facility. Employees of the Partner will get an authorization of access to the Facility to the extent necessary and they have to comply with the working and security rules in force. The Partner is responsible for such compliance by its employees.

In case of delivery of products these will be hold available for collection by the Partner at the location of the Facility. If the Partner requests another way of delivery or a specific packaging the Partner bears all related costs. Ownership and risk pass over to the Partner in the moment of collection or of dispatching by VBCF.

4. Fees

For each research cooperation VBCF charges fees calculated on the basis of the internal principles of calculation and laid down in writing in the Project Agreement. The fee is increased by legally mandatory value added tax.

Unless otherwise agreed upon in writing after completion of the cooperation the Partner is sent a fee note in the form prescribed by law. Payment has to be effected within 30 days from the date of the fee note without deductions and without any commissions charged by the bank. In case of delay the Partner is obliged to pay interest amounting to 10 per cent p.a. on a current account basis for the time until complete payment of the open amounts.

Setting off fees against claims, if any, against VBCF is not permitted.

5. Provisions on utilization and security

The results of services and the products (sample material and electronic data) of VBCF in the framework of cooperation projects are based on research work and will be used by the Partner for further research work or for other purposes laid down in the Project Agreement.

The Partner acknowledges that products of VBCF may be biological material in the meaning of the laws on genetic technology or may contain toxic substances. In any case VBCF will inform the Partner about such facts upon delivery. It is the obligation of the Partner to care for further safe use and utilization of the services and products of VBCF. The Partner is also obliged to care for a safe disposal of the products according to the relevant waste regulations in force.

The Partner is responsible to inform its employees and all other persons that may possibly come into contact with the products about all risks that could result therefrom in any way for persons or objects and to instruct them in the safe handling and utilization of the products.

6. Intellectual property, exploitation and publications

The results of a research cooperation project shall be owned by Partner and will be analysed as to potential intellectual property rights. Intellectual property pertaining to the research area of the Partner and which directly relate to the Partner's product(s), shall belong to that Partner. The research area of the Partner and the Partner's product(s) shall be defined in detail in the Project Agreement. Intellectual property pertaining to any other area (i.e., any area other than the Partner's area and product(s)), including without limitation the VBCF technology shall belong to VBCF. Each party agrees to render its full assistance and cooperation to the other party in obtaining and enjoying such ownership rights.

The Partner is granted the limited license to use the VBCF-intellectual property resulting from the research cooperation project solely for research purposes. The license shall be royalty-free and perpetual, but non-exclusive, non-sublicenseable and non-transferable.

Each party is responsible for its respective intellectual property rights, and may file, prosecute, maintain and exploit or otherwise commercialize intellectual property rights at its sole discretion and expense.

VBCF shall have the right to publish those results of research cooperation projects which pertain to VBCF's intellectual property upon consent of the Partner which shall not unreasonably be withheld. The Partner is obliged to describe the contributions of VBCF in an appropriate way under "acknowledgements" in all of its own publications.

7. Non-disclosure

Subject to the foregoing, each party shall not disclose any information about subject and content of the cooperation and the other party's results. The non-disclosure period ends after the lapse of five (5) years from the termination of the Project Agreement. Each party shall take care that also their employees, co-workers and consultants are included in the non-disclosure obligation.

Excepted from the non-disclosure obligation is information which has already been previously known to the recipient or is or becomes common knowledge or in case disclosure is based on legal provisions or on decisions of public authorities.

8. Quality of products, warranty and indemnification

VBCF will use its reasonable commercial efforts to cooperate and provide services in the research cooperation. The Partner is aware that products of VBCF in general are biological material of experimental nature and therefore subject to variations of quality and to changes of products beyond VBCF's control.

Though VBCF is committed to adhere to high quality standards in its laboratory work, VBCF does not give any explicit or implicit warranty or guarantee and hereby expressly disclaims any warranty, express or implied, in relation to the provision of services or the delivery of materials or products by VBCF, in particular regarding the merchantability or fitness for a particular purpose, the durability or certain quality of results or products, or the non-infringement of third party intellectual property rights. VBCF explicitly does not warrant that the use or sale of any materials, products and results delivered in a research cooperation or under a Project Agreement will not infringe any intellectual property rights.

The Partner shall defend VBCF, its employees, agents, affiliates and contractors (the "VBCF Indemnitees"), and shall hold the VBCF Indemnitees harmless from and against all suits, actions, or proceedings, at law or in equity, and from all claims, costs, damages, losses and expenses (including, without limitation, attorney's fees, consultants' fees, experts' fees) of third parties that are related to or in connection with the materials, products, the provision of the services and results in the course of a research cooperation or under a Project Agreement with the Partner.

9. Limitation of liability

All risks of the cooperation projects is borne by the Partner.

VBCF does not assume any liability for the breach of third party rights to intellectual property in course of the cooperation. VBCF furthermore is not liable for delays in the carrying through of the project or in case of a project discontinuation.

In any case the liability of VBCF is limited to damages in case of intent or gross negligence only. The liability for any negligence other than gross negligence is excluded. In no case encompassed by any liability are mere economic losses, lost profit and indirect or consequential damages of any kind whatsoever. Liability of VBCF in any case is limited to the amount paid by the Partner under the Project Agreement.

10. Term of the agreement

The Project Agreement terminates upon completion of the agreed cooperation and payment of the fee note issued.

An early termination of the Project Agreement by the Partner for any reason requires two (2) weeks prior notice in writing to VBCF. The Project Agreement may be terminated by either party with immediate effect by written notice, if the other Party breaches the agreement in any material manner and shall have failed to remedy such default within two (2) weeks, after written notice thereof from the terminating party.

In case VBCF terminates a Project Agreement with a Partner because of the non-payment or the delay of payment of fees, VBCF shall have the right to terminate any and all further current Project Agreement(s) with the same Partner at will.

Upon termination for any reason, VBCF is entitled to the contractual fees for all services or parts of services already provided plus all costs of VBCF that result from the termination which includes payments for residual expenses that result from actual obligations until the date of termination.

Provisions of the Project Agreement pertaining to intellectual property ownership, licenses and exploitation, publications as well as provisions on the non-disclosure shall survive the termination of the Project Agreement.

11. Miscellaneous

The Project Agreement together with these GCC constitutes the entire content of the agreements between VBCF and the Partner. Should any terms of the Project Agreement or the GCC be or become void or otherwise ineffective the other terms thereof are not affected. The parties are obliged to replace the ineffective terms by effective ones coming as near as possible to the scientifically and economically intended result. No variation of the terms and conditions of the GCC will be binding upon VBCF unless agreed to in writing and signed by an authorized representative of VBCF.

Should any terms and conditions of a Project Agreement be inconsistent with or in addition to the GCC, those inconsistent or additional terms of the Project Agreement shall prevail.

Until a Project Agreement is in place or where there is no Project Agreement, the terms and conditions in this GCC constitute the entire agreement of the parties in relation to a research cooperation.

The Project Agreement and the GCC is subject to Austrian law expressly excluding the rules of conflict of laws and the UN Convention on Contracts for the International Sale of Goods.

The parties to the Project Agreement shall endeavour to settle any disputes amicably and shall ask the User Committee of the relevant Facility for its opinion.

Exclusive place of jurisdiction is the materially competent Court at the seat of the VBCF in 1030 Vienna, Austria.