**RECITALS**

**WHEREAS,** XYZ is a research-based pharmaceutical company involved in the research, development, manufacture and commercialization of medicinal products, and wishes to procure the Services (as defined below) from ABC.

**WHEREAS,** ABC possesses extensive experience and sufficient resources to perform its obligations under the Agreement on the terms and conditions set forth below, and is willing to render the Services as may be required from time to time by XYZ.

**NOW, THEREFORE,** the Parties hereto agree as follows:

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**AGREED TERMS**

# Definitions

* 1. **“Applicable Law”** means all international, local, state and federal laws, ordinances, rules, guidelines, including industry regulations, and lawful orders of any governmental authority, applicable to the performance of Parties’ obligations under the Agreement.
  2. **“Affiliate”** means any entity which directly or indirectly Controls, is Controlled by, or is under common Control with the relevant Party. For the purposes of this definition “Control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or the power to direct or cause the direction of the management and policies of such entity whether by contract, through the majority ownership of voting capital stock or otherwise.
  3. **“XYZ Data”** means any and all XYZ data uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available to ABC by or on behalf of XYZ in connection with the Services, both digital and non-digital, including, but not limited to, XYZ Documentation, XYZ Confidential Information and XYZ personal data, as well as all associated metadata.
  4. [Reserved]
  5. **“Confidential Information”** means any data, material, substances, know-how and all other information, including protocols, (i) obtained by the Receiving Party or its Affiliate from the Disclosing Party, including Disclosing Party’s Background Intellectual Property and/or (ii) gained by the Receiving Party or its Affiliate during site visits at the Disclosing Party’s facilities. With respect to XYZ, Confidential Information includes, without limitation information generated by ABC or its Affiliate in connection with the performance of the Services or otherwise under the respective PO/SOW, including but not limited to the Results and XYZ Intellectual Property Rights.
  6. **“Data Security Program”** has the meaning as set forth in Section 9.3.
  7. **“Defect”** or **“Defective”** means with respect to any Service performed or a Deliverable delivered any non-conformance or non-compliance with (a) specifications or requirements agreed in the relevant PO/SOW, and/or further terms of this Agreement and/or (b) Applicable Law or GxP (if any) and/or (c) agreed quantities of Deliverables to be delivered to XYZ.
  8. **“Deliverables”** means the materials, documents, reports, data and/or other results due to be delivered by ABC as further specified in PO/SOW.
  9. **“Disclosing Party”** means a Party or its Affiliate disclosing Confidential Information under the Agreement.
  10. **“Documentation”** means any document, record, report, presentation, data (including original and raw data) or other written material.
  11. **“Effective Date”** means September 2023.
  12. **“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidence (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist in any part of the world.
  13. **“PO”** means the purchase order issued by XYZ describing the Services to be performed by ABC.
  14. **“Pass-Through Costs”** mean any costs explicitly referred to as “Pass-Through Costs” in a respective PO/SOW, as applicable, including the costs of any specialist tooling, expenses for consumables, expenses for courier services and other costs for transport of Deliverables or ABC out of pocket expenses (only as appropriate and as may be required by the Agreement), properly incurred in the performance of the Services, at actual cost, without any profit, overhead, general administration charges or mark-up applied to such costs by ABC.
  15. **“Price”** has the meaning as set forth in Section 5.1.
  16. **“Proposal”** means a proposal for specific Services issued by ABC and agreed to by Parties.
  17. **“ABC Property”** has the meaning as set forth in Section 8.7.
  18. **“Receiving Party”** means a Party receiving Confidential Information under the Agreement.
  19. **“Results”** means the Deliverables and all other results, inventions, discoveries, methods, know-how, processes, compositions, analysis, assays, techniques, specifications, protocols, documents, schematics, diagrams, materials, reagents, compounds, cell-lines, samples, formulation, design layouts, software, data, databases, and other forms of technology (all of the foregoing whether or not protectable/patentable) arising or generated in the course of the performance of the Services.
  20. **“Secure Erasure”** has the meaning as set forth in Section 9.3.6.
  21. **“Services”** means De novo antibody design (*in silico*) and evaluation for binding affinity (*in vitro*) as further specified in the respective PO/SOW.
  22. **“Subcontractor”** means any service ABC of ABC or vendor of ABC.
  23. **“Taxes”** means all forms of preliminary or finally imposed taxation, domestic and foreign taxes, fees, levies, duties and other assessments or charges of whatever kind (including but not limited to sales, use, excise, stamp, transfer, property, value added, goods and services, withholding and franchise taxes) together with any interest, penalties or additions payable in connection therewith.
  24. **“Volume Order”** means a non-binding forecast of Services which XYZ expects to order over a specified time period.

# Services, PO/SOWs and Change Orders

* 1. ABC shall perform the Services for XYZ or for any XYZ Affiliate. Subject to Section 2.14, ABC’s Affiliate may also perform the Services under the Agreement, however only as a Subcontractors, therefore in such a case ABC remains a Party to the Agreement and is directly liable to XYZ for performance of the Agreement.
  2. Where XYZ Affiliate issues PO/ signs SOW, a contractual relationship (rights and obligations) resulting from such PO/SOW shall exist as between ABC and the respective XYZ Affiliate. For the avoidance of doubt, the term “XYZ” as used in the Agreement shall refer to the respective XYZ Affiliate ordering Services under PO/SOW, unless expressly stated otherwise.
  3. Parties agree on the following procedure for ordering Services:
  4. Upon request of XYZ, ABC shall submit a Proposal to XYZ. Each Proposal shall include:

1. date of issuance and project name;
2. detailed description of the Services to be provided, including project timelines, Deliverables and delivery dates;
3. price breakdown for the Services;
4. hourly or daily rates, depending on the type of personnel, to the extent that these rates are not already defined in the Agreement;
5. complete and correct address of XYZ and ABC.
   1. Once Parties agree to the terms of the Proposal, XYZ shall issue PO to ABC based on the Proposal. In the event said Proposal is agreed by XYZ US Affiliate, the Proposal shall be attached or incorporated to a Statement of Work (“SOW”), which shall be signed by both Parties prior to the commencement of any Services performed, attached hereto in form of Appendix 1, followed by issuance of an administrative purchase order by XYZ.
   2. If ABC fails to reject PO within 3 (three) days from its receipt, PO shall be deemed to have been accepted by ABC. Any notice issued by ABC after expiry of the 3-day period, amending or rejecting PO is invalid.
   3. PO/SOWs shall be subject to the provisions of the Agreement.
   4. The Agreement does not create any obligation for XYZ to place PO on ABC (sign SOW in case of XYZ US Affiliate) and XYZ shall at all times be entitled to retain the Services of other service ABCs at its discretion.
   5. ABC shall not commence any Services without a prior written PO issued by XYZ or signing of SOW by both Parties and issuance of administrative purchase order in case of XYZ US Affiliate.
   6. XYZ may issue Volume Orders which shall state the applicable time period, the agreed price for the Services and any further details required for the performance of Services. XYZ may subsequently place any number of PO/SOWs referencing the Volume Order. For the avoidance of doubt, a Volume Order shall not result in any payment obligations on XYZ. The procedure described in Sections 2.3 - 7 above may also be applied to Volume Orders.
   7. XYZ or ABC may at any time propose changes to the Services. Any significant impact on the timelines, pricing, quality or technical functionalities of the Services resulting from the change proposed shall be specifically indicated by ABC to XYZ in writing. XYZ shall, at its discretion, either issue a written change order taking the respective impact into account or decide not to implement the change. Any change to the scope of the Services requires XYZ´s prior written approval (amendment of SOW in case of XYZ US Affiliate). In urgent cases XYZ may request ABC to proceed with the changed Services prior to change in PO/SOW.
   8. If no other timeline has been defined, all Services shall begin promptly after the lapse of 3 days’ period set forth in Section 2.7 above (unless ABC rejected PO) and shall be deemed finalised upon receipt of the Deliverables set forth in the respective PO/SOW and their written approval by XYZ pursuant to Section 4.1 below.
   9. ABC may not subcontract or assign its obligations under this Agreement to any third party, including its Affiliates, without a prior written consent of XYZ. A list of approved ABC Subcontractors constitutes **Appendix 2**. In case of subcontracting or assignment, ABC shall remain liable and responsible vis-à-vis XYZ for the acts and omissions of such third parties.
   10. In case of Shipment of Deliverables such a shipment to XYZ shall be made DDP (Incoterms 2020) to the address specified in SOW/PO, including unloading at ABC's cost and risk. ABC shall arrange for the transport of the Deliverables with XYZ approved freight forwarding carriers in strict accordance with all Applicable Laws and SOW/PO, all in a manner that ensures that the Deliverables will not be damaged or adversely affected. Upon special request of XYZ, ABC shall arrange for delivery by using its own freight forwarding company.

# Performance of the Services

* 1. ABC shall implement all actions required for the performance of the Services and keep XYZ informed of the progress of the work under PO/SOW(s) on a regular basis. The Parties nominate contact persons as follows:

XYZ: [name, function, ph.no: +49-7351-54-XXX],

who shall be responsible for all general questions in connection with the Agreement. XYZ shall be entitled to replace the contact person if so required. In addition, XYZ can nominate a contact person specifically responsible for detailed questions regarding the Services at the respective XYZ Affiliate.

ABC: [name, function, ph.no. (+other contact details)],

who shall be responsible for the coordination of the Services and for all questions in connection with the Agreement. ABC is not entitled to transfer this function to another person without prior approval by XYZ; in the event such transfer is necessary due to unforeseeable and compelling reasons, ABC will promptly inform XYZ thereof and propose a qualified replacement that XYZ may accept if deemed suitable.

Either Party shall nominate respective deputies for representation in the event of temporary absence (e.g. vacation, short-term illness).

* 1. ABC represents, warrants and covenants that:

1. it will carry out the Services and deliver to XYZ complete Deliverables within the timelines agreed upon and set forth in PO/SOW and with all reasonable care and skill, in accordance with this Agreement and the respective PO/SOW;
2. it shall devote the efforts of suitably qualified and trained employees capable of carrying out the Services by up-to-date standards and in a professional manner and shall provide all necessary facilities;
3. it is in possession of (or will obtain prior to providing Services hereunder) and will remain in compliance with all necessary permits, approvals, licenses and other authorizations required by Applicable Law for the performance of the Services (jointly the “**Permits**”). ABC will provide XYZ with copies of such Permits upon XYZ’s request without undue delay;
4. it has and will continue to have the technical competence, suitable qualifications and experience necessary to carry out the Services;
5. the Deliverables to be provided to XYZ shall be compiled in accordance with best scientific practice and delivered in a form agreed upon in advance with XYZ;
6. the Services are performed in accordance with all Applicable Law and codes of conduct, including without limitation the relevant drug laws, labour laws, laws relating to environment, health and safety, as well as data protection laws, current Good Laboratory Practices (cGLP) and current Good Clinical Practices (cGCP), where so required and/or instructed by XYZ;
7. it is entitled to transfer and/or grant the rights according to Article 8 (Intellectual Property) to XYZ, and that it has taken all appropriate measures (including but not limited to having appropriate agreements in place with any person or Subcontractor involved in provision of the Services) under all Applicable Law (including the claim of any inventions made by its employees, if necessary) to ensure that it is entitled to transfer and/or grant such rights;
8. the materials and methods employed by ABC to perform the Services under this Agreement will not violate any third party intellectual property rights, and that XYZ, upon using Results obtained under this Agreement incorporating such materials and methods, will not violate any third party intellectual property rights;
9. it shall adhere at all times to XYZ´s Supplier Code of Conduct as set out at: **https://www.XYZCorporation.com/sustainability/ABC-code-conduct/ABC-code-conduct-download** laying down the fundamental principles of corporate responsibility and integrity, human rights, working standards and anti-corruption laws;where a provision of the Agreement or PO/SOW is more stringent than a provision of the Supplier Code of Conduct, the provision of the Agreement or PO/SOW shall prevail;
10. ABC and ABC personnel are not persons or organizations excluded from participation in Medicare, Medicaid or other federal healthcare programs by the US Department of Health and Human Services’ Office of Inspector General, the FDA or any other US federal agency, and are not using in any capacity persons or organizations that are barred, suspended, or excluded from federal contracting by the General Services Administration. If any any time this representation and warranty is no longer accurate, ABC shall immediately notify XYZ of such fact;
    1. In the framework of this Section, “Nagoya law” means the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization according to the United Nations Convention on Biological Diversity as transcribed in the country of origin of the Deliverables or any other local applicable laws on access and benefit sharing of genetic resources of this country of origin.

ABC represents and warrants that any Deliverables (materials of plant, animal or microbial origin) or traditional knowledge transferred and/or used under this Agreement which might be subject to the “Nagoya Law” will meet the requirements of said law.

* 1. XYZ US Affiliates are equal opportunity employers and federal contractors or subcontractors. **Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, colour, religion, sex, sexual orientation, gender identification or national origin or for inquiring about, discussing or disclosing information about compensation. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, colour, religion, sex, sexual orientation, gender identification, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

# Acceptance Procedure and Default

* 1. Upon finalization of separate work packages as agreed in PO/SOW or the provision of Deliverables, Parties shall complete a formal procedure for the acceptance of such work results or Deliverables, in order to determine whether the respective work package or Deliverable has been diligently performed or delivered pursuant to the terms and conditions set forth herein, the relevant PO/SOW, GxP (if any) and Applicable Law. The formal acceptance will be documented by signature of either Party of a report covering such work package or separate acceptance minutes. XYZ shall exercise caution and fairness in assessing any alleged Defects of the work performed or the Deliverables and shall discuss any concerns with the ABC in a timely manner. In the event of a dispute, the ABC shall have the opportunity to remedy any perceived Defects promptly in accordance with Section 4.2 below, and XYZ shall make reasonable efforts to facilitate the resolution of such issues in a collaborative manner.
  2. In case of a Defect, XYZ shall have the rights and remedies set out herein, without prejudice to any other right or remedy that XYZ may have under this Agreement and the governing law:
     1. ABC shall take all reasonable actions required to promptly and properly remedy the Defect without additional charge and fee by a Defect-free re-performance of the Defective work, or replacement of the Defective Deliverable by a Defect-free Deliverable;
     2. If ABC fails to remedy the Defect in accordance with Section 4.2.1 within a reasonable grace period set by XYZ or (ii) if such remedy by ABC is unacceptable for XYZ due to the nature of the Defect, or (iii) if ABC refuses to remedy the Defect, ABC shall refund XYZ all fees paid for such Defective Service and XYZ has the right to:
        1. terminate PO/SOW without further notice period and without cost
        2. claim damages in lieu of defect free performance.
  3. The agreed delivery timelines for the Services set forth in PO/SOW or otherwise agreed upon are binding. If the Services are delayed or likely to be delayed, ABC shall make a proposal to XYZ for the acceleration of the Services in order to achieve the respective timelines. Notwithstanding the above, if ABC fails to meet the timelines and fails to perform the Services or deliver the Deliverables within a reasonable grace period set by XYZ, then XYZ shall, without abrogating any further rights, be entitled at its sole discretion to (i) claim contractual penalty in the amount of 0,2% of the PO/SOW Price for each day of delay and/or (ii) claim damages in lieu of performance, and/or (iii) terminate PO/SOW without further notice period and without cost. In the latter case, ABC shall reimburse all payment received from XYZ under the Agreement.

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# Consideration

## In consideration of the Services to be conducted by ABC under PO/SOW, XYZ shall pay to ABC the amount set forth in the respective PO/SOW (the “**Price**”). The Price is inclusive of any costs and expenses of ABC incurred in connection with the performance of the respective Services, including, but not limited to, the purchase of equipment, the costs of personnel and the audit costs. The ABC shall not issue an invoice earlier than receipt and approval by XYZ of the Deliverables set out in the respective PO/SOW in accordance with Section 4.1.

## XYZ undertakes to make all payments due under PO/SOW within **forty five (45)** days of receipt of a proper invoice from ABC, detailing value added tax separately (if applicable), to a bank account designated by ABC. Invoices shall be issued as specified **in Appendix 3** and/or the respective PO/SOW, which shall be modified in the event of a change in the applicable legal requirements. The date of the payment order will be taken to be the day of payment.

## In the event of a default in payment, default interest may be charged at an annual rate of three (3) % above the 1 month €STER rate starting from the occurrence of the default until payment. If the 1 month €STER is no longer available, Parties will agree upon another internationally recognised rate which has historically been substantially equivalent to 1 month €STER and utilise such rate retroactively to such time as the rate was no longer available.

## ABC shall maintain complete, accurate, written records of all expenses and Pass-Through Costs incurred and payments made under this Agreement for at least three (3) years after the Services are completed.

## All payments under or in connection with this Agreement shall be inclusive of any Taxes and each Party shall be responsible for its own Taxes assessed by a tax or other authority except as otherwise expressly set forth in this Agreement.

## Notwithstanding Section 5.5, all payments due to ABC under the terms of this Agreement are understood to be exclusive of value added tax (VAT) or similar indirect Taxes (e.g. goods and service tax). VAT/indirect Taxes shall be added to the payments under the Agreement if legally applicable.

## The VAT amounts of invoices received by ABC are not billable to XYZ as far as ABC has an input VAT deduction, i.e. ABC is able to receive a refund by the competent authority. If VAT is not refundable because of legal restrictions, which are not caused by ABC, the VAT amounts are billable to XYZ. Prior to invoicing the aforementioned billable amounts, written approval of XYZ is mandatory. Legal restrictions which are caused by ABC and lead to a non-billable amount to XYZ are the following, but are not limited to (i) failure of ABC to adhere to applicable statutes of limitations, (ii) inaccurate documents in order to receive the input VAT deduction.

## If Applicable Law requires withholding by XYZ of any Taxes imposed upon ABC on account of any royalties and other payments paid under this Agreement to the benefit of ABC, such Taxes shall be retained by XYZ as required by Applicable Law from such remittable royalty and other payment, and shall be paid by XYZ to the competent tax authorities on account of ABC. Official receipts of payment of any withholding tax shall be secured and sent to ABC as evidence only upon ABC’s request. Parties shall cooperate and exercise their best efforts to ensure that any withholding Taxes imposed are reduced as far as possible under the provisions of any relevant tax treaty.

## Withholding Taxes retained by XYZ and paid to the competent local tax authorities as well as a possible refund of retained and paid local withholding Taxes from the local tax authorities in favour of ABC are paid in local currency. Any effect of currency conversion is for the benefit or burden of ABC as tax-payer and is not refundable or taken by XYZ.

## In the event that parts of this Agreement, in particular parts of the Services, are performed by ABC in close collaboration with an Affiliate of XYZ, XYZ may notify ABC thereof and ABC shall invoice such XYZ Affiliate according to the information provided by XYZ, and such invoice shall refer to the respective attributable Services. However, XYZ remains responsible and liable for the correct payment by such Affiliate in accordance with this Agreement. Any such payment by the Affiliate shall be made in and deemed as fulfilment of XYZ’s obligations under this Agreement.

# Confidentiality

## During the term of this Agreement and for fifteen (15) years thereafter the Receiving Party shall keep all Confidential Information of the Disclosing Party confidential and shall not (i) reverse engineer Confidential Information, (ii) disclose and/or otherwise make available any such Confidential Information to any third party and/or (iii) use such Confidential Information for any purpose other than for the performance of the Services, in each case (i), (ii) and (iii) without the prior written approval of the Disclosing Party.

## The confidentiality and non-use obligations set forth above shall not apply to the extent the Confidential Information of the Disclosing Party: (a) now or later becomes publicly available through no fault of the Receiving Party, or (b) is obtained by the Receiving Party from a third party entitled to disclose it as evidenced in the Receiving Party's written records, or (c) was in the possession of the Receiving Party prior to disclosure by the Disclosing Party, or was held on its or its Affiliates’ behalf, as evidenced in the Receiving Party's written records (for the avoidance of doubt, this shall not abrogate the confidential character of any Confidential Information generated or derived in connection with the provision of the Services), or (d) is required by any mandatory law, rule, regulation, order, decision, decree or subpoena or other judicial, administrative or legal process to be disclosed, provided that the Receiving Party informs Disclosing Party prior to any such disclosure and limits the disclosure to the minimum possible, or (e) was independently developed by the Receiving Party or its Affiliates without reference to or use of Confidential Information disclosed by Disclosing Party under this Agreement.

## If the Receiving Party is required to disclose the Disclosing Party’s Confidential Information pursuant to any mandatory law, rule, regulation, order, decision, decree or subpoena or other judicial, administrative or legal process, the Receiving Party shall, to the extent legally permissible, assert the confidential nature of the information, and promptly notify the Disclosing Party in writing of such request so that the Disclosing Party will have an opportunity to review the request and take any appropriate action thereon. The Receiving Party will make all reasonable efforts to cooperate with the Disclosing Party to resist disclosure and to maintain the confidentiality of the Disclosing Party’s Confidential Information. If, after a reasonable opportunity to seek protective relief, such relief is not obtained, the Receiving Party may disclose only such portion of the Disclosing Party’s Confidential Information that the Receiving Party is legally obligated (upon the advice of counsel) to disclose.

## The Receiving Party agrees and binds itself, either immediately upon request of the Disclosing Party or upon expiry or termination of this Agreement, to return to the Disclosing Party all Confidential Information of the Disclosing Party, in case of ABC including but not limited to the Deliverables of the Services, without making or retaining any samples or copies thereof except copies of Confidential Information electronically exchanged and made as a matter of routine information technology back up to the same extent and in the same manner as other electronic information received by the Receiving Party. The obligations of confidentiality and non-use set forth in this Agreement shall however continue to apply to such retained copies notwithstanding termination or expiry of this Agreement.

## Parties shall establish and maintain reasonable safeguards to protect against the accidental or unlawful loss, theft, deletion, disclosure or corruption of Confidential Information and/or any unauthorized use or access to Confidential Information. ABC will use encryption technology when transmitting XYZ’s Confidential Information by email or other file-sharing means outside of its internal email network. Notwithstanding the foregoing, failure by ABC to use encryption technology in its transmission of Confidential Information will not affect the confidential nature of such information. Suitable email encryption technology, provided by XYZ, can be found at http://guides.XYZ Corporation.com and at no charge to ABC.

## The Receiving Party shall and shall cause its Affiliates, agents, or other individuals engaged in the provision of Services to use at least the same care and discretion in maintaining the confidentiality of the Disclosing Party’s Confidential Information as it uses with its own confidential information, but not less than a reasonable degree of care. The Receiving Party shall restrict the dissemination of the Disclosing Party’s Confidential Information only to those of its Affiliates, employees, representatives, agents and other individuals engaged in provision of Services, who have a need to know such Confidential Information for the purposes of this Agreement. The Receiving Party shall ensure that prior to performance of Services each such person/Affiliate is aware of the obligations of confidentiality and non-use required by this Agreement and is bound by confidentiality obligations at least as strict as those set forth in this Agreement.

## The Receiving Party shall promptly inform the Disclosing Party upon discovering any breach of its obligations herein or any loss or other compromise of the Disclosing Party’s Confidential Information. The Receiving Party will, and will cause all its personnel to, use best efforts to mitigate the effects of any breach, to propose corrective action, and to take corrective action as reasonably requested by the Disclosing Party.

## The Receiving Party shall remain fully responsible for the acts and omissions of all of its Affiliates, employees, representatives, agents and other individuals engaged in performance of Services leading to any such loss or compromise of the Disclosing Party Confidential Information.

## ABC shall not use the XYZ’s name or logo in any press release or product advertising or for any other promotional purpose or publication, without first obtaining XYZ’s written consent.

# [Reserved]

# Intellectual Property

## XYZ is and shall remain the owner of any data, documents, information, substances and any Intellectual Property Rights, which have been generated prior to or outside of this Agreement (**“XYZ Background Intellectual Property”**) and this Agreement shall not affect the ownership of any XYZ Background Intellectual Property. XYZ grants ABC a royalty free, non-exclusive, non-sublicensable license to use XYZ Background Intellectual Property only for the purpose of performing the Services under the Agreement.

## All Results collected, developed or conceived in connection with the provision of the Services and any Intellectual Property Rights in and to such Results are and shall be the exclusive property of XYZ except for ABC Property and improvements thereto as set out in Section 8.9. XYZ shall be exclusively entitled to the exploitation of such Results at no additional charge.

## To the extent any Intellectual Property Rights in and to the Results are capable of prospective assignment, ABC hereby assigns those Intellectual Property Rights to XYZ and XYZ hereby accepts such assignment; and to the extent any Intellectual Property Rights in and to the Results cannot be prospectively assigned, ABC shall promptly assign those Intellectual Property Rights to XYZ at the request of XYZ, and shall procure that all of its representatives do so.

## To the extent any Intellectual Property Rights in and to the Results cannot be assigned at all under the Applicable Law, ABC hereby grants to XYZ and procures that its representatives grant to XYZ, a licence to use such Intellectual Property Right. Such licence shall be irrevocable, transferable, sublicensable, exclusive, fully paid up, royalty-free, worldwide, unlimited in time and way of exploitation, including, but not limited to, research, development, making, having made, using, selling, offering to sell, marketing and commercialization of products for use in the diagnosis, prevention or treatment of diseases. In case of copyrightable materials the exploitation rights for which the licence is granted shall include but not be limited to: publication, distribution, copying, making changes and amendments, editing, translation, synchronisation (where applicable), use and storage by way of audio-visual and electronic media (CD-ROMs, Internet, e.g. as webcasts of lectures, data bases, etc.), for exploitation in part and for the assignment of the rights to third parties. The same applies to the rights in labels (brands, titles, logos, etc.), which may be developed in connection with the Services performed by ABC.

## ABC shall inform XYZ without undue delay in writing of inventions which are conceived or made by ABC, its employees, agents, consultants, Subcontractors or Affiliates involved in rendering the Services. In such information, the names and contact details of all inventors shall be listed, and a brief description of the invention shall be included (not more than half page).

## XYZ has the right to apply for worldwide Intellectual Property Rights in the Results in its own name and at its own cost, naming the inventor(s), and to use the invention and to defend, and enforce any such Intellectual Property Rights. Where required, ABC will support the assignment, retention, defence and enforcement of these Intellectual Property Rights and cause any of its inventors or contributors to the invention to do so by timely providing the necessary statements and documents requested by XYZ.

## ABC shall conclude the necessary agreements with all parties, employees and any other individuals involved in the rendering of the Services assigning or obligating to assign all rights, title and interest in and to the Intellectual Property Rights created within the scope of their employment to (contractual relationship with) ABC before involving them into the Services.

## Notwithstanding the foregoing, XYZ acknowledges that ABC possesses certain inventions, processes, know-how, trade secrets, improvements, other intellectual properties and other assets, including without limitation, analytical methods, procedures and techniques, procedural manuals, personnel data, financial information, computer technical expertise and software, which have been independently developed by ABC outside of the Agreement and which relate to its business or operations (collectively the "**ABC Property**"). XYZ agrees that all ABC Property is and shall remain the sole and exclusive property of ABC. The same applies to any improvements or enhancements to ABC Property which are used, improved, modified or developed by ABC under or during the term of this Agreement, if such improvement, modification or development is not a Deliverable or does not relate directly to the XYZ Samples.

## ABC hereby grants XYZ and its Affiliates the right to use ABC Property as well as any improvements, modifications, and developments thereto in order to exploit the Results as required by or on behalf of XYZ and/or its Affiliates. Such right shall be fully paid up, non-exclusive, worldwide, sublicensable, perpetual and without any further restriction or limitation.

# XYZ Data and Security

## **XYZ Data**. All XYZ Data is owned by XYZ and ABC shall have no ownership rights or interest in XYZ Data.

## **Safeguarding of XYZ Data.** ABC shall at all times safeguard XYZ Data which is in the possession of, and/or is or can be accessed, processed and/or otherwise manipulated by ABC (for avoidance of doubt, including ABC Affiliates and/or ABC’s Subcontractors). Further to the obligations set forth in Article 6 (Confidentiality) and other requirements set forth in the respective PO/SOW, ABC agrees to comply with the obligations set forth in this Article 9 (XYZ Data and Security), with regard to safeguarding of such XYZ Data that is or can be accessed by ABC, and/or is processed by ABC.

## **Data Security Program.** ABC shall implement and maintain at all times a comprehensive data security program (“**Data Security Program**”).

## ABC’s Data Security Program shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of XYZ Data, the minimum requirements of which are described in Appendix 4 (IT Security).

## In addition to and without limitation of the requirements set forth elsewhere in this Article 9 (XYZ Data and Security), the Data Security Program and associated technical, organizational and security measures shall be designed to warrant that ABC (including, without limitation, relevant ABC’s Subcontractors) is in compliance with the following:

## Applicable Law (including without limitation, applicable Privacy Laws in the event that personal data is included in the XYZ Data);

## the global data privacy policies of any self-regulatory organizations to which XYZ belongs and which are applicable to ABC in its role as a service ABC to XYZ in relation to XYZ Data (as well as a data processor with regard to personal data of XYZ that may be included in XYZ Data);

## XYZ Standards, including information technology, security, privacy and record retention policies, standards, protocols, requirements and specifications, including those specified in the respective PO/SOW;

## ISO 27000 category of IT security standards in the then current version of such standards; and

## the requirements set forth in Appendix 4 (IT Security).

## Enhancements to Data Security Program. ABC shall regularly advise XYZ of enhanced data security practices, procedures and safeguards that, in ABC’s reasonable judgment, are relevant to the Services being provided under the respective PO/SOW. As part of ABC’s obligation for continual Service improvement, upon approval of XYZ, ABC shall implement such enhanced security practices, procedures and safeguards into the Data Security Program for the Services provided hereunder at no charge to XYZ.

## XYZ’s Right to Maintain Backup Copies of XYZ Data. In addition to ABC’s data security obligations, XYZ shall have the right to establish backup security for any XYZ Data and to keep backup copies of such XYZ Data in XYZ’s possession or under XYZ’s control if XYZ chooses to do so. At XYZ’s request, ABC shall provide XYZ with downloads of XYZ Data to enable XYZ to maintain such backup copies.

## Costs Resulting from Unauthorized Disclosure of XYZ Personal Data or other Security Incidents. To the extent any unauthorized disclosure of or access to personal data, or security incident is attributable to a breach by ABC or ABC’s personnel of ABC’s obligations under this Agreement and/or the respective PO/SOW, ABC shall bear (A) the costs incurred by ABC in complying with its obligations relating to such breach, and (B) in addition to any other damages for which ABC may be liable for under this Agreement and/or the respective PO/SOW, the following costs incurred by XYZ in responding to such breach, to the extent applicable: (1) the cost of providing notice to affected individuals, (2) the cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) the cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, to the extent the incident could lead to a compromise of the data subject’s credit or credit standing, (4) call center support for such affected individuals for a specific period not to exceed thirty (30) days, (5) the cost of any other measures (including remediation and reinstallations) required, including under Applicable Law, and (6) any other losses and damages for which ABC would be liable under this Agreement and/or the respective PO/SOW, as well as XYZ’s internally incurred costs.

## ABC’s Obligations when Equipment is Removed from Delivery of Services. When it is determined that any equipment under ABC’s control will no longer be used to provide Services pursuant to the respective PO/SOW, ABC is responsible to provide the Secure Erasure of any XYZ Data that is electronically stored on such equipment. “Secure Erasure” means that the XYZ Data electronically stored on such equipment is removed from the equipment in accordance with XYZ standards, providing that it is deleted in such a way that renders it unreadable and impossible to electronically identify and/or reconstruct. Prior to ABC’s performance of any such Secure Erasure of electronically stored XYZ Data, ABC shall comply with the following:

## if the cessation of use of such equipment is the result of a Service discontinuation, ABC shall return to XYZ the relevant XYZ Data, or

## if the cessation of use of such equipment is due to normal operational requirements (such as: refresh or upgrade of outdated equipment, replacement due to malfunction, reconfiguration of data center, etc.), ABC shall ensure that XYZ has reasonable time to exercise its rights pursuant to Section 9.4 (Access to XYZ Data).

## if XYZ provided equipment is to be removed from the Services and returned to the control of XYZ, XYZ, at its option, shall advise ABC as to whether Secure Erasure of XYZ Data is, or is not required for such XYZ provided equipment. Upon cessation of use, ABC shall promptly return such XYZ provided equipment to XYZ (or, if requested by XYZ, to other designee(s)) in condition at least as good as the condition thereof on the date initially provided to ABC, ordinary wear and tear excepted.

## in any event, ABC shall not perform the Secure Erasure until (i) ABC ensures that applicable records retention requirements have been met, and (ii) in the case of a Service discontinuation, XYZ has confirmed to ABC that copies of the subject XYZ Data are accurate and useable by XYZ, or (iii) in the case of normal operational requirements, any replacement equipment has been tested and placed into production use.

## For avoidance of doubt, subject to and without limitation of the provisions set forth in Section (vi), the Secure Erasure of the relevant XYZ Data must be performed by ABC prior to (i) redeployment such equipment for use with non-XYZ services, or (ii) disposal of the equipment (e.g., sale to a used equipment dealer, return to lessor).

## **Access to XYZ Data.** ABC shall provide to XYZ at no extra charge, secure access to, and the right to review and retain the entirety of all XYZ Data in the possession of or under control of control of ABC or its Affiliates or subcontractors. An electronic copy of the XYZ Data shall be made available to XYZ at any time, upon XYZ’s request, in the form and format as reasonably requested by XYZ. At XYZ’s request, ABC shall provide access to XYZ Data to an eligible recipient in the same manner and to the same extent access to such data is provided to XYZ.

# Term and Termination

## This Agreement shall become effective on the Effective Date and shall remain valid for a period of five (5) years unless terminated earlier by either Party with a three (3) months’ written notice or as expressly provided elsewhere in the Agreement.

## XYZ reserves the right to terminate individual PO/SOWs or parts of it with immediate effect at any time for any reason.

## This Agreement and/or any PO/SOW may be terminated with immediate effect by written notice by either Party if (i) the other Party breaches this Agreement in any material manner and fails to remedy such breach within thirty (30) days of receipt of the written notice; and/or (ii) the other Party by voluntary or involuntary action goes into liquidation or receivership, or dissolves or files a petition for bankruptcy or reorganisation or for suspension of payments or is adjudicated as bankrupt, becomes insolvent or assigns or makes any composition of its assets for the benefit of credit.

## Notice of termination must in all cases be given in writing.

# Effects of Termination

## Expiration pursuant to Section 10.1 or termination of the Agreement shall not affect any running PO/SOWs, which shall be finalised according to the terms of this Agreement and the respective PO/SOW, subject only to early termination of PO/SOW itself.

* 1. In the event of termination of PO/SOW, upon receipt by ABC of notice of termination, unless otherwise requested by XYZ, ABC shall immediately cease all work under the respective PO/SOW, cease to represent itself as providing services to XYZ under the respective PO/SOW and deliver to XYZ at no additional expense, confined to the respective PO/SOW: (i) a summary of the current state of the Services as of the date of termination (ii) all XYZ Confidential Information in its possession, and (iii) all Deliverables and all work in progress in whatever state of development they may exist on the date of termination. In such a case XYZ shall only be liable for (i) the Price for the Services already performed and the respective Deliverables which have been approved by XYZ in accordance with Section 4.1; and/or (ii) with regard to any other Services or parts thereof which are not yet performed and/or not accepted by XYZ in accordance with Section 4.1, all Service-related costs actually incurred by ABC in accordance with PO/SOW until the date of termination (including actual costs resulting from non-cancellable commitments entered into by ABC), always provided that ABC has used its best efforts to minimise and mitigate such costs, but in any case at maximum the Price set forth in the respective PO/SOW.
  2. In case XYZ has made prior payments to ABC that exceed the amount owing to ABC upon termination of this Agreement, ABC will return the excess payment to XYZ within forty five (45) days after the actual, effective date of termination.

## In addition to Section 11.3, in the event of termination of PO/SOW due to delay in delivery of the Services by ABC, XYZ is entitled to deny payment of the Price except for (the part of) the Services in respect of which XYZ has accepted late delivery and/or late performance of the Services or respective parts thereof.

## For the avoidance of doubt, in the event of any termination pursuant to Section 10.3 the terminating Party reserves the right to claim for damages.

## ABC agrees, at its expense, to cooperate with and provide reasonable assistance to XYZ and any new service ABC to effect an efficient unbroken transition in responsibilities to such new service ABC with respect to the Services provided hereunder.

# Audit and Document Records Retention

## At any time during the term of the Agreement and for 1 (one) year thereafter, XYZ is entitled, at its absolute discretion (through its employees or through external consultants reasonably acceptable to ABC) to monitor and audit the performance of the Services by ABC and any Subcontractor(s) approved by XYZ hereunder. Such monitoring or auditing may take such form as XYZ thinks fit and shall include, without limitation, the right to:

1. inspect any facility being used for the Services and
2. review and examine any procedures being used by ABC in its performance of the Services for XYZ, as well as all data generated from said performance, including without limitation all written reports, audit reports, notes, schedules, computer tapes or similar work product which may document work done and Results achieved.

## Unless otherwise required by the circumstances (e.g. for-cause audit), XYZ shall give not less than thirty (30) days prior written notice to ABC, and where appropriate to any Subcontractor of its intention, to audit the Services. ABC agrees to cooperate and procure that the relevant Subcontractor (s) cooperate and provide all reasonable assistance at reasonable times and places with any auditing activity. No such audit by XYZ shall relieve ABC of any of its obligations hereunder.

## Where an internal ABC audit of a Subcontractor is planned, the ABC shall notify XYZ at least ten (10) days prior to the audit. XYZ may, at its sole discretion, elect the appropriate persons to attend and observe such audit. The audit report and the summary results of such internal audits by the ABC shall be shared with XYZ within ten (10) days following completion of the audit.

## All Documentation generated under this Agreement are XYZ's exclusive property. ABC will comply with all archiving and record-keeping requirements of the Applicable Law. ABC shall retain all Documentation produced in connection with the performance of the Service in its archive for the longer of (i) fifteen (15) years from the termination or expiration of this Agreement, (ii) until final resolution of any dispute concerning this Agreement, or (iii) as long as required by Applicable Law or XYZ policy. At the end of the retention period, and unless otherwise agreed, ABC shall retain the Documentation appropriately, at the additional expense of XYZ, unless otherwise authorized or instructed in writing by XYZ. ABC shall contact XYZ in due time after the end of such retention period for respective instruction.

# Financial Audit

## At any time during the term of the Agreement and PO/SOWs and for three (3) years thereafter, upon reasonable notice to ABC, XYZ and its representatives, including any independent public accountant engaged by XYZ and reasonably acceptable to ABC, shall have the right to audit ABC’s financial records relating to Services performed pursuant to PO/SOW and all Pass-Through Costs to be reimbursed by XYZ pursuant to PO/SOW. Such records may include accounts, invoice records, invoices and contracts with third parties, travel & expense reports and receipts, and payments relating to PO/SOW. Such records may also include agreements with third party ABCs, such as couriers, to enable a review of any existing discount and rebate terms. To the extent such records are not separable from other customer records or deemed confidential, ABC will give reasonable access to the records to an independent public accountant selected by XYZ who will audit the records pertaining to the Services and Pass-Through Costs and may disclose the results of the audit only to the extent it relates to the Services. In no event shall other customer information be disclosed to XYZ. This audit right shall not be exercised by XYZ more than once (1) per calendar year.

## In the event an audit reveals that XYZ has been overcharged, ABC shall, within thirty (30) days of such audit report, refund such overcharge to XYZ. The fees and expenses for such auditing shall be borne by XYZ, unless such examination reveals an overpayment of 1 % (one percent) or more of the amount properly payable. In such event, the fees and expenses for such auditing shall be borne by ABC and shall be paid within thirty (30) days following request by XYZ.

## The provisions of this Article shall survive the expiration or termination of the Agreement and PO/SOWs.]

# Supply or Use of HBS Documentation

ABC represent, warrants and covenants to XYZ that:

## all Services which require the obtainment and/or the use of HBS Documentation will be carried out by ABC in accordance with Applicable Law and the terms set forth in **Appendix 5** (XYZ HBS Documentation Requirements);

## Any exceptions to **Appendix 5** shall be agreed in advance in writing between Parties and documented in a separate document to be signed by both Parties;

## the Services which require the obtainment of HBS Documentation will not involve or require the application, use or administration of treatment protocols, or investigational drug products, materials, or devices on any human subjects;

## for Services which require the obtainment of HBS Documentation no human subjects will be recruited or enrolled to receive a particular drug product or treatment, and/or to participate in any interventional component(s) relating to the Services;

## if ABC obtains the HBS Documentation, XYZ has not and will not be involved with, or in any way have any impact on the design or the conduct of any clinical aspect of the obtainment of HBS Documentation for the Services; and

## if ABC obtains the HBS Documentation, XYZ shall not be identified on any consent documentation as a sponsor/co-sponsor with respect to HBS Documentation obtainment.

# Customs

## Both Parties hereby agree that ABC will not ship any products, compounds, materials, samples or substances (the “**Material**”) without the prior written request by XYZ. XYZ will request such Material through PO/SOW which will outline the specific amount and price assigned to it as agreed between the Parties.

## To comply with Applicable Law, following expiration or termination of this Agreement, ABC shall continue to support XYZ in matters related to Taxes and customs compliance.

## ABC hereby agrees to monitor total Material synthesis/production/generation and shipment for each Material under the Agreement on a yearly basis. ABC shall share such data by filling in the form attached hereto as **Appendix 6** and by sending it to: [data@XYZ Corporation.com](mailto:x4gtspro@boehringer-ingelheim.com) at XYZ within thirty (30) days of the beginning of each calendar year to document the shipments during the previous calendar year. Such documentation shall include shipments by third parties to XYZ on behalf of ABC. ABC agrees to ship Material generated under this Agreement only with reference to an existing PO/SOW generated as outlined in Section 2.2 and 2.6.

## ABC agrees to collaborate with XYZ on determining the potential of ABC becoming an approved exporter in a country that has a Reciprocal Preferential Trade Agreement with the EU in place and therefore all Materials meet preferential origin status.

## ABC hereby declares that the Material originates from the home country of ABC and corresponds and fulfills the rules of origin for preferential trade with the EU. ABC undertakes to make available to XYZ any additional documents required by the relevant customs authorities to prove this.

## ABC undertakes to provide legal authorizations for the issue of preference certificates, in particular the status of the authorized exporter under EU free trade agreements or a comparable status in other EU preferential agreements (for example, the status as a registered exporter in the general preferential system [GSP]) and ensure the correct exercise of the obligations resulting from the granting of the respective status.

# Trade Compliance

## Parties acknowledge that any products, goods, software, technology (specific technical information necessary for the development, production, or use of a product) and technical services, including, without limitation, Deliverables, provided by either Party under this Agreement (“**Items**”), may be subject to international, EU, US and/or any other applicable trade compliance and/or export control laws and regulations (“**Trade Compliance** **Laws**”) restricting exports, re-exports, transfers or disclosures, regardless of the mode of provision (“**Transactions**”). ABC shall comply with all Trade Compliance Laws.

## If the Item is subject to any restrictions or license requirements under the Trade Compliance Laws, Parties shall notify each other about these restrictions accordingly. Upon request, Parties shall cooperate with each other by providing information and other assistance necessary for the classification export documentation, license determination, export licensing etc. of Items provided under this Agreement.

## Parties confirm that they are neither a Sanctioned Party under UN, US, EU or any national Sanctioned Party List nor Controlled by a Sanctioned Party. ABC shall notify XYZ without delay in case of any changes of this status.

## ABC shall indemnify and hold XYZ harmless from any losses or damages arising from, or in connection with, breach of any of the provisions of this Article 22 by ABC including any violations by its employees, consultants, agents, or customers.

# Anti-Bribery / Anti-Corruption (ABAC)

## ABC represents and warrants that it, its owners, its members of the board of directors and the supervisory board, directors, officers, employees, Subcontractors and agents will act in full compliance with any applicable ABAC laws and regulations in connection with XYZ’s operations or this Agreement and will not offer, promise or give any benefit or other advantage to any public official, or any other third party in exchange for an improper advantage in any form either directly or indirectly.

## Any breach of this Section 23 constitutes a material breach of this Agreement and will allow XYZ to terminate this Agreement with immediate effect.

## ABC shall indemnify and hold XYZ harmless for any loss or damage resulting from i) any violation of the applicable ABAC laws and regulations by ABC’s owners, members of the board of directors and the supervisory board or directors or ii) ABC’s own negligent conduct that made it possible for its employees, Subcontractors or agents to violate such laws and regulations in connection with XYZ’s business operations or this Agreement.

# Personal Data Protection

* 1. ABC shall comply with the applicable personal data protection laws.
  2. To the extent that ABC collects, processes or uses personal data on behalf of XYZ when rendering the Services (“Processing”) in accordance with article 28 of the EU General Data Protection Regulation 2016/67, ABC shall, upon XYZ’s request, enter into any additional contractual arrangement which is, in XYZ’s reasonable opinion, required by Applicable Law, especially in case of transfers of personal data to recipients outside the European Union. Such contractual arrangements may include:

1. XYZ’s standard contract for Processing, and/or,
2. the European Union’s Standard Contractual Clauses for the transfer of personal data to processors and/or,
3. any other agreement that competent data protection authorities have declared to be compulsory or acceptable to comply with personal data protection law obligations.

# Insurance

* 1. A ABC is responsible for maintaining, at its own expense and throughout the term of this Agreement and for period of 5 years thereafter, programs of insurance with reputable insurance companies in amounts which are reasonable and customary in the market for the respective activities and adequate to cover all losses and damages (also indirect losses and damages) caused by ABC, its personnel, Affiliates or Subcontractors in the course of its business, but not less than five million Euro (€ 5,000,000) per even**t**. The sum insured must not be exhausted at the start of the Effective Date and must be available twice in the aggregate. It is understood and agreed that the failure of ABC to have insurance coverage, inability to obtain insurance coverage, or any inadequacy of insurance coverage will not relieve ABC of any part of its liabilities and obligations under this Agreement.
  2. XYZ is entitled to demand that ABC furnish an appropriate confirmation of insurance cover by ABC´s insurance ABC. ABC shall furnish such evidence of insurance cover without undue delay. ABC is not entitled to claim any payment before the evidence of insurance coverage has been provided.

# Safety and Environmental:

## ABC acknowledges that the Services involve experimental chemicals and therefore warrants that ABC will:

1. comply with the Applicable Law regarding their storage and use,
2. exercise care in handling such chemicals, and
3. treat such chemicals as experimental, exercising appropriate care to avoid human exposure by
4. using appropriate protective equipment and clothing, and
5. observing appropriate handling and storage techniques. ABC will appropriately inform and warn its employees, those under its supervision and direction, and others who may come in contact with such experimental compounds that they are experimental and that suitable precautions must be observed when handling or otherwise being exposed to them. XYZ agrees that it shall provide ABC with any applicable material safety data sheets. ABC understands that any information supplied by XYZ regarding such compounds or their handling is not intended to, and does not relieve ABC of its duty to exercise reasonable care toward all persons who may be exposed to them.

## ABC warrants that the Services under this Agreement are conducted in compliance with any applicable XYZ and/or its Affiliates' protocols and/or specifications of which ABC is reasonably advised in a timely manner, and in compliance with all Applicable Law.

## If ABC becomes aware of any safety hazard relating to any compound it supplies to XYZ and/or its Affiliates, it shall promptly notify XYZ and/or its affiliates with all information in its possession or control concerning such safety hazard.

# Force Majeure

* 1. If the performance by either Party of any of its obligations under this Agreement is delayed or prevented by circumstances beyond its reasonable control and that could not have been foreseen at the Effective Date, that Party will not be in breach of this Agreement because of that delay in performance. However, such Party shall promptly give a written notice to the other Party claiming force majeure and shall use its best efforts to eliminate the effect of such force majeure, insofar as is possible and with all reasonable dispatch.
  2. If the period of delay or failure should extend for more than three (3) months then the non-defaulting Party shall have the right to terminate this Agreement forthwith upon written notice at any time after expiration of said three (3) months period.

# Miscellaneous

## **Assignment.** ABC shall not be entitled to assign or otherwise transfer its rights and obligations under this Agreement in whole or in part to any third party without the prior written consent of XYZ. Any right or obligation of XYZ under this Agreement may be assigned to any of its Affiliates or a third party.

## **Entire Agreement/Amendments.** This Agreement sets forth the entire agreement between Parties and supersedes all previous agreements, written or oral regarding the subject matter hereof. This Agreement may be amended only by an instrument in writing duly executed on behalf of Parties. In case of inconsistencies between this Agreement and any appendix hereof, the terms of this Agreement shall prevail unless agreed explicitly that the appendix should prevail. In case of discrepancies between the terms of this Agreement and PO/SOW, the terms of the Agreement shall prevail, unless it is expressly otherwise indicated in PO/SOW.