

TERMS AND CONDITIONS

of an agreement made between

(1) Oxford University Hospitals National Health Service Foundation Trust
of Headley Way, Headington, Oxford, OX3 9DU (“**the OUH**”)

and

(2) You

1. CONTRACT FORMATION

- 1.1 When the OUH receives a sample and completed request form sent by you, a new agreement shall be deemed to be formed (“**Agreement**”).
- 1.2 The Agreement shall incorporate:
 - 1.2.1. these terms and conditions; and
 - 1.2.2. any special conditions requested by you on the completed request form which accompanied the sample.
- 1.3 Where there is any conflict between these terms and conditions and any special conditions, these terms and conditions shall take precedence to the extent necessary to resolve such conflict.
- 1.4 There is no need for an Agreement to be signed by either party. By you sending a sample and completed request form to the OUH, and by the OUH accepting receipt of the same, both parties are agreeing to abide by these terms and conditions.
- 1.5 Where no work has previously been received by our laboratories or you wish to make a significant change (considered to be more than 20% by volume) good practice would be to contact the relevant laboratory to ensure we have the capacity to meet your needs prior to sending the samples.
- 1.6 Neither party may terminate an Agreement once formed.

2. OUH SERVICES

- 2.1 Upon receipt of the sample and the completed request form, the OUH will:
 - 2.1.1. carry out the requested testing in accordance with clause 3; and
 - 2.1.2. collate the results, and send them to you as a report in accordance with clause 3.7.
- 2.2 Except in circumstances set out in clause 2.3 below, the OUH will destroy all samples once the testing is complete.
- 2.3 Where you require the sample to be returned to you, the OUH will do so and will be entitled to charge you for the cost of doing so.

3. TESTS

- 3.1 Subject to clause 3.7, the OUH will carry out the tests which are requested by you on the form attached at Appendix 1.

- 3.2 Where the OUH, using its reasonable skill and care, considers a further test or tests ought to be carried out but which were not requested by you, the OUH shall:
 - 3.2.1. be entitled to carry out such further tests and include the results within your report;
 - 3.2.2. be entitled to include the cost of such further tests in the invoice to you; and
 - 3.2.3. not be entitled to any costs for such further tests, if you dispute the costs in accordance with clause 5.5 below and it is agreed or determined that the OUH acted unreasonably in carrying them out.
- 3.3 The OUH will use its reasonable endeavours to meet its target turnaround times for completing the relevant test(s). These target turnaround times are regularly updated, and are available upon request.
- 3.4 The OUH shall carry out the tests:
 - 3.4.1. in accordance with Good Clinical Practice and/or Good Industry Practice, as appropriate;
 - 3.4.2. with full regard to the safety of all persons at the premises;
 - 3.4.3. in compliance with all consents (including without limitation the giving of notices and the obtaining of any such consents) and so as not to prejudice the renewal of any such consents; and
 - 3.4.4. in accordance with all applicable law.
- 3.5 The OUH shall at all times ensure that any equipment, medical gases, medicines, medical equipment and supplies, consumables and other items supplied or used in the performance of the tests comply with:
 - 3.5.1. law;
 - 3.5.2. regulatory or NHS guidance; and
 - 3.5.3. the relevant consents.
- 3.6 The OUH shall ensure its staff undertaking the tests:
 - 3.6.1. are suitably skilled, experienced and qualified to carry out such tests; and
 - 3.6.2. are covered by insurance or indemnity arrangements appropriate for the performance of the Agreement.
- 3.7 If the sample is unsuitable for carrying out one or more requested tests, you will be notified of this within the report.

4. REPORTS

- 4.1 You must state in any written note accompanying the Sample if you require an interim report, in addition to the final report, and you must specify which tests or analysis are required in such interim report.
- 4.2 The OUH will use its reasonable endeavours to provide the report to you within 2 business days of completing the last test applicable to that report.

5. PAYMENT

- 5.1 Each test will be charged at the OUH's then-current rates. These are available upon request.
- 5.2 Once the OUH has issued the report (or, if an interim report has been requested, once it has issued the final report), the OUH will send you an invoice for all tests carried out on the sample.
- 5.3 The invoice will state your purchase order number, if included with the sample. If no purchase order number was included, the OUH will allocate its own number to the invoice.
- 5.4 The invoice shall be payable within 30 days of receipt. Where you dispute part of an invoice, you must pay:
 - 5.4.1. the undisputed part within 30 days of receiving the invoice, and

- 5.4.2. the disputed part (if any) within 30 days of the dispute being resolved (whether by agreement or determination)
- 5.5 If you dispute all or part of an invoice, you must notify the OUH in writing of your dispute, by no later than the following date (whichever is the earliest):
 - 5.5.1. 60 days after receiving the report;
 - 5.5.2. 30 days after receiving the invoice; or
 - 5.5.3. the date on which you pay the invoice (or the relevant part of the invoice).
- 5.6 If you do not issue to the OUH a notice of dispute by the applicable date in clause 5.5, you shall be deemed to have accepted in full your obligation to pay the invoiced amount (or such part as was not disputed by the applicable date in clause 5.5).
- 5.7 All payments shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made or such alternative method as the OUH requires.
- 5.8 If you do not make payment by the dates set out in clause 5.4, the OUH shall be entitled to charge you interest at an annual rate of 5% above the Bank of England base rate from time to time, for each day or part thereof in which the relevant sum remains outstanding.

6. INDEMNITIES AND LIABILITY

- 6.1 Nothing in this Agreement will exclude or limit any liability of a Party for:
 - 6.1.1. death or personal injury resulting from negligence;
 - 6.1.2. fraud and/or fraudulent misrepresentation; and
 - 6.1.3. any other matter if and to the extent that liability for the same cannot as a matter of law be excluded or limited.
- 6.2 Subject to clauses 6.1 and 6.4 each party's liability to the other shall be limited to the £10,000 for all acts or omissions in connection with an Agreement.
- 6.3 You shall bear the full and entire clinical responsibility in respect of all your patients, and you acknowledge that the OUH is providing only contracted services to you.
- 6.4 The OUH shall have no liability for the interpretation of any results, or for the clinical decisions made on the basis of any information contained within a report (whether interim or final, whether provided in writing or verbally). You shall indemnify the OUH for any costs incurred in defending any claim against the OUH (whether made by a third party, or by you) based on interpretation of results or clinical decisions made therefrom.
- 6.5 You will give written notice to the OUH as soon as practicable of the details of:
 - 6.5.1. any actual or potential clinical negligence claims or proceedings or
 - 6.5.2. any circumstances likely to result in clinical negligence claims or proceedingsfrom a third party in relation to, or in connection with, an Agreement.

7. DATA PROTECTION

- 7.1 For the purposes of each Agreement, you will be the Data Controller for:
 - 7.1.1. the health records of your patients;
 - 7.1.2. all information relating to your staff which are created by you; and
 - 7.1.3. any other Personal Data which is created by you as Data Controller.
- 7.2 The OUH may from time to time act as a Data Processor on your behalf in respect of Personal Data. To the extent that the OUH is acting as a Data Processor on your behalf under an Agreement, the OUH shall, in regard to such Personal Data,;

- 7.2.1. identify to you an individual within the OUH authorised to respond to enquiries from you. The OUH shall deal with such enquiries promptly, including those from the Information Commissioner;
- 7.2.2. deal with any relevant Data Subject requests in relation to that Data Subject's Personal Data in accordance with all relevant Data Protection Legislation;
- 7.2.3. promptly provide to you all information in its possession concerning any unauthorised or accidental disclosure or access made by an employee, director, agent, or any other identified or unidentified third party;
- 7.2.4. comply with any relevant changes in the Data Protection Legislation; and
- 7.2.5. give effect to confidentiality of patient information in accordance with NHS confidentiality policies.

8. MISCELLANEOUS

- 8.1 Neither party may assign, transfer, charge or otherwise dispose of all or any of its rights under an Agreement without the prior written approval of the other party.
- 8.2 Nothing in an Agreement shall be construed as creating a partnership or a contract of employment between the OUH and you. You shall not be, or be deemed to be, an agent of the OUH, nor shall you hold yourself out as having authority or power to bind the OUH in any way.
- 8.3 Each Agreement constitutes the entire Agreement between the parties in connection with a sample, and supersedes all prior representations, communications, negotiations and understandings concerning such sample.
- 8.4 Each of the parties acknowledges that:
 - 8.4.1. it does not enter into an Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to an Agreement or not) except those expressly repeated or referred to in an Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under an Agreement; and
 - 8.4.2. this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of an Agreement which was induced by fraud, for which the remedies available shall be all those available in law or equity.
- 8.5 If any provision of an Agreement shall be declared invalid, unenforceable or illegal by the courts, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of an Agreement.
- 8.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999, each Agreement is not intended to, and does not, give to any person who is not a party to it any rights to enforce any provisions contained therein
- 8.7 Each Agreement is subject to the laws of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction in all matters concerning an Agreement.