



Department of Life Sciences

Serology Service

TERMS AND CONDITIONS of an agreement made between

- (1) The University of Bath, incorporated by Royal Charter under number RC000644, whose principal administrative offices are located at Claverton Down, Bath, BA2 7AY ("the UoB"); and
- (2) "You" or "Your"

1. CONTRACT FORMATION

1.1 If and when the UoB receives a sample and completed request form, in the format set out in Appendix 1, sent by You, AND it agrees to accept the request and provide a testing service, a new agreement shall be deemed to be formed and these terms and conditions shall apply ("Agreement"). For the avoidance of doubt, the UoB is not obliged to provide any such testing service, unless and until the details of the respective order, (including but not limited to, the respective order specification(s), qualities involved, dates upon which the results are to be provided and the price payable to the UoB), have been formally agreed between the Parties. Nevertheless, on each occasion that the UoB agrees to provide such services pursuant to a sample and completed request form, the Parties shall contract in accordance with these terms and conditions.

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 These terms and conditions shall normally be supplied to You before testing commences and prior to You sending to the UoB a sample for testing in addition to a completed request form. By You sending a sample and completed request form to the UoB, and by the UoB accepting receipt of the same, both parties are agreeing to abide by these terms and conditions and there is no requirement for either party to provide a signature. In the event that You send the UoB a sample prior to these terms and conditions being issued to You, the UoB shall send You a copy of these terms and conditions. The requested testing of the samples to undertaken by the UoB is conditional upon Your agreement to these terms and conditions.

2. SAMPLES & UoB SERVICES

- 2.1 Upon receipt and acceptance of the sample and the completed request form, the UoB 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 UoB will either securely destroy or retain samples according to the most recent Royal College of Pathology guidelines on the retention and storage of pathological records and specimens.
- 2.3 Where You require the sample to be returned to You, the UoB will do so and will be entitled to charge You for the reasonable cost of doing so.
- 2.4 Samples should be shipped to UoB by You, at Your expense, properly labelled and marked as confidential for the attention of Martin White/ Serology Service, University of Bath, Science Stores, 3 South, Claverton Down, Bath BA2 7AY, UK, and in accordance with all applicable regulations and conditions necessary to preserve the integrity of the samples.
- 2.5 Samples must be clearly and unambiguously labelled individually with indelible marker; and with unique identifying data for each sample; a minimum of 0.5 ml of each sample should be provided.
- 2.6 You are responsible for obtaining all applicable consents from the relevant data subjects for the conduct of the tests.

3. TESTS

- 3.1 Subject to these terms the UoB will carry out the tests which are requested by You on the completed request form.
- 3.2 Where the UoB, 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 UoB shall contact You to discuss this and, if You consent to such further test(s) being carried out, You will submit a further request form for any additional tests agreed.
- 3.3 The UoB will use its reasonable endeavours to meet its target turnaround times for completing the relevant test(s) but this cannot be guaranteed. These target turnaround times are regularly updated and are available upon request.
- 3.4 The UoB shall carry out the tests in accordance with all applicable laws, regulations and best practice.
- 3.5 The UoB shall carry out its obligations under this Agreement with reasonable skill, care and judgement, and shall provide the Services to a high quality and standard. However, UoB does not make any representation or give any warranty as to the use of any test result(s) provided or give any guarantee that any such test result(s) shall be fit for any purpose,

The UoB shall ensure its staff undertaking the tests are suitably skilled, experienced and qualified to carry out such tests.

- 3.6 If the sample is unsuitable for carrying out one or more requested tests, You will be notified of this within the report.
- 3.7 If the test requested is not in our repertoire and is clinically indicated we will contact You to discuss whether to refer it to an external lab of equal standing.

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.

5. PAYMENT

- 5.1 Each test will be charged at the UoB's the current applicable rate at the point when the UoB receives a sample and completed request form, unless an alternative rate is agreed at the time the order is accepted. The UoB's rates are available upon request.
- 5.2 Once the UoB has issued the report (or, if an interim report has been requested, once it has issued the final report), the UoB will send You an invoice at the end of the month in which the testing occurred. If the testing requested by You extends beyond one (1) month in length, invoices shall be raised at the end of the relevant month in which the testing occurred.
- 5.3 You shall provide the UoB with a relevant purchase order number(s), contact details, address and e-mail. A sample will not be processed and testing will not commence if no purchase order number is provided.
- 5.4 The invoice submitted by the UoB to You shall be payable by You within 30 days of receipt.
- 5.5 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 UoB specified in the relevant invoice, quoting the invoice number against which payment is made or such alternative method as the UoB requires.
- 5.6 If You do not make payment within the timeframe as prescribed by clause 5.4, the UoB shall be entitled to charge You interest on a daily basis in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013.

6. INDEMNITIES AND LIABILITY

- 6.1 Nothing in an 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 clause 6.1, each party's liability to the other shall be limited to the total fees paid by You to the UoB in the previous 12 months under this Agreement for all acts or omissions that arise out of or 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 UoB is providing only contracted services to You.
- 6.4 The UoB is not accredited by Clinical Pathology Accreditation (UK) Ltd or United Kingdom Accreditation Service (UKAS) and You acknowledge that any test carried out by the UoB in accordance with an Agreement is unaccredited.
- 6.5 The UoB 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 UoB for any costs incurred in defending any claim against the UoB made by any third party based on interpretation of results or clinical decisions made therefrom.
- 6.6 The UoB does not makes any representation or gives any warranty (other than as outlined in clause 3 above), as to the use of any test result(s) provided or that any such test result(s) shall be fit for any purpose, and UoB shall have no liability in this respect or in result of the accuracy of any such result(s).
- 6.7 You will give written notice to the UoB as soon as practicable of the details of:
- 6.7.1 any actual or potential clinical negligence claims or proceedings or
- 6.7.2 any circumstances likely to result in clinical negligence claims or proceedings from a third party in relation to, or in connection with, an Agreement.

7. DATA PROTECTION

- 7.1 For the purposes of an Agreement, the terms 'Data Controller', 'Data Processor', 'Data Subject' and 'Personal Data' shall have the meaning given to them in the Data Protection Legislation. The term 'Data Protection Legislation' shall mean all applicable data protection and privacy legislation in force from time to time in the UK including, but not limited to, the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (or "**UK GDPR**"), the Data Protection Act 2018 and any applicable guidance or regulations issued by the UK Information Commissioner, in each case as amended or supplemented from time to time by UK law, and any other applicable laws from time to time relating to the processing of personal data and privacy.
- 7.2 The Parties shall be solely responsible for their own compliance with the Data Protection Legislation, and shall share personal data solely for the purposes of this Agreement.

- 7.3 For the purposes of an Agreement, You will be the Data Controller for:
- 7.3.1 the health records of Your patients;
 - 7.3.2 all information relating to Your staff which are created by You; and
 - 7.3.3 any other Personal Data which is created by You as Data Controller.
- 7.4 The UoB may from time to time act as a Data Processor on Your behalf in respect of Personal Data. To the extent that the UoB is acting as a Data Processor on Your behalf under an Agreement, the UoB shall, in regard to such Personal Data:
- 7.4.1 not access any personal data except personal data which is directly provided to the UoB by You for the purposes of providing the Services;
 - 7.4.2 act on Your instructions in relation to all personal data, including in relation to any retention periods specified by You for the storage of any personal data provided to the UoB;
 - 7.4.3 implement appropriate technical and organisational measures to protect personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. Such measures shall be appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage to the personal data to be protected, and shall include the encryption of personal data both in transit and at rest;
 - 7.4.4 co-operate as requested by You in the preparation of any data protection impact assessment ("DPIA") which is either required by the Data Protection Legislation or is otherwise required by You;
 - 7.4.5 comply with any security or other measures mandated in any DPIA carried out under Clause 7.4.4 above;
 - 7.4.6 store personal data securely in accordance with the Data Protection Legislation;
 - 7.4.7 store personal data for no longer than is necessary for the purposes of this Agreement, and in accordance with any retention periods specified by You;
 - 7.4.8 not transmit such personal data and information to a country or territory outside the United Kingdom without Your prior express written consent. Any such data transfer shall be made in accordance with Your instructions;
 - 7.4.9 not sub-contract any processing of any personal data without Your prior express written consent, and ensure that a DPIA has been undertaken against any such sub-contractor, and any identified risks fully remediated;
 - 7.4.10 ensure that any approved sub-contractor is subject to the same data protection obligations in any sub-contracting agreement as bind the UoB under this Agreement;
 - 7.4.11 notify You in writing, within 72 hours, if it:

- (i) receives any complaint from, or request for or notice of, any investigation or assessment by the UK Information Commissioner in respect of any processing of personal data (including, without limitation, any information, enforcement, assessment or monetary penalty notice, or any warning that such a notice may be issued);
- (ii) receives a request from a data subject or his/her authorised representative exercising their rights under the Data Protection Legislation;
- (iii) becomes aware of any unauthorised or unlawful processing, loss or destruction of, or damage to, the personal data; or
- (iv) exceeds, without authorisation from You, any personal data retention period which has been agreed with You

and together with such notice to You provide a copy of any such request or notice and reasonable details of the circumstances giving rise to that request or notice or the unauthorised or unlawful processing, loss or destruction of, or damage to, the personal data (as the case may be);

7.4.12 promptly provide to You such information, co-operation and assistance as You may from time to time reasonably require to enable it to comply with its obligations under the Data Protection Legislation as a data controller in respect of any personal data;

7.4.13 provide You and its representative(s) on reasonable notice, with such access to its premises, personnel and records as You may reasonably require and to inspect and copy any records or relevant documentation in order to inspect the UoB's activities with respect to the processing of the personal data and audit the UoB's compliance with this clause 7 and the Data Protection Legislation;

7.4.14 immediately inform You if, in its opinion, an instruction from You infringes the Data Protection Legislation;

7.4.15 not disclose to third parties (including any regulators) any information about a data breach involving the personal data in connection with this Agreement without prior written and express permission from You for such disclosure; and

7.4.16 identify to You an individual within the UoB authorised to respond to enquiries from You. The UoB shall deal with such enquiries promptly, including those from the Information Commissioner;

7.4.17 give effect to confidentiality of patient information in accordance with relevant 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 Without affecting any other right or remedy available to it, You may immediately terminate this Agreement if the UoB fails to comply with, or to observe, any of the terms, conditions or covenants of this Agreement, and providing such failure is capable of being remedied, fails to remedy such failure within 5 working days of You giving written notice to the UoB of the failure.
- 8.3. Without affecting any other right or remedy available to it, You may terminate this Agreement at any time before the end of the term specified in Clause 4 above:
- 8.3.1. by giving the other party not less than one month's notice in writing, unless otherwise expressed in this Agreement; or
 - 8.3.2. immediately by written notice to the other party, if any provision of, or the continued performance of, this Agreement or any part of it, by either party, becomes illegal.
- 8.4 Nothing in an Agreement shall be construed as creating a partnership between the UoB and You. You shall not be, or be deemed to be, an agent of the UoB, nor shall You hold yourself out as having authority or power to bind the UoB in any way.
- 8.5 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.
- 8.6 Each of the parties acknowledges that:
- 8.6.1 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
 - 8.6.2 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.
- 8.7 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.

- 8.8 For the purposes of the Contracts (Rights of Third Parties) Act 1999, each Agreement does not give to any person who is not a party to it any rights to enforce any provisions contained therein.
- 8.9 If the UoB fails to enforce or delays in enforcing an obligation placed upon You under an Agreement, or fails to exercise or delays in exercising a right under an Agreement, that failure or delay will not affect the UoB's right to enforce that obligation or constitute a waiver of that right. Any waiver by the UoB of any provision of an Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 8.10 **FORCE MAJEURE**
- If the performance by UoB of any of its obligations under these terms and conditions is delayed or prevented by circumstances beyond its reasonable control, (including but not limited to, COVID, acts of God, decrees or restraints of government, strikes, labour disputes, pandemic, epidemic, war, fire, riot, sabotage, terrorism and any other cause or causes whether similar or dissimilar to those already specified which UoB cannot control), it will not be in breach of contract, or in breach of these terms and conditions because of that delay in performance. However, if the delay in performance is more than 3 months, the Parties may agree to terminate this Agreement.
- 8.11 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.

Appendix 1



Serology Service

Department of Life Sciences,

University of Bath, Claverton Down, Bath, BA2 7AY

Please note this is not a UCAS accredited laboratory or service

Lab Reference

Patient Details

(please complete in full or attach a label)

Originator Details

Surname	
Forename	
D.O.B	__/__/__
Gender	Male ☐ Female ☐
Hospital number	
NHS Number	

Relevant Clinical Information

Test Request Immunoprecipitation ☐ Other (please give details)
--

Hospital	
Contact Name	
Sample Date	__/__/__
Send Report to	
Invoice Address and E-mail	
Purchase Order Number*	

* Sample will not be processed and testing will not commence if a purchase order number is not provided.

Sample Delivery Address: Martin White/ Serology Service, University of Bath, Science Stores, 3 South, Claverton Down, Bath BA2 7AY, UK