



# Viapath Analytics LLP Standard Terms

February 2019



## 1. PROVISION OF SERVICES

1.1 Viapath will provide Services to Customer upon acceptance of a valid Pathology Request.

1.2 Viapath will carry out the Services faithfully and diligently in a competent and professional manner. All scientific staff will undertake competency testing for the service that they provide to Customer and will exercise reasonable skill and care in accordance with this Agreement, relevant professional guidelines, good industry practice and all applicable Legislation.

1.3 Save as otherwise expressly provided, Viapath shall procure all the staff, equipment and materials required to provide the Services.

1.4 Customer shall send Samples for testing in accordance with the Sample Requirements. Unless otherwise agreed, transport of Samples shall be at Customer's own cost and Viapath accepts no responsibility for Samples until received at Viapath laboratories in accordance with the Sample Requirements. Viapath reserves the right to decline any Sample that does not conform with the Sample Requirements.

1.5 Results will be made available to Customer in hard copy by post or electronically as stated in the Service Specification or as otherwise notified to Customer.

## 2. PRICE AND PAYMENT

2.1 Viapath shall be entitled to invoice the Customer at the end of each month the Prices for Services provided by Viapath in that calendar month. Viapath will provide workload statistics to support all invoices.

2.2 The Customer shall pay the invoices, together with any applicable VAT and without set off or any other deductions, taxes or charges within 30 days of issue.

2.3 Viapath has the right to charge interest on late payment at a rate of 8% above the official dealing rate from time to time of the Bank of England. Invoices paid from outside the UK must be paid by either direct bank transfer or by cheque drawn on a UK branch. All payments shall be made in pounds sterling.

2.4 Prices may be reviewed and adjusted by Viapath with effect from 1 April each year. Reviews shall take into account the annual percentage change in RPIx for the preceding year and other cost factors as determined by Viapath.

## 3. WARRANTIES

3.1 The Customer warrants to Viapath that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Agreement.

3.2 The Customer warrants that it will obtain all patient or other consents and permissions required in accordance with Legislation and good medical practice or otherwise in order to permit the conduct of the Tests on the Samples.

3.3 Viapath warrants to the Customer that it has and will continue to have valid Accreditation for the provision of the Services.

3.4 The Customer acknowledges that, except as expressly provided in this Agreement, Viapath gives no express or implied warranties or representations to the Customer in respect of the Services. In particular, whilst every effort is made to achieve the Turnaround Times for the conduct of Tests, no warranty or guarantee is given that such Turnaround Times will be achieved in any particular instance.

## 4. INDEMNITIES AND LIABILITY

4.1 Nothing in this Agreement limits a Party's liability for fraudulent misrepresentation or for death or personal injury caused by the negligence of that Party.

4.2 Save as in Clause 4.1, Viapath shall not be liable to the Customer for (a) any indirect or consequential loss or (b) any loss of use or loss of profits, business, contracts, revenues or anticipated savings whether arising from tort (including, without limitation, negligence or breach of statutory duty), breach of contract or otherwise.

4.3 Save as in Clause 4.1, Viapath's liability under this Agreement whether in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising shall not exceed the Price paid to Viapath in the 12 months previous to the date of the event (or first series of related events giving rise to such liability) first arose.

4.4 The Customer shall indemnify and hold harmless Viapath and the members of its group and their respective directors, officers, employees and agents, in respect of all liabilities, costs, claims, loss, damage, demands, action and expenses (to include any settlements or ex-gratia payments and reasonable legal and expert costs and expenses) arising directly or indirectly from any breach of paragraph 3.2 above.

## 5. DISPUTE RESOLUTION

5.1 If a dispute arises between the Parties in relation to any matter which cannot be resolved by the nominated contacts on the Customer Creation Form, either of them shall arrange for more senior representatives to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.

5.2 If the meeting(s) referred to in Clause 5.1 does not resolve the matter in question within 30 days of such referral, then any dispute or difference between them may be referred to mediation, another form of dispute resolution or the Courts.

5.3 Nothing in this Clause 5 shall prevent either party applying to court for injunctive or other interim relief or exercising any right to terminate or other right under this Agreement.

## 6. VARIATION

6.1 Viapath may amend these Standard Terms from time to time upon notice to the Customer. If the Customer reasonably considers that it will be materially disadvantaged by such revised terms it may terminate this Agreement upon 30 days' written notice. The Customer shall otherwise be deemed to accept such revised terms 30 days after receiving notice thereof.

6.2 No other variation to this Agreement shall be effective unless agreed in writing by both Parties.

## 7. CONFIDENTIALITY

7.1 Each of the Parties undertakes to keep secret and strictly confidential and shall not use, copy or disclose Confidential Information to any third party, without the other Party's prior written consent provided that the provisions of this Clause 7 shall not apply to any Confidential Information which: (i) is in or enters the public domain other than by breach of the Agreement; or (ii) is obtained from a third party who is lawfully authorised to disclose such information; or (ii) is authorised for release by the prior written consent of the disclosing party.

7.2 Nothing in this Clause 7 shall prevent the Parties from disclosing Confidential Information where required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

7.3 This Clause 7 shall survive expiry or earlier termination of this Agreement and shall remain binding for a period of 6 (six) years following the expiry or termination of this Agreement.



## 8. DATA PROTECTION

8.1 Each Party agrees that in providing the other with information under the terms of this Agreement it is not and will not be, in breach of the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) (EU) 2016/79.

8.2 By entering into this Agreement, the Parties hereby agree that Viapath are the Processor and the Customer is a Controller in accordance with the definitions provided by GDPR guidelines.

8.3 As such, both Parties will comply with their respective duties and responsibilities in accordance with the GDPR Addendum as attached for the duration of this Agreement.

## 9. INTELLECTUAL PROPERTY

The Customer shall have no right or licence to use any Intellectual Property of Viapath. Customer acknowledges and agrees that any Intellectual Property which may arise during the provision of the Services by Viapath shall vest in Viapath.

## 10. FORCE MAJEURE

10.1 The obligations of each Party under this Agreement shall be suspended during the period and to the extent that that Party is prevented or hindered from complying with them by a cause of Force Majeure.

10.2 In the event of either Party being so hindered or prevented, the Party concerned shall give notice of suspension as soon as reasonably possible to the other Party stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that Party to claim suspension. Any Party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than 2 months either Party may terminate this Agreement on 30 days notice.

## 11. TERM AND TERMINATION

11.1 This Agreement shall commence on the Commencement Date and shall continue for the Contract Period and on a rolling basis thereafter, unless and until terminated in accordance with this Clause 11.

11.2 Either Party may terminate this Agreement forthwith by notice in writing if:

11.2.1 the other Party is in material breach of this Agreement and fails to remedy the breach (if capable of remedy) within 30 days of written notice of the breach being given by the terminating party; or

11.2.2 a resolution is passed or an order is made for the winding up of the other Party (otherwise than for the purpose of solvent amalgamation or reconstruction) or the other Party becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the other Party's property;

11.2.3 the other Party ceases or threatens to cease to carry on business in the United Kingdom

11.3 Either Party may terminate this Agreement after expiry of the Contract Period upon giving 60 days' notice in writing to the other Party.

11.4 Without limiting its other rights or remedies, Viapath may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due on the due date for payment.

## 12. ARRANGEMENTS ON TERMINATION

12.1 Termination or expiry of this Agreement for any reason shall be without prejudice to any right or remedy of either Party which may have accrued prior to such termination.

12.2 Upon expiry or earlier termination of this Agreement, Viapath shall continue to be entitled to receive and the Customer shall pay Viapath for any Services provided by Viapath up to and including the date of termination or expiry.

12.3 The provisions of Clauses 4, 7, 8, 9, 12 and 16 or which by their context should survive termination shall survive termination of this Agreement.

## 13. GENERAL PROVISIONS

13.1 Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute either Party as the agent of the other or allow either Party to hold itself out as acting on behalf of the other.

13.2 This Agreement supersedes all previous understandings and negotiations in respect of the Parties' obligations as provided in this Agreement. The Parties acknowledge that in entering into the Agreement neither of the Parties has relied on or shall have any remedy for any representation or statement which is not expressly included in this Agreement. All representations (save in respect of fraudulent misrepresentation), warranties, conditions and other terms whether implied by statute or otherwise which are not expressly included in this Agreement and which might otherwise relate to this Agreement are hereby excluded.

13.3 The failure by any Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

13.4 If any provision of this Agreement is agreed or held to be invalid, unenforceable or void, such provision shall not have the effect of invalidating or rendering void the remainder of this Agreement and the Parties agree that they shall immediately commence in good faith negotiations to vary the terms of this Agreement in order to remedy such invalidity, unenforceability or illegality.

13.5 Neither Party shall assign its rights and obligations under this Agreement or any part thereof without the prior written consent of the other Party such consent not to be unreasonably withheld or delayed, save that Viapath may assign or otherwise transfer its rights and obligations to any affiliate or alternative laboratory with valid Accreditation.

## 14. THIRD PARTY RIGHTS

A person who is not a Party to this Agreement shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 15. NOTICES

Any notice to be given under the Agreement shall either be delivered personally or by post (airmail if overseas) or by email or fax. The address for service of each Party shall be as set out in the Schedule or its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served: if personally delivered, on the day of delivery; if sent by electronic mail, on day the mail was sent; if posted, 48 hours after posting; and if sent by fax, at the time of transmission.

## 16. LAW

The Parties submit to the exclusive jurisdiction of the English courts and, subject to Clause 5, agrees that this Agreement is to be governed and construed according to English law.

# General Data Protection Regulation Addendum (“GDPR Addendum”)

## PART 1

### DEFINITIONS

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

### 1. DATA PROTECTION

**1.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Addendum is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation. In this Addendum, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

**1.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data Controller and the Viapath Analytics LLP is the data Processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Part 2 of this addendum sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

**1.3** Without prejudice to the generality of clause 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.

**1.4** Without prejudice to the generality of clause 1.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Customer unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Provider has provided appropriate

safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this Addendum.

**1.5** The Customer consents to the Provider appointing third party processors to process Personal Data under this agreement. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party’s standard terms of business. As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Addendum

**1.6** Either party may, at any time on not less than 30 days’ notice, revise this Addendum replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## PART 2

### PROCESSING, PERSONAL DATA AND DATA SUBJECTS

#### 1. SCOPE

Viapath Analytics LLP has a contract with the customer for the provision of pathology services.

#### 2. PURPOSE OF PROCESSING

The purpose of the processing of data is to allow for the utilisation of data required as required for the provision of pathology services in compliance with the contract. Data obtained in connection with the provision of pathology services will not be used for any other purpose e.g. marketing.

#### 3. DURATION OF THE PROCESSING

The processing of data is required for the provision of pathology services. Therefore data will be stored for the duration of the provision of pathology services or longer if prescribed by law.

#### 4. TYPES OF PERSONAL DATA

Data which we may hold can include the following:

- Patient data held in the LIMS system for the purposes of pathology services. The data is used to identify the correct patient regarding test results and treatment. Most laboratories use three key identifiers for a patient to ensure the individual has been verified correctly.
- Racial or ethnic origin (e.g. necessary for sickle cell related testing and research).
- GP address.
- Hospital attendants.
- NHS number/hospital number



## 17. DEFINITIONS AND INTERPRETATION

<b>Accreditation</b>	means accreditation by the United Kingdom Accreditation Service (or its subsidiary, Clinical Pathology Accreditation (UK) Limited) or any equivalent or successor accreditation
<b>Agreement</b>	means the agreement between Viapath and the Customer in respect of the Services comprising these Standard Terms, the Customer Creation Form and any Service Specification
<b>Commencement Date</b>	means the date stated on the Customer Creation Form (or where Services had already commenced, the date of commencement of such Services)
<b>Contract Period</b>	means the period specified in the Service Specification or (if none is specified) the duration of provision of the Services
<b>Customer</b>	means the person or entity to whom Viapath has agreed to provide the Services
<b>Customer Creation Form</b>	means the standard Viapath form for new Customers or such other written form as the Parties may use to agree and enter into this Agreement
<b>Confidential Information</b>	means any information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by either Party to the other or by a third party on behalf of a Party including, without limitation, any Personal Data or Sensitive Data (as both terms are defined in the Data Protection Act 1998) relating to a patient or information relating to products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs and including any commercially sensitive Information
<b>Force Majeure Event</b>	means any event beyond the reasonable control of the Party claiming to be subject to the Force Majeure Event including, without limitation, strikes, lock-outs, labour or industrial disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm
<b>Intellectual Property</b>	means patents, trade marks, service marks, trade names, copyright (including rights in computer software and in websites), rights in databases, rights in designs, know-how and all and any other intellectual property as may exist anywhere in the world (in each case whether registered, capable of registration or otherwise) for the full duration of such rights, including any extensions or renewals
<b>Legislation</b>	means any statute, statutory instrument, regulation, applicable directive, by-law, code of practice, Standard or Department of Health or National Health Service guidance, policy or regulation applicable to the provision of Services to Viapath
<b>Party</b>	means any party to this Agreement individually including all permitted assigns and "Parties" refers to all of the parties to this Agreement collectively
<b>Pathology Request</b>	means any form used by the Customer to request a pathology service from Viapath (including by sending a Sample to Viapath) which meets the Sample Requirements
<b>Prices</b>	means the list of Test prices available on request from Viapath and updated from time to time or as set out in the Services Specification
<b>Results</b>	means the results of the Tests carried out by Viapath
<b>Samples</b>	means any and all biological specimens and materials sent by Customer to Viapath for testing
<b>Sample Requirements</b>	means the instructions for sending samples for each test as published and updated from time to time on the Viapath website or as otherwise notified to Customer
<b>Services</b>	means the provision of Tests requested in a Pathology Request submitted by the Customer and accepted by Viapath, and/or such other services as Viapath has agreed to supply to the Customer
<b>Service Specification</b>	means the service specification appended to the Customer Creation Form or otherwise agreed in writing between the Parties
<b>Tests</b>	means the laboratory tests published and updated from time to time on the Viapath website
<b>Turnaround Times</b>	means the estimated turnaround times for Tests as published from time to time on the Viapath website or as otherwise agreed between Viapath and the Customer
<b>Viapath</b>	means Viapath Analytics LLP

In this Agreement:

a reference to a statutory provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (whether before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

clause and schedule headings do not affect the interpretation of this Agreement; words importing the singular only shall include the plural and vice versa; and writing or written includes e-mail;

where there is any inconsistency between the documents comprising this Agreement, the following order of precedence shall apply:

- 1) the Service Specification
- 2) the Customer Creation Form
- 3) these Standard Terms.