

## YOUR PARTICIPATION IN UK NEQAS LI PROGRAMMES WILL BE VIA EQA International Ltd

### Terms and Conditions for the Supply of Services of UK Neqas for Leucocyte Immunophenotyping Programmes Via EQA International Ltd

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions (**conditions**).

**Business Day:** means any day except a Saturday or Sunday or a bank or public holiday in England.

**Buyer:** a non-UK clinical, research, commercial laboratory or a designated distributor which purchases the Services from the Company.

**Charges:** the charges for the Services for one Year as set out in the Specification Sheet.

**Company:** EQA International Ltd is a company registered under the law of England (CRN: 3915340) whose registered office is at Charlotte House, 500 Charlotte Road, Sheffield, South Yorkshire, England, S2 4ER.

**Contract:** is any written or electronic contract between the Company and the Buyer for the provision of the Services, incorporating the Specification Sheet and these conditions.

**Data:** has the meaning set out in condition 7.2.

**EQAS:** External Quality Assessment Scheme.

**Head of Laboratory:** the person stated to be Head of Laboratory of the Buyer in the Specification Sheet (or such other person that the Buyer notifies the Company in writing).

**Programmes:** external quality assessment surveys provided by the Company using the UK NEQAS for Leucocyte Immunophenotyping Scheme (UK NEQAS LI) or any other EQAS provider including the preparation, despatch and analysis of material and samples (as amended from time to time at the sole discretion of the Company).

**Services:** services relating to the provision of Programme(s) by the Company to the Buyer as set out in Specification Sheet. For the avoidance of doubt the company does not sell samples.

**Specification Sheet:** the sales order confirmation issued by the Company to the Buyer setting out the Services to be provided by the Company to the Buyer and the Charges to be paid by the Buyer to the Company.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

**Year:** 1st April to 31st March.

- 1.2 Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender.
- 1.3 Condition headings do not affect the interpretation of these conditions.

- 1.4 Any obligation in the Contract on a party not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. APPLICATION OF CONDITIONS

- 2.1 Subject to any variation the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2 These conditions apply to all the Company's provision of Services and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company that is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3 Each registration or re-registration by the Buyer in connection with the provisions of Services by the Company (in any form or manner whatsoever including, but not limited to, in writing (by letter, fax or email) and/or using the UK NEQAS LI or EQA International Ltd websites) shall be deemed to be an offer by the Buyer to buy Services subject to these conditions. Verbal registrations will not be accepted.
- 2.4 For the avoidance of doubt registration via the UK NEQAS LI or EQA International Ltd websites or by any of the methods deemed as acceptable forms (including the issue of an invoice from EQA International Ltd for EQA services) the basis of a contract and will be binding.

## 3. SERVICES

- 3.1 In consideration of the Company providing the Services to the Buyer, the Buyer shall pay the Charges the Company pursuant to the terms of this Contract and/or shown in an invoice issued by EQA International Ltd.
- 3.2 The Company reserves the right to make any changes in the specification of the Services which are required to conform with any applicable statutory requirements which do not materially affect the nature of the Services. The Company shall in its sole discretion be entitled to amend from time to time the details and content of any of the Programmes. The Company shall use its reasonable endeavours to notify the Buyer in writing as soon as reasonably practicable after any substantive change (for the avoidance of doubt, timings as to the supply of Services are not substantive changes). The Buyer acknowledges that the number of samples set out in the Specification Sheet **is a guide only** and the Company shall in its sole discretion be entitled to change the amount of the samples providing such change does not in the opinion of the Company (acting reasonably) have an impact on the quality assessment of the Buyer being undertaken. For the avoidance of doubt, unless otherwise agreed in writing by the Company, any change in the number of samples shall not reduce the Charges.
- 3.3 Any materials and samples, reports and correspondence shall be sent to the Head of Laboratory of the Buyer (as set out in the Specification Sheet) or to such other person as the Company and/or programme acting reasonably thinks fit provided always that any correspondence from the Programme concerning poor performance or unsatisfactory return rates of the Buyer will be sent directly to the Head of the Laboratory.

- 3.4 Respective reasonable endeavors to resolve any disputes, problems and/or other issues relating to the provision of the Services within a reasonable time of them being raised.
- 3.5 When the Buyer shows poor performance or fails to return results in connection with a Programme, the Company and/or Programme will make informal contact with the Buyer and offer advice to the Head of Laboratory verbally, in writing or, where appropriate, a visit by the Buyer to the UK NEQAS LI may be required (in each case at the cost of the Buyer).
- 3.6 Unless otherwise notified in writing by the Buyer, the Buyer agrees that the Company may send details of any events which are associated with the Services (including any events, seminars and meetings relating to UK NEQAS activities) and/or details of any new Programmes and services provided by the Company.

#### **4. COMPANY'S OBLIGATIONS**

- 4.1 The Company shall use reasonable endeavours to provide the Services to the Buyer in accordance with the Contract and subject to these conditions. The Company shall provide the Services using reasonable care and skill.
- 4.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Company may suspend or cease to provide the whole or any part of the Services without liability to the Buyer and shall not be or deemed to be in breach of this Contract if there is any total or partial failure of performance by it of its obligations under this Contract occasioned by any act of God, fire, act of government or state, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials energy or other supplies, labour disputes of whatever nature and any other reason beyond its control which for the avoidance of doubt includes the inability of UK NEQAS LI to provide services to the Company.
- 4.4 If the Company's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 4.5 If the Buyer suspects a fault with regard to any samples that have been issued as part of the Services, the Buyer shall inform the Company as soon as reasonably practicable (and in any event no later than 7 days after such samples are delivered to the Buyer). In the event that a sample is reissued we are not obliged to cover carriage charges. If any samples are faulty, provided that all charges have been paid to the Company by the Buyer, the Company shall at its option replace such samples and if the Company complies with this condition. It shall have no further liability in connection with such samples.

- 4.6 EQA International Ltd are not liable for any duties, taxes or customs clearance fees incurred in relation to the selected courier service. Any duties, taxes and customs clearances must be dealt with locally.

## 5. BUYER'S OBLIGATIONS

- 5.1 The Buyer shall:

- (a) ensure that the details of its registration or re-registration including the extent of the Services required and details of the Head of Laboratory (including a valid email address) are complete and accurate in all respects;
- (b) provide a valid VAT registration number (where applicable) of the Buyer to the Company;
- (c) pay the Charges together with VAT (if applicable) and any delivery costs to the Company for the Services **on receipt** of the invoice pursuant the Contract;
- (d) treat samples provided by the Company and/or the Programme in the same way as clinical samples;
- (e) co-operate with the Company in all matters relating to the Services;
- (f) provide to the Company, in a timely manner, such material and other information as the Company may reasonably require in relation to the Services; and
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its operation including but not limited to the provision of the Services by the Company.

- 5.2 The Buyer shall not use any Data, other information relating to the Services advertising, promotional or selling materials or publication in any form in relation to the Services without the prior written consent of the Company and/or the EQA programmes.

- 5.3 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

- 5.4 Nothing in this Agreement shall give the Buyer any rights in respect of any copyright, trade names, trademarks, goodwill or any other intellectual property of any nature whatsoever used or owned by EQA International Ltd (and/or UK NEQAS LI) in relation to or associated with the Services (including but not limited to the right to use the name and/or logos 'EQA International Ltd' and/or 'UK NEQASLI' in any form whatsoever).

## **6. CHARGES AND PAYMENT**

- 6.1 The Buyer shall pay the Charges together with VAT (if applicable) and any delivery costs to the Company for the Services on receipt of the invoice pursuant condition 6.
- 6.2 The Company shall invoice the Buyer for the Charges together with VAT (if applicable) and any delivery costs on the date(s) set out in the Specification Sheet and in the absence of any such date(s):
- (a) for Charges for the Services for the entire Year in full on 1<sup>st</sup> April; or
  - (b) for Charges for the Services for part of a Year on the date that the Specification Sheet is issued to the Buyer.
- 6.3 All invoices shall be in either UK pounds sterling (UK£), Euros (€) or US Dollars (US\$) as requested by the Buyer and as set out in the Specification Sheet. All invoices shall be paid in the currency by which the invoice is raised by telegraphic transfer (at the Buyer's expense). Invoices are due for payment upon receipt.
- 6.4 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.5 In the event that the Buyer withdraws from a Programme(s) during the Year and ceases to require Programme samples/surveys for the remainder of that Year, (for the avoidance of doubt) the Company shall be entitled to continue to invoice you for any outstanding Charges in accordance with the Contract notwithstanding that the Company shall not be required to provide the Services. For the avoidance of doubt in no circumstances shall the Buyer be entitled to (and the Company shall provide) a refund in respect of Charges which have already been paid.
- 6.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, without prejudice to any other right or remedy that the Company may have:
- (a) the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the current rate in accordance with EU and UK law from time to time of the Company's bank, accruing on a daily basis until payment is made, whether before or after any judgment provided always that the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) the Company may suspend all Services until payment has been made in full (including interest accrued in accordance with condition 6.6(a)).
- 6.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision. This clause 6.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.8 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

- 6.9 The Company may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Company against any liability of the Company to the Buyer.
- 6.10 The registration period for participation in a Programme(s) is annually from the 1<sup>st</sup> April to 31<sup>st</sup> March (**Year**). In the event that the Buyer joins a Programme(s) part way through the Year the Buyer will be charged at a pro-rata rate for the months that it participates on the basis that if it joins between 1<sup>st</sup> and 19<sup>th</sup> month it will be charged for the full month and that if it joins on or after the 20<sup>th</sup> of the month its registration period begins on the 1<sup>st</sup> day of the month following such registration.
- 6.11 Registration is continuous year to year unless terminated in accordance with clause 9.

## **7. DATA AND CONFIDENTIAL INFORMATION**

- 7.1 Subject to this condition 7 during the term of this Contract and after the termination of this Contract both parties will keep confidential any information relating to the other party's business which it may learn during or prior to the performance of its obligations under this Contract unless it is public knowledge (other than through the other party's fault) or that party has received such information from a third party who is entitled to disclose it or the disclosure of any information as may be required by any law, court order or any governmental or regulatory authority.
- 7.2 The buyer agrees, by registration and payment of invoice, that their identity and any data they submit whilst participating in the EQA programmes can be shared with the EQA provider and no third party unless specifically agreed between the company and buyer.
- 7.3 The Company (and/or UK NEQAS LI and/or other EQA provided) shall be entitled to use, compile, store, record and publish any information, records and data it obtains pursuant to the provision of The Services (**Data**) provided it does not identify the Buyer and the property, copyright or other intellectual property rights in the Data shall belong to the Company (and/or UK NEQAS LI and/or other EQA provider as the case may be).
- 7.4 The EQAS code of the Buyer and the assessment of individual performance of the Buyer is confidential to the Buyer and shall not (without the written permission of the Head of Laboratory) be disclosed by the Company to any third party provided always that such information and details can be disclosed to UK NEQAS LI and/or other EQA provider (and the Buyer hereby agrees to such disclosure).
- 7.5 The Buyer agrees that the identity of the Buyer (including details of Head of Laboratory) and the tests for which the Buyer is registered (but, for the avoidance of doubt, not details of performance) may be released, on request to any health authority (or other relevant authority), hospital and/or other relevant person which is, or may be, relevant to or in connection with the operation of the Buyer.
- 7.6 Either the buyer or the company has the right, under current GDPR legislation, to request any information held can either be disclosed or deleted upon their request following termination of supply of service. The request to delete information during participation will automatically mean that the provision of EQA services will be immediately terminated and any fees will be retained by the company pursuant to clause 6.
- 7.7 The EQA International Ltd Privacy Policy is available upon request: [admin@uknegasli.co.uk](mailto:admin@uknegasli.co.uk)

## **8. LIMITATION OF LIABILITY – THE BUYER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

8.1 Subject to condition 4.5, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of the Contract; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) For death or personal injury caused by the Company's negligence;
- (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation by the Company.

8.4 The Company shall accept liability to the Buyer in respect of damage to the tangible property of the Buyer resulting from the negligence of the Company or its employees, agents or sub-contractors up to a maximum amount of UK pounds sterling two million (GBP £2,000,000) for each event or series of connected events.

8.5 Subject to conditions 8.2 - 8.4 (inclusive):

- (a) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the aggregate amount of the Charges; and
- (b) The Company shall not be liable to the Buyer for any (i) pure economic loss, (ii) loss of profit, (iii) anticipated savings, (iv) loss of business (v) depletion of goodwill or (vi) similar loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- (c) The Company or Programme shall not be liable for death or injury through misuse of the samples once they have been shipped. All samples issued must be handled as being potentially hazardous and in accordance with good laboratory practice and health and safety policies.

## **9. TERMINATION**

9.1 This Agreement shall commence on the date of issue of the Specification Sheet with automatic renewal on the 1<sup>st</sup> of April each year, unless otherwise terminated in accordance with condition 9.2,



and shall continue in force until 31<sup>st</sup> March of the relevant Year (being the Year that that the date of issue of the Specification Sheet falls within).

- 9.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other party immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - (d) the other party has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party;
  - (e) the other party suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - (f) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this condition 9.2; or
  - (h) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.



9.3 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all outstanding Charges; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected conditions 6 - 10 (inclusive) shall survive and continue in full force and effect:

## **10. GENERAL**

- 10.1 The Contract constitutes the whole agreement between the parties in relation to the Services and supersedes all previous agreements between the parties relating to its subject matter.
- 10.2 Subject to conditions 3.2 and 4.3, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 10.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 10.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 10.5 Failure or delay by any party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver of any right under this Contract only applies in the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived in relation to a subsequent event. No failure to exercise or delay in exercising any right or remedy provided under this Contract or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof. No single or partial exercise of any right or remedy under this Contract shall preclude or restrict the further exercise of any such right or remedy. Any waiver of any breach of any provision of the Contract shall in no way affect the other terms of the Contract.
- 10.6 The Company may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company. The Company shall be entitled to perform any of the obligations undertaken by it pursuant to this Contract using a sub-contractor.
- 10.7 Save in relation to UK NEQAS LI or any other EQA provider, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 10.8 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post, by fax or email (with read receipts):
  - (a) (in case of communications to the Company) by post to EQA International Ltd, Pegasus House, 4<sup>th</sup> Floor Suite, 463a Glossop Road, Sheffield S10 2QD, by fax to 0114 2673601 and/or by email to [claire@eqainternational.com](mailto:claire@eqainternational.com) or such other address or number as shall be notified to the Buyer by the Company; or

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- (b) (in the case of the communications to the Buyer) to such addresses and numbers of the Buyer set out in the Specification Sheet or such other address and number as shall be notified to the Company by the Buyer

and communications shall be deemed to have been received:

- (c) if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting);
- (d) if delivered by hand, on the day of delivery; or
- (e) if sent by fax or email on a Business Day at the time of transmission or if not a Business Day on the next Business Day following the date of transmission.

- 10.9 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law only and the parties submit to the exclusive jurisdiction of the English law courts.