TERMS AND CONDITIONS FOR THE SUPPLY OF VETERINARY PATHOLOGY SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8.

1. Interpretation

1.1 Definitions

In these Conditions, the following definitions apply:

Applicable Regulations: Applicable international agreements for the transportation of biological material including ICAO and IATA.

Business Day: A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: Has the meaning set out in Clause 2.2.

Conditions: These terms and conditions as amended from time to time in accordance with Clause 14.4.

Confidential Information: Any information disclosed by a party to the other for use in the Services and identified as confidential before or at the time of disclosure; and any Foreground.

Consents: The consents obtained from Owners as set out at Clause 5.

Contract: The contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: The person acting in a professional capacity or firm, veterinary practice, charity or other organisation who purchases Services from the Supplier.

Customer Default: Has the meaning set out in Clause 4.2.

Deliverables: The report requested in the Submission Form produced by the Supplier for the Customer.

Fee Rates: The charges payable by the Customer for the supply of the Services are available at the Services Website.

Foreground: Individually and collectively all know-how and results conceived and/or made, reduced to practice or learned, by one or more members or agents of the Supplier acting in performance of the Services.

Intellectual Property rights (IPRs): Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Owner: The owner of the animal from which animal Material is derived.

Material: Means the animal biological material to be supplied by the Customer for the purposes of the Supplier providing the Pathology Services and Deliverables.

Pathology Services: Means the provision of histopathology, clinical pathology, post-mortem examinations and any appropriate ancillary tests.

Services: The Pathology Services, including the Deliverables, supplied by the Supplier to the Customer as requested in the Submission Form or any additional services agreed between the Customer and Supplier pursuant to Clause 5.6.

Services Website: https://www.surrey.ac.uk/veterinary-pathology-centre

Submission Form: As available on the Services Website. All requests for services must be made using the relevant form for the service.

Submission Guidelines: As available on the Services Website. All samples must conform to these guidelines.

Supplier: University of Surrey, Guildford, Surrey, GU2 7XH.

Supplier IPRs: Means all IPRs owned or controlled by the Supplier as at the Commencement Date.

VAT: Value Added Tax chargeable under English law for the time being and any similar additional tax.

VetPath Reference Number: A unique identifying code raised by the Supplier on acceptance of the Submission Form.

2. Basis of Contract

2.1 The Submission Form constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Supplier is under no obligation to perform the Pathology Services if the sample is of unsatisfactory quality or does not comply with the Submission Guidelines. The Submission Form shall only be deemed to be accepted when the Supplier generates a VetPath Reference Number, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract between the parties consists of the Conditions, Submission Form, Submission Guidelines and Fee Rates as current at the Commencement Date. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or Services Website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract nor have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer as requested on the Submission Form in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Submission Form,

but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Services will be carried out in accordance with the Submission Guidelines.

3.4 The Materials shall be disposed of in accordance with the Submission Guidelines.

3.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's Obligations

4.1 The Customer shall:

(a) Ensure that any information it provides in the Submission Form is complete and accurate;

(b) Co-operate with the Supplier in all matters relating to the Services;

(c) Obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, including but not limited to obtaining the necessary Consents;

(d) Ensure that all Material is packaged in accordance with Applicable Regulations and is submitted in accordance with Submission Guidelines; and

(e) Ensure that the completed Submission Form is clearly attached to the Materials.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) The Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4.2; and

(c) The Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Consents, Services, Ownership and Re-Use of Materials

5.1 By sending Materials to the Supplier, the Customer warrants that they have obtained the Consent from the Owner for ownership of the Materials to transfer to the Supplier upon receipt of the Material by the Supplier. For the avoidance of doubt, ownership of the Materials will transfer to the Supplier upon receipt of the Material by the Supplier.

5.2 By sending Materials to the Supplier, the Customer warrants that they have obtained the Consent from the Owner for the Services to be carried out on the Materials.

5.3 By sending the Materials to the Supplier, the Customer warrants that they have obtained the Consent from the Owner for disposal of the remains in accordance with the Submission Form and the Submission Guidelines.

5.4 By sending Materials to the Supplier, the Customer warrants that they have obtained the Consent from the Owner for the processing of the Owner's personal data by the Supplier.

5.5 The Customer must inform the Supplier by email to the address indicated on the Submission Form before a VetPath Reference number has been generated, if the Owner does not consent to the re-use by the Supplier of the Materials for teaching and research purposes.

5.6 If the Customer requires additional services to those specified on the Submission Form, or the Supplier advises that additional tests would be beneficial, these will be discussed with the Customer and any additional tests and associated fees will be agreed in advance with the Customer by email. For the avoidance of doubt, any additional services will be supplied subject to these Conditions.

6. Charges and Payment

6.1 The Fee for the Services shall be calculated in accordance with the Fee Rates, as prevailing at the Commencement Date.

6.2 The Supplier shall invoice the Customer on completion of the Services.

6.3 The Customer shall pay each invoice submitted by the Supplier:

(a) Within 30 days of the date of the invoice; and

(b) In full and in cleared funds quoting the VetPath Reference number to National Westminster Bank, Guildford Branch. Sort code 60-09-50, account number 58080716.

Time for payment shall be of the essence of the Contract.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable for the time being. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. Intellectual Property Rights

7.1 The Supplier shall retain ownership of all Supplier IPRs. All IPRs in the results of the Services (including the Deliverables) will be owned by the Customer.

7.2 The Customer shall not misrepresent any views or conclusions reached by the Supplier and expressed in any written report or other written information supplied as part of the Services; and no such views or conclusions, or any such written information may be used in any legal or arbitration proceedings as evidence of the facts or opinions stated by the Supplier.

8. Warranties and Liability: The Customer's Attention is Particularly Drawn to this Clause

8.1 The Customer warrants that it has obtained the necessary Consents.

8.2 The Customer warrants that any description of the Material and any instructions to the Supplier in relation to use, re-use, storage and disposal of the Material shall be accurate, complete and up to date.

8.3 The Customer agrees to indemnify and keep indemnified and defend at its own expense the Supplier against all costs, claims, damages or expenses incurred by the Supplier or for which the Supplier may become liable due to any failure by the Customer or its employees or agents to comply with any of its obligations under this Agreement including those arising from breach of any warranty.

8.4 The Customer accepts that all information supplied by the Supplier to the Customer in connection with the Services is supplied on an 'as is basis' and in good faith and the Supplier gives no warranty and makes no representation as to its fitness for any purpose or that it will solve any problem put by the Customer.

8.5 Nothing in the Contract shall limit or exclude the Supplier's liability for:

a) death or personal injury caused by its or its employees', agents' or subcontractors' negligence; or

b) fraud or fraudulent misrepresentation.

8.6 Subject to Clause 8.5, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits, loss of sales or business, loss of agreements, loss or damage to data, or any indirect or consequential loss.

8.7 Subject to Clause 8.5, the Supplier's aggregate liability to the Customer for all claims, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall not exceed the total monies paid to the Supplier by the Customer in respect of the Services.

8.8 In respect of any loss or damage which in any way arises out of or is connected with the performance or non-performance by or on behalf of the Supplier under the Contract, the Customer agrees that it shall take no action or proceedings against any of the Supplier's employees, students or agents and shall look solely to the Supplier in accordance with this Contract.

8.9 The Customer in entering into the Contract acknowledges and accepts that all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.10 This Clause 8 shall survive termination of the Contract.

9. Cancellation

9.1 Subject to Clause 10, the Customer may cancel a Submission Form at any time and terminate this Contract.

9.2 The Supplier shall be entitled to immediately terminate the Contract in the event that the Customer and/or the Owner behaves in a physically and/or verbally abusive way towards any of the Supplier's staff, agents, students or subcontractors.

10. Consequences of Termination

10.1 On termination of the Contract for any reason:

(a) The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied or in respect of part-performance of the Services but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) The Supplier shall dispose of all Materials in its possession in accordance with the Submission Guidelines;

(c) Where requested and at Customer's expense, any Material will be returned to the Customer according to the Submission Guidelines, subject to the below. Ownership of the Material will transfer back to the Customer upon receipt by the Customer of the Materials, again subject to the below. Such returns and transfers of ownership of the Materials in question may not be legally permissible (e.g. under The Animal By-Products (Enforcement) (England) Regulations 2013) in the case of pathology services commenced before termination of the Contract and all such transfers of ownership and returns will be subject to overriding legal and regulatory obligations incumbent on the Supplier;

(d) The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination of expiry; and

(e) Clauses which expressly or by implication survive termination shall continue in full force and effect.

11. Force Majeure

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to: strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party); failure of a utility service or transport network; act 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; storm; epidemic or pandemic; or default of suppliers or subcontractors.

11.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12. Confidentiality

12.1 In the event of either party (**Disclosing Party**) making available to the other party (**Receiving Party**) (or the Receiving Party otherwise gaining access to) Confidential Information, the Receiving Party shall protect and safeguard such Confidential Information received with at least the same degree of care with which it protects and safeguards its own Confidential Information, which shall be at least reasonable care (to the extent that such Confidential Information is within its control), and not use or disclose such Confidential Information except to the extent necessary for the purpose of the Contract.

12.2 The obligations in Clause 12.1 shall not apply to Confidential Information which the Receiving Party can clearly demonstrate:

(a) was known to it prior to disclosure by the Disclosing Party, or is independently developed or conceived by the Receiving Party; or

(b) was in or enters the public domain through no fault of the Receiving Party or breach by a third party of an obligation of confidence; or

(c) becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure; or

(d) is required to be disclosed pursuant to the requirements of any applicable law or regulation or by order of a Court of competent jurisdiction (to the extent required); or

(e) is required to be disclosed where there are legitimate animal welfare and/or the public interest concerns; or

(f) is required to be disclosed to the Police as part of an investigation.

13. Data Protection

13.1 The parties shall comply with the requirements of all applicable data protection and privacy legislation in force from time to time in the UK including without limitation: the Data Protection Act 2018 (and regulations made thereunder); the UK General Data Protection Regulation (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the Information Commissioner and which are applicable to a party, arising in respect of data processed in relation to performing their obligations under the Contract or otherwise in connection with the Contract.

13.2 The Supplier shall process all personal data in accordance with the privacy notice detailed at https://www.surreyvetpathology.com/privacy-policy

13.3 If either or both parties intend to process any personal data on behalf of the other party, the parties shall enter into an appropriate data processing agreement.

14. General

14.1 **Severance:** If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.2 **Third parties:** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.3 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.4 **Variation:** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

14.5 **Governing law:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

14.6 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).