

DATED

2021

(1) THE DOCTORS LABORATORY LIMITED

and

(2)

(CLIENT / CLINIC)

**AGREEMENT FOR THE PROVISION OF
COVID-19 TESTING FOR THE 'FIT TO FLY'
SCHEME**

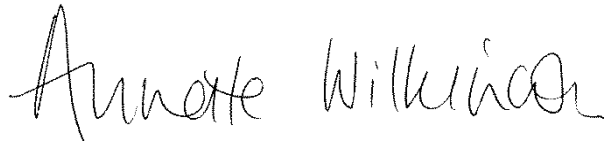
AGREEMENT DETAILS

| | |
|--|---|
| Agreement date: | |
| Client (full company name, company number and registered address): | |
| Client's address for notices: | Name: Title: Email: Telephone: Postal Address: |
| TDL: | The Doctors Laboratory Limited (Company No. 02201998) |
| TDL's registered office: | The Halo Building, 1 Mabledon Place, London, WC1H 9AX |
| TDL's address for notices: | Name: Annette Wilkinson Title: Director of Business Development & Service Email: TDLtravel@tdlpathology.com Telephone: 020 7307 7373 Postal Address: The Halo Building, 1 Mabledon Place, London, WC1H 9AX |
| Services Start Date OR The date the Agreement is entered into by the parties: | / / |
| Notice period: (see clauses 4.2 and 8.1) | 7 days |
| Services: | The Fit to Fly Service, as described in the Services Description, provided by TDL pursuant to the Agreement. |
| Type of test required: | Client to check the box of the type(s) of test requested under this Service: <input type="checkbox"/> Covid-19 PCR testing: RNA testing by PCR or equivalent/NAAT/TMA meeting the Department of Health and Social Care (DHSC) standards for private Covid-19 testing providers (" PCR Test "). <input type="checkbox"/> Covid-19 antibody testing (" Serology Test ") |
| Fees: | The Fees for this Service shall be in line with published or existing fees. |
| Method for TDL to provide Sample Collection Kit: | Sample Collection Kits sent in bulk to the Client, for the Client to send on to travellers. |

- 1 This agreement is made up of the following:
 - 1.1 The Agreement Details.
 - 1.2 The Agreed Terms.
 - 1.3 The Services Description.
 - 1.4 The Annex.
(together the "**Agreement**").
- 2 If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1 above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.
- 3 Except where expressly provided otherwise words and phrases used in the Agreement have the meaning defined in clause 1 of the Agreed Terms.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by ANNETTE WILKINSON for
and on behalf of THE DOCTORS
LABORATORY LIMITED



)
) Director

Signed by:

Signature:

.....)

for and on behalf of:

) Job Title:

.....)

SERVICES DESCRIPTION

I. Services:

- a. TDL is providing the Client with the pathology testing element of the requirements for international travel required by various airlines, ferry services or other methods of travel, and destination countries, or 'Fit to Fly' services (detailed below).
- b. The Test that TDL is providing is the type indicated in the Agreement Details (although the parties may agree that other Tests should be provided). TDL will communicate the results of the Test to the Client as described below.
- c. The Client acknowledges that TDL will not be responsible for assisting travellers with meeting any travel requirements specific to the traveller's destination. The Client will be responsible for meeting such any requirements (to the extent agreed between the Client and the traveller).
- d. TDL will refer the Test to the relevant member of the TDL Group, HSL Analytics (LLP) for PCR Tests (UKAS accreditation number 8059) and Serology Tests (UKAS accreditation number 8169).
- e. The Client shall ensure that all information provided to TDL is accurate and up to date.
- f. TDL has the right to prioritise Priority Testing over this Service, as further set out in clause 3.5. This may impact turnaround times and provision of the Service.

II. Ordering a Test:

- a. The Client shall order Tests through the TDL travel test portal (a '**Pathology Request**'). Requests for travel Tests will only be accepted for analysis when ordered via the TDL travel test portal and accompanied by a TDL travel test portal generated form (a '**Pathology Request Form**'). Any Sample received that has not been requested via the TDL travel test portal and accompanied by a Pathology Request Form will not be accepted for analysis and will be discarded.
- b. The Client shall only send Samples for Testing to TDL using the Sample Collection Kit provided by TDL for that purpose, unless otherwise agreed.
- c. Where a Pathology Request Form sent to TDL does not include the Sample collection date and time, the Test will be rejected and the Sample discarded without analysis.

III. Returning Sample Collection Kits to TDL;

- a. Sample Collection Kits will be returned to TDL by the traveller using tracked 24 mail (in accordance with the instructions provided in the Sample Collection Kit) or alternatively the traveller may make their own arrangements to return the Sample Collection Kit to the address provided on the envelope contained within the Sample Collection Kit.

IV. Reporting Pathology Results to the Client:

- a. TDL will report Test results to the Client using the wording currently used by TDL for clinical or general Testing (a '**Report**'). The Client will be responsible for relaying the Test results using any wording dictated by Applicable Law and government guidance to the traveller and within the timeframe dictated by Applicable Law and government guidance. TDL will not communicate the Test result directly to the traveller.
- b. Where the Client is reproducing a Report, the Client must also include on the reproduced Report a reference to the TDL Group UKAS number using the following wording, as relevant to the type of Test covered in the Report:

- i. PCR Test: 'This assay is UKAS (ISO15189) accredited. Results produced by HSL Analytics (LLP) UKAS no.8059'
- ii. Serology Test: 'This assay is UKAS (ISO15189) accredited. Results produced by HSL Analytics (LLP) UKAS no.8169'

or such other wording as TDL informs the Client from time to time.

- c. TDL will report the Test results to the Client in accordance with the method of communication agreed between the Client and TDL from time to time. The Client will be responsible for ensuring that their contact details are correct.

V. Turnaround times

- a. Subject to clauses 3.4 and 3.6, the turnaround time for a Test conducted on a Sample is:
 - i. 24 hours for a PCR Test; and
 - ii. 24 hours for an antibody Test;

The turnaround time is measured from the time TDL logs the Sample in its laboratory information management system at its Sample reception facility, until the time TDL releases the Test result to the Client in accordance with this Agreement.

VI. Fees

- a. For this Service, the Client will pay a fee that is the most recent price that TDL has communicated to the Client in writing prior to the date of the Pathology Request.
- b. The Client acknowledges and agrees that where the Client requests a PCR Test and a Serology Test for a single traveller, the Client will need to order a separate Sample Collection Kit for each Test requested.

VII. The obligations of the parties

COVID-19 TESTING FOR OUT-BOUND INTERNATIONAL TRAVEL - 'FIT TO FLY'

BACKGROUND: Depending on the ultimate destination and/or any stop-over or transfer site travellers may be required to provide information including evidence of a recent negative Covid-19 test. These requirements vary widely between destinations and carriers (airlines, ferries, Eurostar etc) and TDL takes no responsibility for providing advice or guidance to travellers or Clients regarding these requirements.

The following obligations are included in order for the parties to comply with the responsibilities set out in the government's guidance and the Applicable Law.

| | |
|----------|--|
| 1 | TDL's Obligations: TDL shall fulfil the obligations set out in this table in accordance with Applicable Law and government guidance. |
| 1.1 | TDL shall have a GMC-registered medical director for oversight and approval of medical practices and reporting any medical issues relating to the Testing aspect of the Service and shall have an HCPC-registered healthcare scientist for oversight and reporting any clinical scientific issues relating to the Testing aspect of the Service. |
| 1.2 | Have an effective system of clinical governance in place which includes appropriate standard operating procedures in relation to the carrying out of appropriate tests. |
| 1.3 | Use a Test Device which has a CE marking or UK equivalent (for the avoidance of doubt, this obligation does not apply to the Sample Collection Kit). |

| | |
|-----|---|
| 1.4 | Report to Public Health England or any public health body that takes on the functions of or replaces PHE (collectively PHE) the information, so far as it is known to the operator of the TDL laboratory, which that operator is required to report (as defined in the Applicable Law) and in accordance with the timeframes set out in Applicable Law. |
| 1.5 | Have a system in place to report adverse incidents or quality control issues to the relevant regulatory body, in relation to the Testing only. |
| 1.6 | Hold UKAS ISO 15189 or ISO/IEC standard 17025 accreditation as required by Applicable Law. |

| | |
|----------|---|
| 2 | The Client's Obligations: the Client shall fulfil the obligations set out in this table in accordance with Applicable Law and government guidance. |
| 2.1 | The Client shall have made a declaration to the DHSC that they meet the minimum standards for private sector-provided testing relevant to their practice prior to the date that TDL starts to perform the Services. |
| 2.2 | Ensure that the Client's use of this Service in relation to the relevant traveller is consistent with the Target Product Profile ('TPP') published by the Medicines and Healthcare Products Regulatory Agency for the relevant Tests. |
| 2.3 | Have an appropriately registered clinician for oversight and approval of clinical practices and oversight and reporting of any clinical issues. |
| 2.4 | Have an effective system of clinical governance in place. |
| 2.5 | Tell the traveller's employer, when required, of any positive Test result for Covid-19. The Client must ensure that they have collected sufficient information to allow the Client to make this notification. |
| 2.6 | Have a system in place to report adverse test incidents or quality control issues to the relevant regulatory body with the exception of those involving the Testing aspect of the Service, which TDL will report. |
| 2.7 | Collect the information required under the Applicable Law and promptly provide this to TDL via the TDL travel test portal, or via any other method that TDL reasonably requests. The Client must provide this information to TDL within the timeframes that TDL notifies to the Client from time to time, and in any event in time to allow TDL to meet its reporting obligations to PHE. |
| 2.8 | Comply with all legal and regulatory requirements for sample collection, processing and sharing Test results, including data protection legislation as applicable and/or as set out in this Agreement. |
| 2.9 | Issue the report of the Test and any applicable guidance to the traveller using any notification format and wording dictated by Applicable Law or government guidance. |

| | |
|------|--|
| 2.10 | Any other obligation required by Applicable Law or government guidance in relation to any 'Fit to Fly' for international travel scheme that is not expressly an obligation on TDL set out in this Services Description. |
| 2.11 | Ensure that travellers are aware and understand that they should contact the Client with any comments or queries they have relating to the Service and that travellers should not contact TDL directly with any such comments or queries. |

AGREED TERMS

1 INTERPRETATION

1.1 Definitions:

'Agreed terms' means these terms and conditions set out in clause 1 to clause 20 (inclusive).

'Applicable Law' means the laws, regulations, judgments, binding on the relevant party, as amended from time to time.

'Authorised Sub-Processors' means: a) Health Service Laboratories LLP and any other member of the TDL Group which provides the applicable Test or Service; b) persons who provide information technology services that TDL uses in the course of providing the Services; and c) any Sub-Processor referred to in the Annex.

'Business Day' means a day other than a Saturday, Sunday, or public holiday in England when the banks in London are generally open for business.

'Client' means the client identified in the Agreement Details.

'Consumables' means the Sample Collection Kit and any other commodity provided by TDL in order for the Client to benefit from the Services.

'controller, data subject, personal data, process and processor' have the meanings given to those terms in Data Protection Laws (and terms related to 'process' such as 'processing' have corresponding meanings).

'Data Protection Laws' means the UK GDPR, the Data Protection Act 2018, and any other Applicable Law having effect in the United Kingdom concerning privacy or the use of personal data.

'Data Subject Request' means a request made by a data subject to exercise any rights of data subjects under Data Protection Laws.

'Device' means an in vitro diagnostic medical device within the meaning given in regulation 2(1) of the Medical Devices Regulations 2002.

'Good Industry Practice' means the standard of skill and care reasonably to be expected from a professional provider of the Services.

'Group' in respect of any undertaking, means such undertaking and its group undertakings ('undertaking' and 'group undertaking' having the meanings given in s1161 of the Companies Act 2006).

'Health Authority' means (i) a department of the UK government or of a devolved administration, (ii) an executive agency of such department, or (iii) a body exercising statutory functions in relation to public health in the UK or any part of the UK.

'Laboratory Guide' means TDL's Laboratory Guide current at the date of this Agreement, as supplied to the Client or, if not so supplied, available on request from TDL, including any updates or supplements issued by TDL.

'Pathology Request' means a request for a Test which the Client submits in accordance with the process set out in the Services Description.

'Personal Data Breach' means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data.

'Privacy Notice' means TDL's detailed Privacy Notice available at tdlpathology.com.

'Processing Instructions' has the meaning given to that term in clause 11.2

'Protected Data' means personal data provided to TDL by the Client or a third party on the instructions of the Client, or collected or generated by TDL in the course of the Services.

'Public Health Programme' means a programme administered by a Health Authority to monitor or analyse health data for the purpose of public health or for statistical, scientific or research purposes in the public interest.

'Sample' means a sample provided by the Client to TDL for Testing.

'Sample Collection Kit' means a kit provided to the Client for the Services and used to collect the Samples.

'Sub-Processor' has the meaning given in clause 13.1.

'TDL Group' means The Doctors Laboratory Limited and its Group and Health Service Laboratories LLP and its Group

'Test' means the type of pathology test indicated in the Agreement Details to be carried out by TDL on a Sample, and 'Testing' means the process of conducting that Test and reporting the results to the Client.

'UKAS' means the United Kingdom Accreditation Service, or any successor to it.

1.2 Interpretation:

1.2.1 References to the singular include the plural and vice versa.

1.2.2 Clause headings and paragraph headings are for ease of reference only and are not part of this Agreement for the purpose of construction.

1.2.3 References to paragraphs are to paragraphs of the Schedules, unless otherwise indicated.

1.2.4 Words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, preceding those terms.

1.2.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2 COMMENCEMENT AND TERM

The Agreement shall commence on the Services Start Date and shall continue until terminated in accordance with clause 8.

3 THE SERVICES

3.1 The Services shall consist of:

3.1.1 the services selected in the Agreement Details and described in the Services Description;

3.1.2 such other services as TDL agrees in writing to supply to the Client from time to time.

3.2 The Client shall request the Test by completing and submitting a Pathology Request.

3.3 TDL will provide the Services under the Agreement:

3.3.1 in accordance with Good Industry Practice;

3.3.2 in accordance with the UKAS medical laboratory accreditation standard (ISO 15189); and

3.3.3 using suitably skilled and experienced staff.

3.4 TDL will use reasonable efforts to achieve the Test turn-around times set out in the Services Description. TDL does not warrant that it will achieve Test turn-around times in the case of any particular Sample.

3.5 TDL may prioritise over the Services any laboratory testing services (which are not Tests) provided in relation to medical diagnoses, medical care or treatment which patients are undergoing (not including care or treatment related to the Services) ('**Priority Testing**'). If TDL considers it necessary in order to ensure the provision of Priority Testing by a member of the TDL Group, TDL may:

3.5.1 suspend or restrict the provision of the Services, and/or

3.5.2 extend the Test turn-around times;

and TDL may restrict the supply of the Consumables if it considers this necessary in order to manage stock levels.

- 3.6 The Laboratory Guide sets out Sample rejection criteria. If the Sample meets those criteria, or if TDL considers that the Sample is otherwise unsuitable for Testing (including for any reason set out in the Services Description) or TDL is unable to conduct the Testing then TDL may decline to carry out the Testing under the Agreement and will be entitled to dispose of the Sample.
- 3.7 TDL may destroy or dispose of a Sample after completing the Testing or on termination of the Agreement, unless otherwise agreed in writing with the Client.
- 3.8 TDL shall make reasonable efforts to supply the Sample Collection Kits to the Client in the manner indicated in the Agreement Details.

4 **PRICE AND PAYMENT TERMS**

- 4.1 The fees payable by the Client for the Services will be the fees set out at the Services Description (subject to clause 4.2).
- 4.2 TDL may amend the fees set out in the Services Description by giving the Client prior written notice. The notice period given by TDL will be no shorter than the period specified in the Agreement Details.
- 4.3 As at the date of this Agreement many of TDL's services are VAT exempt. All of TDL's prices are stated exclusive of VAT and where VAT is chargeable on the Services the Client will pay it at the applicable rate.
- 4.4 Invoices are normally issued to the Client on a monthly basis, but TDL reserves the right to issue them more frequently. The Client will pay TDL's invoices within 30 days of the date of the invoice, without any deduction or set off. At TDL's option interest may be charged on late payment at the statutory rate prescribed from time to time by regulations under the Late Payments of Commercial Debts (Interest) Act 1998. Invoices paid from outside the UK must be paid by either direct bank transfer or by cheque drawn on a UK branch. All payments will be made in pounds sterling.
- 4.5 Without affecting any of its other rights, TDL may suspend provision of the Services if the Client fails to pay an invoice due to TDL.
- 4.6 The Client acknowledges that there is no 'fee-to-patient' payment option available for this Service. This means that the Client cannot request that TDL seeks payment from the traveller of the fees owed by the Client in respect of the Test and Sample Collection Kit.

5 **CONFIDENTIALITY**

- 5.1 A party (the "**Receiving Party**") shall hold and maintain the confidence of all information of a confidential nature which it receives from the other party (the "**Disclosing Party**").
- 5.2 The Receiving Party may disclose the Disclosing Party's confidential information:
- 5.2.1 to the employees, officers, representatives, contractors, subcontractors or advisers of the Receiving Party or the Receiving Party's Group who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under or in connection with this Agreement. The Receiving Party shall ensure that its and its Group's employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 5;
- 5.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, or accreditation body; or
- 5.2.3 as necessary for the performance of the Receiving Party's obligations under this Agreement.
- 5.3 The Receiving Party shall not use the Disclosing Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement, or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, or accreditation body.

5.4 The restrictions in clause 5 will not apply to information which: (i) was in The Receiving Party's possession prior to disclosure by the Disclosing Party; or (ii) is now or hereafter comes into the public domain other than by default of the Receiving Party; or (iii) was lawfully received by the Receiving Party from a third party acting in good faith having a right of further disclosure; or (iv) is required by law to be disclosed by the Receiving Party; or (v) which is required by a regulatory or accreditation body to be disclosed to it for the purpose of regulating or accrediting the Receiving Party.

6 CLIENT RESPONSIBILITIES

6.1 The Client will ensure that all necessary consents and permissions are obtained and all necessary information provided to the traveller, which is required under Applicable Law or good clinical practice in order to permit the Testing, and the performance of any other Services, and the use of the Protected Data as contemplated in the Agreement.

6.2 The Client will provide TDL with any information reasonably necessary for performing the Services, including by ensuring that the Pathology Request contains sufficient information regarding the Sample, the relevant traveller, and the Client details of where the results of the Test are to be reported, and will ensure that any information the Client provides to TDL in connection with the Services is accurate and complete.

6.3 The Client will comply with its obligations set out in the Services Description.

7 LIABILITY

7.1 Nothing in this Agreement will limit or exclude liability for death or personal injury caused by negligence or any other liability that cannot be limited or excluded under Applicable Law.

7.2 In this Agreement, 'liability' means any liability whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise, which arises in connection with the Services or under or in connection with this Agreement.

7.3 The aggregate liability of TDL and the Client will each be limited to £2,000,000 in total.

7.4 Neither TDL nor the Client will have any liability for:

7.4.1 loss of profit or revenue;

7.4.2 loss of anticipated savings;

7.4.3 loss of reputation or goodwill; or

7.4.4 indirect, special or consequential loss.

7.5 TDL will have no liability for any delay or failure in performance of the Services arising from the Client's delay or failure in performing its obligations under clause 6.

7.6 All of the warranties which TDL gives in relation to the Services are expressly set out in this Agreement. All other warranties, whether implied or express, are excluded from this Agreement where it is lawful to exclude them.

7.7 In this clause 7 references to TDL include the members of TDL's Group, and for the purpose of the limit in clause 7.3 the liabilities of TDL and the TDL Group Members will be counted in aggregate. The members of TDL's Group may enforce this clause 7.

8 TERMINATION

8.1 Either party may terminate this Agreement for convenience by giving the other party prior written notice of at least the period specified in the Agreement Details.

8.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

8.2.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days of receipt of a notice identifying the breach and requiring its remedy;

- 8.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 8.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to it, TDL may terminate this Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment;
- 8.4 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 8.5 Following termination of this Agreement for any reason TDL may submit its invoice for any Services provided but not yet invoiced up to the date of termination, and the Client shall pay such invoice in accordance with clause 4.
- 8.6 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect, including clauses 7 (LIABILITY), 8 (TERMINATION), 18 (DELETION OR RETURN OF PROTECTED DATA AND COPIES), 19 (PROTECTED DATA THAT TDL PROCESSES AS A DATA CONTROLLER) and 20 (GENERAL).

9 **FORCE MAJEURE**

- 9.1 If the performance of any obligation under the Agreement (except for an obligation to pay) is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of that party obliged to perform it (a "**Force Majeure Event**"), the party so affected will be excused from any resulting failure or delay in performance, and the time for performance will be extended by an amount of time equal to the duration of the Force Majeure Event. The party so affected will use reasonable endeavours to mitigate the effect of the Force Majeure Event on its performance of its obligations. If the Force Majeure Event delays or prevents performance of a party's obligations for more than three months, either party may terminate the agreement on written notice to the other.

10 **DATA PROCESSOR AND DATA CONTROLLER**

- 10.1 When TDL processes Protected Data on behalf of the Client in providing the Services the parties agree that the Client will be the data controller and TDL will be the data processor. The Annex to this Agreement sets out when TDL processes Protected Data on behalf of the Client. Clause 19 describes the circumstances where TDL will use Protected Data on its own behalf as data controller.
- 10.2 When TDL processes Protected Data as the data processor, clauses 11 to 18 (inclusive) will apply in relation to the Protected Data. Where TDL processes Protected Data as data controller, clause 19 will apply instead.
- 10.3 The Client will comply with the Data Protection Laws in relation to the Protected Data, and ensure that all instructions given by it to TDL in respect of Protected Data will at all times be in accordance with Data Protection Laws.

11 DATA PROCESSING INSTRUCTIONS

- 11.1 When TDL processes Protected Data as the data processor, TDL will comply with the obligations of data processors under Data Protection Laws.
- 11.2 Unless required to do otherwise by Applicable Law, TDL will (and will take steps to ensure each person acting under its authority will) process the Protected Data only in accordance with the Client's documented instructions as set out in this Agreement, the Annex and any relevant Pathology Request (the "**Processing Instructions**").
- 11.3 If Applicable Law requires TDL to process Protected Data other than in accordance with the Processing Instructions, TDL will notify the Client of any such requirement before processing the Protected Data (unless Applicable Law prohibits TDL from doing so).
- 11.4 TDL will promptly inform the Client if TDL becomes aware of a Processing Instruction that, in TDL's opinion, infringes Data Protection Laws. TDL will have no liability for any processing in accordance with those Processing Instructions after giving the notice. TDL's obligations under this clause 11.4 do not limit the Client's obligations under clause 10.3.

12 DATA SECURITY MEASURES

- 12.1 In relation to the processing of the Protected Data, TDL will implement and maintain, at its cost and expense, appropriate technical and organisational measures to ensure for the Protected Data a level of security appropriate to the risks presented by the processing, taking into account the state of the art, the cost of implementation and the nature, scope, context and purpose of the processing of the Protected Data as well as the risk of varying likelihood and severity of the rights and freedoms of natural persons.

13 USING STAFF AND OTHER PROCESSORS

- 13.1 TDL will not engage any data processor to process the Protected Data on the Client's behalf (a "**Sub-Processor**") without the Client's authorisation of that specific Sub-Processor. The Client will not unreasonably withhold, condition or delay such consent. By accepting this Agreement the Client authorises the appointment of the Authorised Sub-Processors.
- 13.2 TDL will ensure that each Sub-Processor that is appointed under clause 13.1 is appointed under a contract containing materially the same obligations as clauses 11 to 18 (inclusive).
- 13.3 TDL will ensure that all persons authorised to process Protected Data are subject to a binding obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case TDL will, where practicable and not prohibited by Applicable Law, notify the Client of any such requirement before such disclosure).

14 ASSISTANCE WITH THE CLIENT'S COMPLIANCE AND DATA SUBJECT RIGHTS

- 14.1 Taking into account the nature of the processing, TDL will implement and maintain reasonable measures to assist the Client to respond to Data Subject Requests relating to the Protected Data that TDL processes on the Client's behalf. TDL will refer such Data Subject Requests it receives to the Client promptly, and in any event within five Business Days of receipt of the request.
- 14.2 TDL will provide such assistance as the Client reasonably requires (taking into account the nature of processing and the information available to TDL) to the Client in ensuring compliance with the Client's obligations under Data Protection Laws with respect to: (i) security of processing, (ii) data protection impact assessments (as such term is defined in Data Protection Laws), (iii) prior consultation with the relevant regulator regarding high risk processing, (iv) and notifications to the regulator and/or communications to data subjects by the Client in response to any Personal Data Breach. The Client will pay TDL's charges for providing the assistance in this clause 14, such charges to be calculated on a time and materials basis at TDL's applicable daily or hourly rates in force from time to time.

15 INTERNATIONAL DATA TRANSFERS

15.1 The Client agrees that TDL may transfer Protected Data to countries outside the United Kingdom for the purpose of providing the Services, provided all transfers by TDL of Protected Data to such recipients are in accordance with such safeguards or other mechanism(s) for transfers of personal data as may be permitted under Data Protection Laws from time to time. The Client agrees that TDL may implement such safeguards by entering into standard data protection clauses authorised under the Data Protection Laws, which TDL may do as agent on behalf of the Client. The provisions of clauses 11 to 18 (inclusive) will constitute the Client's instructions with respect to transfers in accordance with clause 11.2.

16 RECORDS, INFORMATION AND AUDIT

16.1 TDL will maintain, in accordance with Data Protection Laws binding on TDL, written records of all categories of processing activities carried out on behalf of the Client.

16.2 TDL will, in accordance with Data Protection Laws, make available to the Client such information as is reasonably necessary to demonstrate TDL's compliance with its obligations as a data processor under this Agreement and the Data Protection Laws, and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose, subject to the Client:

16.2.1 giving TDL reasonable prior notice of such information request, audit and/or inspection being required by the Client;

16.2.2 ensuring that all information obtained or generated by the Client or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the relevant regulator or as otherwise required by Applicable Law);

16.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to TDL's business, the Sub-Processors' business and the business of other customers of TDL.

17 BREACH NOTIFICATION

17.1 TDL will, without undue delay notify the Client of the Personal Data Breach involving the Protected Data, and provide the Client with details of the Personal Data Breach.

18 DELETION OR RETURN OF PROTECTED DATA AND COPIES

18.1 TDL will, at the Client's written request, either delete or return all of the Protected Data to the Client in such form as the Client reasonably requests within a reasonable time after the end of the provision of the relevant Services related to processing, and delete existing copies (unless storage of any data is required by Applicable Law and, if so, TDL will inform the Client of any such requirement). Where TDL will process that Protected Data as data controller under clause 19, TDL may retain the Protected Data.

19 PROTECTED DATA THAT TDL PROCESSES AS A DATA CONTROLLER

19.1 TDL may process Protected Data as data controller in the circumstances and for the purposes set out in TDL's Privacy Notice. In particular TDL may:

19.1.1 retain and submit Protected Data to a Health Authority in the United Kingdom for the purposes of a Public Health Programme operated by that Health Authority, or to regulator for the purpose of complying with regulatory obligations; and

19.1.2 retain and process Protected Data in its laboratory records in order to meet the requirements of the UKAS medical laboratory accreditation standard (ISO 15189) and implement the guidelines of the Royal College of Pathologists for the retention and storage of pathological records and specimens.

19.2 When TDL processes personal data on its own behalf as data controller, it will do so in accordance with the obligations of data controllers under Data Protection Laws and with the applicable terms of the Agreement.

20 GENERAL

20.1 Dispute resolution.

20.1.1 If any dispute arises relating to this Agreement or any breach or alleged breach of this Agreement, the parties will make a good faith effort to resolve such dispute without recourse to legal proceedings. If, notwithstanding such good faith efforts, the dispute is not resolved either party may submit the dispute to the jurisdiction of the English Courts.

20.1.2 Except to the extent clearly prevented by the area of dispute, the parties will continue to perform their respective obligations under this Agreement while such dispute is being resolved.

20.2 **Variation.** Any amendments to this Agreement will not be effective unless in writing and signed by an authorised signatory on behalf of each of the parties. The terms of this Agreement may be varied by agreement of the parties but without the consent of any third party whether or not the rights of such third party are affected by such variation. Notwithstanding the foregoing, TDL may at any time amend this Agreement by written notice to the Client in order to reflect changes to the Applicable Law and government guidance which relate to the Services.

20.3 **Rights and waiver.** All rights granted to either of the parties will be cumulative and not exhaustive of any rights and remedies provided by law. The failure of either party to enforce (or delay in enforcing) at any time for any period any one or more of the terms of this Agreement will not be a waiver of such term or of the right of such party at any time subsequently to enforce all the terms of this Agreement.

20.4 **Severability.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not be in any way affected.

20.5 **Assignment.** TDL may assign or sub-contract the performance of this Agreement (in whole or in part) or any one or more of the Tests to be performed hereunder to suitably accredited laboratories including those listed in the Laboratory Guide. The Client may not assign, transfer, or declare a trust over, this Agreement or any of its rights or obligations hereunder without the prior written approval of TDL.

20.6 **Relationship of the parties.** It is acknowledged and agreed that TDL and the Client are independent contractors and nothing in this Agreement will create or be construed as creating a partnership or (except as provided in clause 15 and the Annex) a relationship of agent and principal between the parties. The Client acknowledges and agrees that, in requesting Services from TDL, it is not acting as agent for any traveller or travellers to which the Services relate.

20.7 Notices.

20.7.1 All notices given under this Agreement will be in writing and will be delivered by hand or sent by prepaid first class post or by prepaid first class recorded delivery or by email transmission. All notices will be delivered at or sent to the postal or email address of the relevant party set out in the Agreement Details (or such other address as that party will notify in writing to the other for this purpose).

20.7.2 A notice sent by post will be deemed to be served at 9.00 am on the second Business Day following the date of posting; a notice sent by email transmission will (provided the sender receives no error message indicating that delivery has been unsuccessful) be deemed to have been served at the time it is transmitted if transmitted within business hours (9.00 am to 6.00 pm, London time) on a Business Day or, if transmitted outside such business hours on a Business Day or on a day which is not a Business Day as soon thereafter as such business hours commence.

20.8 Entire agreement.

20.8.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, terms implied by custom or course of dealing, warranties, representation and understandings between the parties, whether written or oral, relating to its subject matter.

20.8.2 Each party acknowledges that it has not entered into the Agreement in reliance on, and will have no remedies in respect of, any representation or warranty that is not expressly set out in the Agreement except in the case of fraudulent misrepresentation.

- 20.9 **Third parties.** The Agreement is not intended to create any rights for, nor be enforceable by, any third party except as set out in clause 7.
- 20.10 **Governing law and jurisdiction.** The Agreement and any dispute arising out of or in connection with it (including non-contractual disputes and claims) will be governed by and construed in accordance with English law and each of the parties submits to the exclusive jurisdiction of the English Courts.

ANNEX

1 Subject matter and nature of processing

- 1.1 TDL processes Protected Data as data processor on behalf of the Client:
 - 1.1.1 in the case of Testing, when TDL receives a Pathology Request and Sample and processes the corresponding Protected Data to carry out the Test and report the Test results to the Client in accordance with the Client's documented instructions; and
 - 1.1.2 in the case of any other Services, when TDL is required to process the Protected Data on the Client's behalf to fulfil the Client's instructions.
- 1.2 The subject matter and nature of TDL's processing of the Protected Data are:
 - 1.2.1 pathology samples and test results for the purpose of providing clinical pathology services;
 - 1.2.2 information about clinicians who order pathology tests, for the purposes of reporting the Test results to the Client.

2 Duration of processing

- 2.1 The duration of the processing is the time necessary to carry out the Services.

3 Types of personal data

- 3.1 The Protected Data comprise the following types of personal data:
 - 3.1.1 Name
 - 3.1.2 Sex
 - 3.1.3 Date of birth
 - 3.1.4 Home address (including postcode)
 - 3.1.5 NHS Number (if known and applicable)
 - 3.1.6 Address (home address or address being used as residence in the UK, if the traveller is not a UK resident)
 - 3.1.7 Identity numbers assigned by TDL or the Client
 - 3.1.8 Types of pathology tests conducted
 - 3.1.9 Results of pathology tests
 - 3.1.10 The types of data referred to in the TDL Laboratory Guide
 - 3.1.11 Sample type
 - 3.1.12 Sample date
 - 3.1.13 Report date
 - 3.1.14 Clinical details
 - 3.1.15 Requesting clinician details
 - 3.1.16 Information about the Sample and Test

4 Categories of data subjects

- 4.1 The Protected Data concerns travellers in respect of whom TDL conducts pathology Testing, and clinicians who request pathology tests.