



TERMS AND CONDITIONS OF SUPPLY OF HISTOPATHOLOGY SERVICES

This document (together with the documents referred to in it) sets out the terms and conditions on which we supply the histopathology services to you. Please read these terms and conditions carefully. You should understand that by ordering any of our services, you agree to be bound by these terms and conditions.

You should retain a copy of these terms and conditions for future reference. Please understand that if you refuse to accept these terms and conditions, you will not be able to order any services from us.

1. INFORMATION ABOUT US

- 1.1 Source BioScience histopathology services are operated by Source BioScience UK Limited ("SBS") a company registered in England and Wales under registered number 4078501 and whose registered office is at 1 Orchard Place, Nottingham Business Park, Nottingham NG8 6PX.

2. INTERPRETATION

- 2.1 In these conditions of supply the following words will (unless the context otherwise requires) have the following meanings:

"Additional Work" the extra levels and/or immunohistochemistry testing and/or special stains that a reporting consultant histopathologist, acting in accordance with normal industry standards on reporting practice, determines in their sole discretion is absolutely necessary in order to arrive at a definitive diagnosis in respect of a patient case;

"Client" the company, academic institution, hospital, NHS Trust, firm, body or any representative thereof or any other person who submits an Order to SBS to purchase the Services;

"Conditions" the conditions set out below;

"Contract" the contract between SBS and the Client for the supply of the Services comprising these Conditions and any documents referred to in them;

"Materials" those Specimens, Sample Submission Forms and other items which may be supplied by the Client to SBS in respect of the performance of the Services;

"Order" the Clients request for Services through the submission of Materials to SBS from time to time;

"Party" the Client or SBS;

"Parties" means the Client and SBS;



"Personal Data" any data compiled and/or processed by SBS pursuant to this Contract which identifies a living individual;

"Published List Price" SBS standard list prices in respect of the Services which can be obtained by request from SBS at:

- sales@sourcebioscience.com; or
- by telephone at: +44 (0)115 9739012; or
- by post to: Source BioScience, 1 Orchard Place, Nottingham Business Park, Nottingham NG8 6PX.

"Quotation" the quotation (if any) prepared by SBS on the basis of its understanding of the Clients request for Services, outlining the Services to be provided by SBS including a quotation in respect of the prices for the Services, submitted by SBS to the Client prior to the Services being undertaken;

"Requirement" the manner and levels of preparation of the Materials to be provided by the Client to SBS, required by SBS and the reporting consultant histopathologist in order for the Services to be performed in accordance with the warranties herein;

"Report" the diagnostic report following review by a histopathologist if applicable to the requested Services;

"Sample Submission Form" the standard documentation available from the SBS website to be completed by the Client and submitted along with the Specimen to identify the patient, the nature of the specimen and other important relevant medical information needed by SBS and the reporting histopathologist to undertake the Services;

"Services" the Pathology Services to be provided by SBS under the Contract identified more fully within Schedule 1 hereto and the Quotation and such other services which SBS provides, or agrees to provide, to Client;

"SPA" the facility allowing the Client secure and confidential access to their patients Reports via the SBS server;

"Specimen" the patient sample which may include, without limitation, formalin fixed wet specimen tissue, tissue embedded paraffin wax blocks and/or prepared slides, submitted by the Client to SBS for use in respect of the performance of the Services; and

"Working Day" Monday to Friday except Bank Holidays and other public holidays.



- 2.2 Any reference in these Conditions to "writing" or cognate expressions includes a reference to facsimile transmission, email or comparable means of communication.
- 2.3 The headings are for reference only and will not affect the interpretation of these Conditions.
- 2.4 SBS reserves the right at any time without liability to correct any clerical, typographical or other similar errors or omissions made by it.
- 2.5 References to statutes or statutory instruments shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

3. APPLICATION OF TERMS

- 3.1 Subject to clause 3.3, the Contract shall be on these Conditions and they will govern the provision of the Services to the exclusion of all other terms and conditions (including any terms or conditions which Client purports to apply under any purchase order, confirmation order, specification or other document).
- 3.2 No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in any purchase order or other similar document delivered or sent by the Client to SBS will form part of the Contract.
- 3.3 No variation to, waiver of or addition to these Conditions or any representation about the Services will have any effect unless it is expressly agreed in writing and contains a specific reference to these Conditions. Client acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, SBS which is not set out in the Contract. Nothing in this clause shall limit or exclude SBS's liability for fraudulent misrepresentation.
- 3.4 Should there be a conflict between any of the provisions of these Conditions and the provisions of a Quotation (if any), the provisions of these Conditions will prevail.
- 3.5 SBS shall provide the Services when such Services are Ordered by the Client from time to time (in accordance with 4.1 herein) upon the terms and conditions in this Contract and in consideration of the fees payable by the Client.
- 3.6 The Client shall have obtained any necessary consents and permissions required for this Contract to be valid and binding upon the Client and the person placing any Order with SBS shall have ostensible authority to bind the Client in accordance with the terms of this Contract (including, without limitation, those obligations concerned with payment).
- 3.7 SBS shall supply and deliver the Services in accordance with the description of services included hereto as Schedule 1 and the Quotation (if any).
- 3.8 The Client acknowledges and accepts SBS's Requirements which are fully detailed within Schedule 1 hereto.

4. HOW THE CONTRACT IS FORMED

- 4.1 The Client shall provide SBS with an Order for the Services by submitting the Materials to SBS. Each submission of Materials by the Client to SBS will be deemed to be an acceptance by the Client of the purchase of Services subject to these Conditions.

5. THE SERVICES AND THE CLIENTS OBLIGATIONS

- 5.1 The Client:
- 5.1.1 Shall comply with all applicable laws and regulations in respect of its possession of and/or use of Materials and Reports;
- 5.1.2 has obtained all necessary ethical permissions and consents in connection with:
- 5.1.2.1 its submission of the Materials to SBS; and
- 5.1.2.2 SBS's use of the Materials.
- 5.2 Client shall be responsible for ensuring that the Materials are in accordance with any specification agreed between us and the Requirements and in any event are in a condition suitable for use by us SBS in the performance of the Services.
- 5.3 In the event that the Client requests SBS to repeat Services for any reason, Client will be required to meet any additional costs associated with such repeat work.

6. DELIVERY

- 6.1 Unless expressly agreed otherwise, SBS will arrange for the collection of Materials as determined by the Client up to a daily collection on the basis of a minimum of 20 cases or more being available for diagnosis.
- 6.2 The Client will use reasonable endeavours to procure that the Materials are readily available to the courier from a single point within the hospital in time for the courier's collection.
- 6.3 Any times specified or agreed by SBS for the delivery of the Services are given in good faith but are an estimate only. If no time is specified or agreed by SBS delivery will take place within a reasonable time following receipt of Materials. SBS will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services.
- 6.4 Unless expressly agreed otherwise, SBS shall supply Reports, where applicable, by one of the following mechanisms: courier, post, facsimile transmission to the Client's nominated contact and secure facsimile number or by SPA. The Client shall provide SBS with all relevant contact details prior to the commencement of the Services.
- 6.5 Any Materials submitted by the Client to SBS will be returned to the Client by SBS to the designated address by courier within reasonable timescales following completion of the Services.

7. PRICE AND PAYMENT

- 7.1 Unless expressly agreed otherwise in writing by SBS, the Services are supplied by reference to the prices identified in the Quotation prepared and submitted by SBS to the Client in respect of the Services.
- 7.2 Notwithstanding clause 7.1 herein, SBS shall have authority to undertake such Additional Work in relation to a specimen that the Consultant acting reasonably and in accordance with normal industry standards on pathology reporting practice, determines as being necessary for the provision of a definitive histopathology report on the specimen. SBS shall be entitled to charge the Client for any such Additional Work in accordance with its Published List Price as amended from time to time.
- 7.3 SBS shall be entitled to charge its second opinion rates in accordance with its Published List Price for any complex cases submitted by the Client which have already been reviewed and reported by a pathologist who has failed to arrive at a diagnosis. The Client shall disclose any such "Second Opinion" cases to SBS at the time of their submission to SBS.
- 7.4 SBS may invoice the Client for the Services at any time after the completion of the Services.
- 7.5 The Client shall pay the fees for the Services within 30 days of receipt of an invoice from SBS.
- 7.6 All fees are exclusive of VAT, which sum shall be added to the invoice and shall be payable by the Client.
- 7.7 No payment will be deemed to have been received until SBS has received the payment in full in cleared funds.
- 7.8 Time for payment will be of the essence of the Contract and the Client will indemnify SBS against all expenses and legal costs incurred by SBS in recovering overdue amounts.
- 7.9 All payments payable to SBS under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.
- 7.10 The Client will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by SBS to the Client.
- 7.11 If the Client fails to pay SBS any sum due pursuant to the Contract then, without prejudice to SBS's other rights and remedies, Client shall pay interest at 4% over LIBOR to SBS on such sum from the due date for payment at the statutory rate from time to time in force accruing on a daily basis until payment is made in full (whether before or after any judgement).

8. WARRANTIES

- 8.1 SBS warrants (subject to the provisions of this clause 8) that the Services will be performed:
 - 8.1.1 safely and with reasonable care and skill;
 - 8.1.2 using properly qualified and experienced persons; and
 - 8.1.3 in accordance with English law.
- 8.2 If any of the Services do not conform with the warranties set out in clause 8.1 SBS will at its option and cost re-perform such Services or refund the price of such Services at the pro rata contract rate.
- 8.3 Save for the warranty given by SBS at clause 8.1, all warranties, conditions and other terms (whether implied by statute or otherwise) are, to the fullest extent permitted by law, excluded from this Contract.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions excludes or limits the liability of SBS for fraudulent misrepresentation or for any death or personal injury caused by SBS' negligence.
- 9.2 Subject to clause 8 and clause 9.1 SBS will not be liable to the Client in contract, tort (including, without limitation, negligence), misrepresentation or otherwise for any:
 - 9.2.1 economic loss of any kind (including, without limitation, loss of use, profit, anticipated profit, business, contracts, overhead recovery, revenue or anticipated savings);
 - 9.2.2 any damage to the Client's reputation or goodwill; or
 - 9.2.3 any other special, indirect or consequential loss or damage (even if SBS has been advised of such loss or damage) arising out of or in connection with the Contract.
- 9.3 Subject to the provisions of clause 8 and clauses 9.1 and 9.2 SBS's total liability in contract, tort (including, without limitation, negligence), misrepresentation or otherwise arising out of or in connection with this Contract (a "Default") will be limited to the price paid or payable in respect of the Services (or the relevant part of the Services) to which the Default relates.
- 9.4 The provisions of this clause 9 shall survive the termination or expiry (for whatever reason) of this Contract.

10. MATERIALS

- 10.1 SBS will not be liable for any breach by Client of any applicable laws and regulations including, without limitation, Client's failure to obtain any necessary permissions and approvals.

- 10.2 SBS will not be liable for any loss or damage to the Materials unless such loss or damage arises as a direct result of SBS's negligence. Where SBS is liable under this clause 10.2 SBS's liability to the Client will be limited to the lesser of: the sums noted in the limitation of liability set out at clause 9.3; or the actual value of the Materials.
- 10.3 The Client will ensure that the Materials are suitable for use by SBS in the performance of the Services.
- 10.4 Any defect in the Services which is due in whole or in part to defects in the Materials will not entitle the Client to terminate the Contract, reject the Services, make any deductions from the Contract price or claim damages in respect of such defect.
- 10.5 The Client will keep SBS indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by SBS as a result of or in connection with the use of the Materials by SBS in respect of the Services.

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1 SBS and Client shall keep strictly confidential all information concerning the business and affairs of the other together with any information disclosed under the Contract (including, without limitation, patient Materials and information) obtained from the other either pursuant to the Contract or prior to and in contemplation of it, and shall use the same exclusively for the purposes of the Contract and shall disclose the same only to those of its directors, consultants and employees to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Contract.
- 11.2 In carrying out the Services SBS shall at all times:
- 11.2.1 process patient information in accordance with the provisions of this Contract solely for the purposes of the Services as specified in the applicable Sample Submission Form;
- 11.2.2 process the patient information as the Client's 'data processor' (as 'data processor' is defined in the Data Protection Act 1998 (the "DPA") and only process the patient information for the purposes set out in this Contract; and
- 11.2.3 subject to the Client supplying patient information which is compliant in all respects with the DPA (including, without limitation, the eight Data Protection Principles contained in Schedule 1 of the DPA), ensure that all patient information is kept in accordance with the reasonable instructions of the Client.
- 11.3 The Client will keep SBS indemnified in full against all liability, loss, damage, claim, action, demand, expense or proceeding in respect of any breach by the Client of the provisions of clause 11.1.
- 11.4 The obligations of confidentiality shall not apply to information which:
- 11.4.1 SBS can demonstrate was already in its possession and at its free disposal prior to receipt;

- 11.4.2 is subsequently disclosed to SBS without any obligation of confidence by a third party who has not derived it directly or indirectly from the Client; or
- 11.4.3 enters the public domain through no act or default of SBS, its agents or employees.

12. INTELLECTUAL PROPERTY RIGHTS ("IPRS")

- 12.1 The Client will keep SBS indemnified in full against all liability, loss, damage, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any IPRs resulting from any use by SBS of the Materials or any compliance by SBS with the Client's instructions, whether express or implied.

13. TERMINATION

- 13.1 SBS may terminate the Contract immediately if:
- 13.1.1 the Client fails to pay the price on the due date;
- 13.1.2 the Client is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- 13.1.3 there is a material change in the ownership or control of the Client; or
- 13.1.4 the Client is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs in any other jurisdiction.
- 13.2 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 13.3 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

14. ANTI-BRIBERY COMPLIANCE

- 14.1 The Client shall:
- 14.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including to the Bribery Act 2010 ("Relevant Requirements");
- 14.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 14.1.3 comply with SBS's Anti-Bribery Policy which can be requested from our Registered Office as SBS may update them from time to time ("Relevant Policies");
- 14.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure

compliance with the Relevant Requirements, the Relevant Policies and clause 14.1.2, and will enforce them where appropriate;

- 14.1.5 promptly report to SBS any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this agreement;
- 14.1.6 immediately notify SBS (in writing) if a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client, and the Client warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement; and
- 14.1.7 within 2 months of the date of this agreement, and annually thereafter, certify to SBS in writing, signed by an officer of the Client, compliance with this clause 14 by the Client and all persons associated with it under clause 14.2. The Client shall provide such supporting evidence of compliance as SBS may reasonably request.
- 14.2 The Client shall ensure that any person associated with the Client who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in this clause 14. (Relevant Terms). The Client shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to SBS for any breach by such persons of any of the Relevant Terms.
- 14.3 Breach of this clause 14 by the Client shall be deemed a material breach under clause 5.
- 14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 14, a person associated with the Client includes any agent, delegate or subcontractor of the Client.

15. FORCE MAJEURE

- 15.1 SBS will not be liable to the Client or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond SBS's reasonable control including, without limitation, fire, flood, strike or other industrial action of whatever nature. If SBS is unable to perform its obligations under these Conditions it will promptly notify the Client of the nature and extent of the circumstances in question.

16. GENERAL

- 16.1 The Client will not without the prior written consent of SBS assign or transfer the Contract or any part of it to any other person.

- 16.2 SBS may without the prior written consent of the Client assign, transfer or subcontract the Contract or any part of it to any other person.
- 16.3 Each right or remedy of SBS under these Conditions is without prejudice to any other right or remedy which SBS may have under these Conditions or otherwise.
- 16.4 Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.
- 16.5 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, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract shall continue in full force and effect to the fullest extent permitted by law.
- 16.6 Failure or delay by us in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.
- 16.7 A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 These Conditions and any document expressly referred to in them represent the entire agreement between the Client and SBS in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between the Client and SBS, whether oral or in writing.
- 16.9 Client and SBS acknowledge that, in entering into the Contract, neither has relied upon any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between Client and SBS prior to such Contract except as expressly stated in these Conditions.
- 16.10 Neither Client nor SBS shall have any remedy in respect of any untrue statement made by the other whether orally or in writing, prior to the date of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these Conditions.
- 16.11 SBS has the right to revise and amend these Conditions from time to time. Client will be subject to the Conditions in force at the time that it orders Services from SBS, unless any change to these Conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by Client), or if SBS notifies the Client of the change to these Conditions before Client makes an Order.
- 16.12 The Contract and any dispute or claim arising out of or in connection with it or its subject matter of formation (including non-contractual disputes or claims) will be will be governed



by English law. Any dispute or claim arising out of or in connection with the Contract or its formation (Including non-contractual disputes or claims) shall be subject to the non-exclusive jurisdiction of the English courts.

**SCHEDULE 1 - REQUIREMENTS FOR PROVISION OF SERVICES AND CONDITIONS
REGARDING DELIVERY OF SERVICES**

- 1) Unless otherwise arranged, where the Client is submitting pre-prepared GI cases one of the following levels of preparation is required:
 - a) Three sections stained respectively with (1) H & E, (2) Alcian blue combined with PAS or PAS, and (3) Helicobacter stain such as Toluidine blue or modified Giemsa.
 - b) One H & E stained slide plus two unstained slides;
 - c) One H & E stained slide plus the associated block.

In the cases of (b) and (c) a charge will be made to cover the costs of SBS processing the stains indicated in (a) as and where applicable to a given case.

- 2) Where the Client is proposing to submit wet specimen samples
 - a) any high risk samples must be discussed with SBS prior to dispatch;
 - b) the "Cases submitted to SBS form" must be completed and included in the package;
 - c) the "Authorisation to dispose of residual clinical tissues form" must be completed and returned to SBS to confirm your consent for us to dispose of residual tissue in accordance with our CPA approved procedures;
 - d) where the Client is submitting breast samples it is important to include specimen x-rays (where available) and to advise SBS if any of the following prognostic indicators are to be undertaken and reported:
 - i) ER;
 - ii) PR;
 - iii) Her 2;
 - iv) Her 2 and FISH.
 - e) the Client shall ensure that their specimen pots are labelled appropriately and shall confirm whether they would like SBS to return these.
- 3) Where possible, Paraffin block (s) with accompanying section stained with Haematoxin and Eosin shall be submitted for each case.
- 4) SBS requires that Corneal and Colposcopic biopsies are routinely provided with three levels of H & E.
- 5) The original Sample Submission Form or a high quality copy must accompany each specimen.
- 6) In relation to urgent cases, the client should indicate the date required and a telephone contact number and name of contact to which a verbal or faxed report can be sent.

- 7) A proportion of cases will require second opinion or double reporting to concur with industry standards of best reporting practice for example, without limitation, GI tract dyspasia.
- 8) Malignant or skin cancers are all reported to current minimum data set standards and the reports of inflammatory dermatoses are more detailed and complex as this type of case requires a greater degree of interpretation. In relation to skin cases, which may appear straightforward (on the basis of the information available on the original Sample Submission Form) but transpire to be more complex upon diagnosis, SBS reserves the right to upband the case in accordance with the considered advice of the relevant skin specialist. Similarly, cases whose clinical history suggests a diagnosis of a malignancy but upon review prove to be benign will be down-banded in line with the final diagnosis.
- 9) Duty of Care and Audit Services will be conducted in confidence and in accordance with GMC and RCPATH guidelines