

**ALLY HEALTH LIMITED (as “Ally”)  
ONLINE MASTER SERVICES AGREEMENT (the “Agreement”)**

**1. DEFINITIONS**

**“Confidential Information”** means information disclosed by (or on behalf of) one party to the other party in connection with or in anticipation of this Agreement that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be supposed to be confidential. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient or that was lawfully given to the recipient by a third party.

**“Customer’s Materials”** means any materials, systems, computer software, logos or graphic assets provided by the Customer and used directly or indirectly in the supply of the Services.

**“Customer’s Manager”** means the Customer’s manager for the Services, appointed in accordance with clause 5.1.

**“Designs”** means all Documents, packaging designs, instructions for use, test kit designs, and materials developed by Ally or its agents, subcontractors, consultants and employees in relation to the Services in any form, including design files, custom computer software, artwork, and cutting templates (including drafts).

**“Document”** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**“Effective Date”** means the Effective Date of the first Order Form executed between Ally and the Customer.

**“Group Company”** means in relation to each of the parties:

- (a) any parent company of that party; and
- (b) any corporate body of which that party directly or indirectly has control or which is directly or indirectly controlled by the same person or group of persons as that party;

**“Incident”** means a ticket raised and logged with the Ally Service Desk by emailing Ally at support@allyhealth.co.uk

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“In-put Material”** means all Documents, information and materials provided by the Customer relating to the Services, including computer software, data, reports and specifications.

**“IVD”** means an In vitro diagnostics test on samples such as blood or tissue that have been taken from the human body. In vitro diagnostics can detect diseases or other conditions, and can be used to monitor a person’s overall health to help cure, treat, or prevent diseases.

**“Order Form”** means each fully executed Ally order form that incorporates this Agreement and describes the Services to be provided by Ally from time to time as agreed in accordance with clause 3 of this Agreement;

**“Pre-existing Materials”** means all Documents, Designs, information and materials provided by Ally relating to the Services which existed prior to the commencement of the applicable Order Form, including computer software, data, reports and specifications.

**“Product”** means any material, including test kits, sampling kits, medical devices, computer software, systems, instructions for use, provided by Ally or its subcontractors and used directly or indirectly in the supply of the Services.

**“UKAS”** means the United Kingdom Accreditation Service (UKAS) is the national accreditation body for the United Kingdom, appointed by government, to assess organisations that provide certification, testing, inspection and calibration services.

**“Services”** means the services and Products to be provided by Ally from time to time under this Agreement in accordance with the applicable Order Form.

**“VAT”** means value added tax chargeable under English law and any similar additional tax.

1.2 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them.

1.3 References to clauses and schedules are to the clauses and schedules of this Agreement.

## **2. COMMENCEMENT AND DURATION**

2.1 Ally shall provide the Services to the Customer on the terms and conditions of this Agreement and the applicable Order Form.

2.2 Ally shall:

- (a) provide the Services to the Customer from the date specified in the applicable Order Form; and
- (b) subject to clause 11, continue to provide the Services until delivered in accordance with the applicable Order Form.

## **3. ORDER FORM(S)**

3.1 Each Order Form shall form a separate agreement between the Customer and Ally on the terms contained in the relevant Order Form and this Agreement. If any Order Form conflicts with the provisions of this Agreement then (unless expressly stated otherwise in an Order Form) the Order Form shall prevail.

3.2 Once the Order Form has been signed by both parties, no amendment shall be made to it except in accordance with clause 6 below.

#### **4. ALLY'S OBLIGATIONS**

4.1 Ally shall provide the Services to the Customer in accordance with the applicable Order Form with reasonable skill and care and in accordance with generally recognised commercial practices and standards.

4.2 Ally shall provide the Services to the Customer in accordance with specific regulation applicable to providing medical services in the United Kingdom:

(a) Any IVD device supplied by Ally will comply with regulations set out by the Medicines and Healthcare Product Regulatory Agency (MHRA).

4.3 Ally shall use reasonable endeavours to meet project milestones (if any) specified in an Order Form.

4.4 Ally shall deliver all Services from Ally's offices unless otherwise mutually agreed between the parties. If Ally is required to travel to Customer's premises or any other third party premises in order to deliver the Services to Customer, Customer shall be responsible for Ally's reasonable costs as mutually agreed between the parties.

4.5 No conditions, warranties or other terms apply to any Services (including any software) supplied by Ally under any Order Form unless expressly set out in this Agreement or an applicable Order Form. Subject to clause 10.2 (b), no implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

#### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

(a) co-operate with Ally in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;

b) provide, such In-put Material and other information as Ally may reasonably require and ensure that it is accurate in all material respects.

5.2 Subject to prior written approval, Customer shall allow Ally to add Customer (including Customer's logo) as a reference on Ally's website located at [www.allyhealth.co.uk](http://www.allyhealth.co.uk) and in such other media as the parties may agree. Customer agrees to act as a reference for prospective customers of Ally.

5.3 Customer shall comply with all reasonable instructions notified by Ally to Customer from time to time relating to the Services.

#### **6. CHANGE CONTROL**

6.1 If either party requests a change to the scope or execution of the Services in the Order Form Ally shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to Ally's charges arising from the change;
- (c) the likely effect of the change on the applicable Order Form; and
- (d) any other impact of the change on this Agreement.

6.2 If the Customer wishes Ally to proceed with the change, Ally has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Services, the relevant Order Form and any other relevant terms of this Agreement to take account of the change.

6.3 Notwithstanding clause 6.2, Ally may, from time to time on reasonable notice, change the Services in any applicable Order Form in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services or materially adversely affect the Customer.

## **7. CHARGES AND PAYMENT**

7.1 In consideration of the provision of the Services, the Customer shall pay the charges set out in the applicable Order Form in the manner set out in this Agreement and/or the applicable Order Form.

7.2 All charges quoted to the Customer shall be exclusive of VAT, which Ally shall add to its invoices at the appropriate rate.

7.3 All payments due to Ally shall be in pounds sterling.

7.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Ally on the due date, Ally may charge interest at the rate of 2% per annum above the base rate of Barclays Bank PLC from time to time, from the due date until the date of actual payment, whether before or after judgement, on any charges for the Services which is overdue.

7.5 Neither party may set off any payment obligations it may incur under any Agreement against any fees owed and not yet paid by the other party under that Agreement and/or any other Order Form or agreements between the parties.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 Subject to clause 8.2, as between the Customer and Ally, all Intellectual Property Rights and all other rights in the Designs and the Pre-existing Materials shall be owned by Ally. Subject to clause 8.2, Ally licenses all such rights to the Customer free of charge and on a perpetual, non-exclusive, non-transferable, royalty-free worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Designs and the Services.

8.2 The Customer acknowledges that, where Ally does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on Ally obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Ally to license such rights to the Customer or the Customer obtaining a written licence from the relevant licensor or licensors as the case may be.

## **9. CONFIDENTIALITY**

The recipient of any Confidential Information will not disclose that Confidential Information, except to Group Companies, employees and/or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep such information confidential. The recipient will ensure that those people and entities: (a) use such Confidential Information only to exercise rights and fulfil obligations under this Agreement, and (b) keep such Confidential Information confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser, such notice to be sufficient to give the discloser the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure.

## **10. LIMITATION OF LIABILITY**

10.1 This clause 10 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the other in respect of:

- (a) any breach of this Agreement and all Order Forms;
- (b) any use made by the Customer of the Services, Product, the Designs or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement and all Order Forms.

10.2 Nothing in this Agreement or in any Order Forms limits or excludes either party's liability:

- (a) for death or personal injury resulting from negligence; or
- (b) for fraud or fraudulent misrepresentation; or
- (c) misuse of Confidential Information; or
- (d) payment of sums properly due and owing to the other in the course of normal performance of this Agreement and all Order Forms.

10.3 Subject to clause 10.1 and clause 10.2, neither party shall be liable under this Agreement or any Order Form (whether in contract, tort or otherwise) for any:

- (a) loss of profit;
- (b) loss of anticipated savings;
- (c) loss of business opportunity;
- (d) loss of or corruption of data;
- (e) loss or damage resulting from third party claims; or
- (f) indirect or consequential losses;

suffered or incurred by the other party,(whether or not such losses were within the contemplation of the parties at the date of this Agreement).

10.4 Either party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement or any applicable Order Form shall be limited to 125% of the total amount paid and payable by Customer under the applicable Order Form in the prior 12-month period or a maximum of £1,000,000 (one million pounds sterling).

## **11. INDEMNIFICATION**

11.1 Ally shall defend and indemnify Customer against damages arising from a third party claim where there is a finding by a court of competent jurisdiction that the Customer's use of the Product infringes the intellectual property rights of that third party; provided that Customer: (i) promptly notifies Ally in writing of any such action; (ii) grants Ally sole control of the proceedings (including without limitation the right to settle on behalf of Customer); and (iii) cooperates at all times with Ally in connection with its defence at the reasonable expense of Ally.

11.2 If Customer is enjoined from using any Product, Ally shall: (i) obtain the right for Customer to continue to use such Product; or (ii) replace or modify the Product so as to make it non-infringing and substantially comparable in functionality. If after using commercially reasonable efforts Ally is unable to do either (i) or (ii) above, such Product shall be returned to Ally and Ally's sole liability shall be to refund Customer the amount paid to Ally for such item or portion thereof

11.3 Ally will have no obligation to indemnify Customer with respect to any infringement claim based upon: (i) use or modification of a Product other than in accordance with applicable documentation or instructions provided by Ally; (ii) any use of the Product in combination with other Product, technologies or data not supplied by Ally; (iii) any refusal to accept or use suitable modified or replacement Product provided by Ally to avoid infringement; (iv) any Product provided on the basis of the Customer's express instructions or specifications; (v) Customer's failure to comply with the terms

of any license agreement or other licensor or manufacturer requirements applicable to any software or other Product provided by Ally; or (vi) Customer's negligence, breach or wilful misconduct.

## **12. TERMINATION**

12.1 Subject to clause 12.2:

(a) this Agreement shall commence on the Effective Date, and remain in full force and effect until all Order Forms have expired or terminated in accordance with their terms;

(b) Each Order Form shall commence on the Order Form Effective Date and shall remain in full force and effect until all Services are delivered or terminated as determined by Ally.

12.2 Subject to clause 12.3, the termination or expiration of an Order Form shall not terminate any other Order Form or this Agreement unless the parties expressly agree otherwise in writing.

12.3 Without prejudice to any other rights or remedies which the parties may have, either party may suspend or terminate this Agreement and/or a Order Form without liability to the other immediately on giving notice to the other if:

(a) the other party fails to pay any amount due under this Agreement or any Order Form on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

(b) the other party commits a material breach of any of the terms of this Agreement or a Order Form and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(c) the other party enters into an arrangement or composition with or for the benefit of its creditors, goes into administration, receivership or administrative receivership, is declared bankrupt or insolvent or is dissolved or otherwise ceases to carry on business; or

(d) any analogous event happens to the other party in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

12.4 On termination of this Agreement or a Order Form by the Customer, Customer shall in accordance with the terms set out in clause 7 pay Ally all of Ally's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Ally may submit an invoice, which shall be payable within 30 days of receipt.

12.5 On termination of this Agreement or an Order Form by either party:

(a) the Customer shall if requested by Ally, within a reasonable time, return all of Ally's Designs and Pre-existing Materials.

(b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **13. EMPLOYEE NON-SOLICITATION**

13.1 Unless otherwise agreed in an Exhibit, during the term of any Order Form hereunder and for one (1) year thereafter, each Party agrees not to solicit or recruit for employment any employee of the other Party, provided that this shall not prevent employees from responding to publicly advertised roles where they have not been targeted or invited to apply by the other Party. If either Ally or the Customer commits any breach of this Section 13, the breaching Party shall, on demand, pay to the claiming Party a sum equal to one year's basic salary that was payable by the claiming Party to that employee plus the recruitment costs incurred by the claiming Party in replacing such person.

## **14. GENERAL**

14.1 Neither party will be liable for any delay or non-performance of its obligations under this Agreement or any Order Form to the extent that such delay or non-performance is a result of any

condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labour conditions, power failures, and Internet disturbances.

14.2 No variation of this Agreement or any Order Form shall be valid unless it is in writing and signed by or on behalf of each of the parties.

14.3 Failure or delay in exercising any right or remedy under this Agreement or any Order Form shall not constitute a waiver of such (or any other) right or remedy.

14.4 If any provision of this Agreement or Order Form (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement or Order Form as applicable, and the validity and enforceability of the other provisions of the Agreement or Order Form as applicable shall not be affected.

14.5 This Agreement and the applicable Order Form constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement and the applicable Order Form. In entering into this Agreement or any Order Form neither party has relied on any statement, representation or warranty not expressly set out in this Agreement or any Order Form.

14.6 Except as expressly stated otherwise, nothing in this Agreement or any Order Form shall create or confer any rights or other benefits in favour of any person other than the parties to this Agreement and Order Form.

14.7 Except as expressly stated otherwise, nothing in this Agreement or any Order Form shall create an agency, partnership, or joint venture of any kind between the parties.

14.8 Neither party may assign any of its rights or obligations under this Agreement or any Order Form without the prior written consent of the other such consent not to be unreasonably withheld save that either party can assign to any of its Group Companies without the consent of the other.

14.9 All notices must be in English, in writing, addressed to the other party's primary contact and sent to their then current postal address or email address or other address as either party has notified the other in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable).

14.10 This Agreement and all disputes and claims arising out of or in connection with it are governed by English law. With the sole exception of any application for injunctive relief, the parties irrevocably submit to the exclusive jurisdiction of the English courts.

14.11 Both parties agree that, for a period of one year following the termination of this Agreement, Contractor will not directly or indirectly:

- induce, solicit, entice or procure, any person who is an Ally Health employee to leave such employment, where that person is an Ally Health employee during the term of this Agreement;

14.11.1 Customer acknowledges and agrees that in the event that Customer breaches this obligation, Customer shall pay Ally Health a sum equal to 6 months of the total compensation paid to the Ally Health employee.