

ESPA Research Limited

Laboratory address:

ESPA Research (ESPA Research)
The Robert Luff Laboratory,
Unit 133I Business & Innovation Centre (BIC)
Sunderland Enterprise Park, Wearfield,
Sunderland SR5 2TA, UK

Registered Office:

2A Hylton Park Road, Sunderland SR5 3HD, UK
Company Registration: 6862992
ESPA Charity Number: 1037868

TERMS AND CONDITIONS OF BUSINESS

1. INTRODUCTION

Each contact between us, ESPA Research Ltd (“ESPA Research” or “the Company” or “we” or “us”) and you (the “Client” or “you”) for the performance of work, hereinafter referred to as the “Services”, will automatically incorporate these terms and conditions which will prevail over any terms and conditions stipulated or referred to by you (unless the same are specifically agreed to by us in writing) and is hereinafter referred to as the “Agreement”. No variations or amendments will be binding on us unless confirmed by us in writing. These terms and conditions are designed for the benefit of the Client and the Company to establish a clear understanding about services, responsibilities and fees in all foreseeable situations. They are intended to cover a wide variety of commissions with which we may be entrusted. Placing an order for Services will be construed as an acceptance of these terms and conditions. Acceptance by you of any tender made by us

will not in itself constitute a contract. The definitions which shall apply to these Terms and Conditions are set out in section 12.

2. THE SERVICES

2.1.

ESPA Research warrants to the Client that:

- (a)** its Services will be provided with reasonable skill and care and in accordance with the standard operating procedures and quality assurance standards set by ESPA Research; and
- (b)** the people providing the Services will be suitably skilled and experienced in the techniques used to provide the Services.

2.2.

The Client acknowledges that, except as expressly provided in this Agreement, ESPA Research gives no warranties or representations to the Client (whether express or implied) in respect of the Services. In particular whilst every effort is made to achieve the turn-around times quoted by ESPA Research for the conduct of Tests, no warranty or guarantee is given that such turn-around times will be achieved in any particular instance. Except in cases of death or personal injury, the Company's total liability to the Client whether for negligence, breach of contract or otherwise shall in no circumstances exceed the charges payable by the Client for the Services.

2.3.

The Client shall supply ESPA Research with such information as ESPA Research may require concerning the Samples supplied by the Client and the persons from whom they were taken to enable ESPA Research to conduct the Tests and to report thereon. ESPA Research will accept no responsibility for any error or defect in a Test or Sample thereon consequent upon any inaccuracies in or omissions from such information supplied by the Client nor for any consequences of such errors or defects.

2.4.

Upon completion of a Test, the Sample and any associated information pertaining to the Sample may be securely stored at ESPA Research under the regulations laid down by the

Data Protection Act regarding confidentiality and good practice, and used thereafter for research purposes specified by ESPA Research. In such cases, all reasonable caution will be exercised regarding the confidentiality of the Client's patients, and should any of the said research be used as part of a formal or informal research submission, all identifiable details of the Client and their patients will be omitted from any final publication. The Company shall also be entitled to destroy all Samples received from the Client or derived from these Samples together with any associated outcomes or other documentation at a suitable time decided by the Company unless otherwise agreed in writing between the Company and Client.

3. CHARGES

3.1

An estimate of our charges and related expenses (the "Charges") for Services will remain valid for three months from the date of submission. It is not to be constructed as an offer to perform the Agreement within a fixed period or at a fixed price.

3.2

The Charges cover all consultant time spent on the Agreement whether at the Company's premises or elsewhere. Fees are not incurred for absence due to illness or voluntary leave.

4. EXPENSES

4.1

Unless otherwise stated, we shall be entitled to be reimbursed all reasonable expenses, including those of our staff arising and properly incurred in the execution of the Agreement. Such expenses will include Hotel and travelling expenses, use of a car, long distance telephone charges, *etc.*

5. PAYMENTS

5.1.

The price for the conduct of Services shall, unless otherwise agreed, be as specified between ESPA Research and the Client. In the event of any change in price, reasonable notice will be provided by ESPA Research to the Client not less than 14 days.

5.2.

All fees must be paid during the month following the submission of our invoice and account, which will be issued either monthly or quarterly until completion of the Agreement and will detail the Charges and expenses incurred. All payments should be made in pounds sterling to ESPA Research unless otherwise stated by ESPA Research.

5.3.

A balancing invoice or credit note (as applicable) will be issued on completion of the Agreement. All Charges payable under this Agreement are inclusive of Value Added Tax (VAT) and any other relevant taxes. We shall be able to charge interest, (both before and after judgement/arbitration award) at the rate of 5% above the base rate of Barclays Bank Plc on all sums due that have been outstanding for one calendar month.

5.4.

We are entitled to make an additional charge for extra work, which arises as a result of: -

- (a)** Changes in the Client's instructions after commencement of the Agreement;
- (b)** Making suitable alterations to an approval, specification, project or design;
- (c)** Any other cause beyond our reasonable control.

5.5.

No modifications or alterations to Services may be made without any prior consent. Any modifications or alterations shall only be carried out by or under our supervision and if they result from change or changes to the Agreement shall be paid for at a rate agreed by us in advance.

6. CONFIDENTIALITY

6.1.

Each party agrees to keep secret and confidential all information supplied by the other which relates to the other's intentions, product methods, business organisation, finance, transactions or affairs which is designated as confidential in writing at the time of supply or with 14 days thereafter.

6.2.

ESPA Research agrees that it will hold and maintain the confidence of all confidential information of the Client and their patients which is received by ESPA Research from the Client in connection with the Services and will not disclose such information other than to its professional staff, persons delegated by the Client, delegated persons within ESPA Research and/or persons to whom it has delegated the performance of the Tests and who require the information for such purposes.

6.3.

The restrictions in paragraph 6.1 shall not apply to information which: *(i)* was in ESPA Research's possession prior to disclosure by the Client; or *(ii)* is now or hereafter comes into the public domain other than by default of ESPA Research; or *(iii)* was lawfully received by ESPA Research from a third party acting in good faith having a right of further disclosure; or *(iv)* is required by law to be disclosed by ESPA Research.

7. OWNERSHIP OF RESULTS AND/OR PUBLICATIONS

7.1.

Unless otherwise specifically agreed in writing and provided payment in full under this Agreement has been made, the results of the Services (hereinafter referred to as the "Results") shall be the joint property of the Company and the Client.

7.2.

Upon completion of the Services, any sample/s and related information and Results from such Services may be securely stored by the Company under the regulations laid down by the Company regarding confidentiality and good practice, and used thereafter for research purposes specified by the Company. Where the Results have been published or have

become public knowledge, the Company shall at any time be entitled to use these Results free of charge in the pursuit of its research activities.

7.3.

If payment under this Agreement in accordance with Clause 5 is not made, the Company may treat the Results as its own (not as joint property) and be free to use or otherwise exploit the said Results within the rules laid down by the Company to be covered by the Data Protection Act.

8. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise specifically agreed in writing nothing in this Agreement shall affect the ownership of Intellectual Property Rights existing prior to the date of the Agreement. In the event that Intellectual Property Rights (including patent, copyright, design or trade mark rights) shall be created or arise during the period of the Agreement then the Company will assume full and sole ownership of such Intellectual Property Rights.

9. THIRD PARTY RIGHTS

You shall indemnify us and keep us fully indemnified in respect of all financial liability (including professional costs and legal fees) arising out of any claim made against us alleging misuse of third party rights, including without limitation any rights in respect of confidential or trade secrets, patent, copyright, design registration, design right or other intellectual property rights or title arising from any material, work or services supplied to us by you.

10. FORCE MAJEURE

If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reasons of circumstances beyond the reasonable control of that party obliged to perform it (including, without limitation, flood, fire, storm, strike, lockout, sabotage, terrorist act, civil commotion and government intervention), the party so affected shall (upon giving prompt notice thereof to the other party) be excused from performance to the extent only of the prevention, restriction or interference, provided

always that the party so affected shall use all reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance as expeditiously as possible as soon as such causes can and have been removed.

11. GENERAL

11.1. Relationship of parties

It is acknowledged and agreed that ESPA Research and the Clients are independent contactors and nothing in this Agreement shall create or be construed as creating a partnership or a relationship of agent and principal between the parties.

11.2. Governing Law

This agreement shall be governed by and construed in accordance with English law and each of the parties submits to the exclusive jurisdiction of the English Courts.

11.3 Dispute resolution

- (a) If any dispute arises relating to this Agreement or any breach or alleged breach of this Agreement, the parties shall 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 Court.
- (b) 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.

11.4 Data Protection

Each party will comply with its obligations under the Data Protection Acts of 1984 and 1998 including notification with the Information Commissioner's Office if so required under UK legislation.

11.5 Variation

Any amendments to this Agreement shall not be effective unless in writing and signed by an authorised signatory on behalf of the Company and the Client. A person who is not a party to the Agreement has no right under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy

of a third party which exists or is available apart from this Act. 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.

11.6 Rights and waiver

All rights granted to either of the parties shall 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 of more of the terms of this Agreement shall not be a waiver of such terms or of the right of such party at any time subsequently to enforce all the terms of this Agreement.

11.7 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 affected in any way.

11.8 Assignment

ESPA Research reserves the right to assign or sub-contract the performance of this Agreement (in whole or part) or any one of more of the Tests to be performed hereunder to suitably accredited laboratories. The Client may not assign this Agreement or any of its rights or obligations hereunder without the prior approval of ESPA Research.

12. INTERPRETATION

In these Terms and Conditions:

“this Agreement” means the contract between ESPA Research and the Client for the supply of Services, incorporating these Terms and Conditions.

“Client” means the person or organisation to whom ESPA Research has agreed to provide Services

- “Company”** means ESPA Research
- “Sample”** means a sample provided by the Client to ESPA Research for investigation.
- “Services”** means the conduct of Tests offered by ESPA Research submitted by the Client and accepted by ESPA Research and/or such other Services as ESPA Research has agreed to supply to the Client.
- “Test”** means a specific laboratory test agreed to be carried out by ESPA Research on a Sample supplied by the Client.

END