



Proficiency Testing (PT) Schemes

Standard Terms and Conditions for the 'Supply of VETQAS® PT Services'

These Terms and Conditions may only be varied with the written agreement of APHA.

1.1 In this Agreement the following words shall have the following meanings:

Acknowledgement of Order. The document setting out the Customer's requirements for the supply of Services (paper or electronic copy).

Agreement. The agreement between the Secretary of State and the Customer as evidenced by this document and comprising the Order and these terms and conditions.

Background IP. Intellectual Property arising before commencement of or acquired in parallel with carrying out of the Services, other than Foreground IP, belonging to either of the Parties or, for which either of the Parties has the necessary rights and is entitled to use or disclose for the purposes of the Services, and which is necessary or may be useful in carrying out the Services.

Business Day. A day (other than a Saturday or Sunday) on which banks in the city of London are generally open for business.

Confidential Information. Any information given to or obtained by APHA under this Agreement relating to the Services.

Customer. The person(s), firm or company to whom this Agreement is issued.

Foreground IP. Any Intellectual Property obtained, found, produced, devised, developed, or generated in the course of the carrying out of the Services.

Intellectual Property. Any patent, copyright, design right, registered design, trademark or service mark, trade name, Know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, domain name or Know-how and any application for any of the foregoing and any similar rights in any jurisdiction.

Parties. APHA and Customer.

Party. APHA or Customer.

Secretary of State. The Secretary of State for Environment, Food and Rural Affairs acting through the APHA.

The Services. The VETQAS® services to be supplied by APHA to the Customer as specified in the Acknowledgement of Order and includes materials, articles and goods to be supplied.

Know-how. Includes all information, biological substances, organisms and materials (whether patentable or not), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.

APHA. The Animal and Plant Health Agency, acting on behalf of the Secretary of State.

QAU. Quality Assurance Unit.

VETQAS®. A registered trademark owned by APHA under which APHA provides its PT services.

1.2 Clause headings are included only for the convenience of the Parties and do not effect interpretation.

2. The Services

2.1 No order for the supply of Services is binding on APHA or the Secretary of State unless and until it has been accepted by APHA in writing.

2.2 The Services to be provided and the dates and amount of payment are set out in the Acknowledgement of Order. In carrying out the Services APHA undertakes to the Customer that it shall: -

2.2.1 use its reasonable endeavours to undertake the Services in accordance with and within the time period set out in the Acknowledgement of Order in accordance with best scientific practice and at all times exercising all reasonable skill and care;

2.2.2 devote the efforts of suitably qualified and trained employees and provide all necessary facilities to carry out the Services;

2.2.3 keep detailed records of all research and other work done in carrying out the Services in accordance with best scientific practice;

2.2.4 provide the Customer with a report of the results of the Services which shall be sent to the nominated representative(s) of the Customer;

2.2.5 keep and maintain in its own archive all data, records and results generated from the Services for a period of at least one year following completion of the Services.

2.3 APHA cannot undertake to provide services of this type for the Customer alone.

2.4 All equipment, accessories (except those owned and provided by the Customer) and all materials and samples used for the purposes of the Services shall remain the property of APHA.

2.5 The schemes are dependent on the sourcing of sufficient suitable material. Lack of availability of material may lead to delays in published schedules or cancellation of the Services. Such lack of availability of material shall be deemed an event of Force Majeure and shall be treated in accordance with Clause 9.

3. Warranties and Indemnities

3.1 The Customer warrants that all information provided by it or on its behalf to APHA will be full and accurate.

3.2 The Customer warrants that the any Know-how supplied by APHA under this agreement will only be used for PT purposes by the Customer in its laboratory under suitable containment conditions by trained laboratory personnel.

3.3 The Customer shall indemnify and keep indemnified on a full and unqualified basis APHA, the Secretary of State and the Crown against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage or injury to any person or to any property incurred by the reason of:

3.3.1 any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services;

3.3.2 any negligence, breach of Agreement, breach of statutory duty or other wrongful act or omission on the part of the Customer.

3.4 The Customer will hold APHA indemnified against any claim made against it as a result of any tort committed by its employee whilst on APHA premises.

3.5 In the event of any breach or breaches of this Agreement by APHA, the Secretary of State, APHA or the Crown shall not be liable to the Customer in respect of any resulting: -

3.5.1 loss of profit, business, revenue, goodwill or anticipated savings;

3.5.2 indirect or consequential loss or damage.

3.6 The aggregate liability of APHA, the Secretary of State or the Crown to the Customer arising out of any breach or breaches of this Agreement shall not exceed the total amount payable by the Customer to APHA in accordance with the Agreement and in any event shall not exceed £100,000.

4 Use of APHA name

4.1 Participation in a scheme grants a licence to the Customer for the use of the following phrase, which must be smaller and less prominent than the Customer's name and logo. "This laboratory participates in the Animal and Plant Health Agency Proficiency Testing Scheme for..." Followed by the full name(s) of the scheme(s) and the participating year".

4.2 Any other use of the APHA name by the Customer must be approved in writing by the APHA Head of Commercial Department and in accordance with Clause 7.1.

5. Confidentiality, Freedom of Information and Data Protection

5.1 APHA shall not without the Customer's written consent disclose to any person other than the nominated representative(s) of the Customer or use otherwise than for the purpose of carrying out the Services: -

5.1.1 The results obtained except in the anonymous report sent to all members of the scheme and published in accordance with clause 8.2; or

5.1.2 any secret or confidential information before or after the date of this Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:

- (i) is acquired from the Customer or is specific to the Customer's business;
- (ii) has not been developed or generated independently by APHA; or
- (iii) has not been in APHA's possession prior to acquisition from the Customer; or
- (iv) is not in the public domain at the time of disclosure to APHA or at any time after its disclosure to APHA, through no breach of this Agreement by APHA; or
- (v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.

5.2 The Parties acknowledge that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2018, or any other applicable legislation governing access to information, the Parties may be obliged to provide information, on request, to third Parties that relates to this Agreement.

5.3 To the extent that APHA get access to any personal data from the Customer or during the provision of the Services (where personal data is defined in the Data Protection Act 2018) the Customer agrees that APHA act as a data processor (as defined in the Data Protection Act 2018) for such personal data. APHA will process such personal data only in accordance with this Agreement and the Customer's reasonable instructions.

5.4 Should the Customer become aware of a third party laboratory's participant identification number, other than directly from that third party, the Customer shall immediately inform APHA and shall keep this information confidential.

6. Payments

6.1 Payments are specified in the Acknowledgement of Order and are payable in advance, immediately on receipt of invoice, and in **UK Pounds Sterling (GBP£)**.

6.2 The charges quoted in this Acknowledgement of Order are exclusive of VAT unless specified to the contrary.

6.3 If there is more than one Party providing finances for the Services, APHA's agreement to provide the Services is conditional upon agreement being reached with all Parties.

6.4 Payment shall be made by the Customer within 28 days of receipt of the invoice, in **UK Pounds Sterling (GBP£)**.

6.5 Payment may be made:

6.5.1 payment and remittance details should be sent to -

APHA, c/o SSCL Finance, PO BOX 843, York, YO31 6EP, UK or email Credit-Control.aph@gov.sscl.com Cheques should be crossed and made payable to APHA. Please note your customer number and invoice number on the reverse.

In case of query please call: +44 (0) 1633 631800

6.5.2 by BACS in **UK Pounds Sterling (GBP£)**.

Account name: **Animal and Plant Health Agency**
Bank name: **National Westminster Bank PLC**
Bank address: **Government Banking Service Branch, 2nd Floor 280 Bishopsgate, London, EC2M 4RB**
Bank Sort Code: **60-70-80**
Bank Account Number: **10004718**
Swift/ BIC Code: **NWBKGB2L**
IBAN: **GB28NWBK60708010004718**
VAT number: **GB 888 8001 81**

6.5.3 by credit/debit card. Cards accepted are Visa, MasterCard and Maestro.

To make credit/debit card payments please call: +44 (0)1633 6318000

6.6 If payment is made by cheque, it must show the UK Bank Sort Code. If payment is made by BACS, a remittance advice should be sent by the customer to SSCL and must contain invoice number.

7. Publication and Public Interest

7.1 The results of the Services may be freely published by the Customer, but any mention of APHA, VETQAS® or the Secretary of State or Defra must be approved in advance in its context by APHA, and the Customer will not make any reference to APHA, VETQAS® or the Secretary of State without obtaining such approval. Notwithstanding the provisions of this clause 7, the Customer shall have the right to use and/or publish any reports and results generated in carrying out the Services in support of submissions to the regulatory authorities.

7.2 APHA may publish the anonymous results of the Service for bone fide scientific publication purposes only.

7.3 In the event that the Services yields Foreground IP or other information ("material") that reasonably gives serious concern for public health or animal health or welfare of the UK animal sector then such material shall forthwith be brought to the attention of the Customer who shall, insofar as it is reasonably able, jointly with APHA, do such things as are reasonably deemed necessary to rectify those factors identified by APHA as giving rise to such concern. In the event that APHA is of the opinion that the Customer is not taking all reasonable steps to rectify such factors as aforesaid APHA shall so notify the Customer whereupon the Customer and APHA shall use their best endeavours to

agree such reasonable steps as ought to be taken. In the event that APHA and the Customer are unable to agree, APHA shall be entitled to release such information that gives rise to such concern as it deems proper (notwithstanding the provisions of Clause 5 hereof) but shall, prior to such release, give the Customer the option to jointly issue such information with APHA.

8. Intellectual Property Rights

8.1 Subject to any third Party rights other than by virtue of this Agreement, any Foreground IP, including but not limited to any patentable discovery, shall belong to the APHA.

8.2 All Background IP shall remain vested in the Party to whom it belonged at the commencement of this Agreement. No licence is granted or implied to either Party's Background IP except as explicitly set out in this Agreement.

8.3 All Know-how supplied may **only** be used for the purposes supplied and must be safely destroyed or returned to APHA within one calendar month of issue.

8.4 If the Customer wishes to use the Know-how supplied by APHA for any other purpose other than the specific PT purpose, for example in a commercial setting to help use or validate a commercial test, the Customer will promptly notify APHA in writing. APHA agrees to give due consideration to a request for a non-exclusive, royalty bearing licence to allow such commercial use.

9. Force Majeure

9.1 Force Majeure shall include but is not limited to any riot, strike, lockout, national emergency, terrorist event, outbreak of contagious or other notifiable human or animal disease and other events, which are beyond the reasonable control of either Party.

9.2 Neither Party shall be liable for delay in performing or failure to perform obligations under this Agreement if the delay or failure results from events or circumstances of Force Majeure. Such delay or failure shall not constitute a breach of this Agreement and the Parties may agree on a plan of action to ensure delayed performance or terminate the Agreement with immediate effect, whichever is appropriate in the circumstances.

10. Termination

10.1 This Agreement may be terminated by APHA or the Customer on giving two months written notice. On receipt of written notice of termination, APHA shall cease carrying out the Services unless the Customer shall notify APHA that any part of the Services should be completed. In the event of termination of the Agreement as a whole, or withdrawal from one or more schemes, by the customer no refund will be given. In the event of termination by APHA, refund of payment will be made on a pro rata basis in respect of the services paid for but not delivered.

10.2 Either Party may terminate this Agreement forthwith by written notice given to the other where: that other Party commits a breach of this Agreement which the Party serving the notice reasonably considers is not capable of remedy; or that other Party has continued in any breach of this Agreement for more than 30 days after being warned in writing of such breach.

10.3 APHA may terminate this Agreement forthwith by written notice given to the Customer if:-

10.3.1 the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or

10.3.2 the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or

10.3.3 the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.

11. Effect of termination

11.1 Termination of this Agreement shall not affect:

11.1.1 any obligation or liability of any Party which has accrued at the date of termination; or

11.1.2 any of the provisions of the Agreement which are intended to continue to have effect after the Agreement has been terminated.

11.2 Upon termination of this Agreement APHA or the Secretary of State may set off against any debt owed by the Customer to APHA or the Secretary of State, or the amount of loss and/or damage APHA or the Secretary of State have reasonably assessed as resulting from the termination of the Agreement any sums otherwise due to the Customer.

12. Assignment

12.1 The Customer shall not assign or sub-contract this Agreement or any part of it without prior consent of APHA in writing.

12.2 The Secretary of State and/or APHA may at any time, on written notice to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.

13. Waiver and variation

13.1 No delay by the Secretary of State or by APHA in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.

13.2 No waiver by the Secretary of State or by APHA of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

13.3 Any variation of any provision of this Agreement must be effected in writing and issued by APHA. No purported variation by any other means shall bind the Secretary of State or APHA

14. Subcontracting

14.1 APHA shall be free to subcontract or otherwise deal with the whole or any part of the Services.

14.2 Various aspects of the proficiency testing schemes may at times be subcontracted. When this occurs it is placed with a competent subcontractor and the APHA Quality Assurance Unit is responsible to the scheme participants for the subcontractor's work.

15. Legal Relationship

15.1 Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the Parties or have the effect of making any employee of the Customer a servant of the Secretary of State, APHA or the Crown or of making any official of the Secretary of State or APHA an employee or servant of the Customer.

15.2 Neither of the Parties shall act nor describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

15.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not give any person who is not a Party to it any right to enforce any of its provisions.

16. Severability

If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

17. Notices

Any notices to be issued shall be in writing to the Parties' representatives as identified in the Acknowledgement of Order and if sent by prepaid first class post shall be deemed to be served on the second Business Day after posting.

18. Jurisdiction and governing law

This Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.

VETQAS Proficiency Testing Schemes – Conditions

The supply of samples and analysis of results by the APHA Quality Assurance Unit (see list of Proficiency Testing (PT) Schemes on webpage) cannot be taken to imply any form of approval of a participating laboratory or its procedures.

Registration

Is on an annual basis commencing on 1 April each year and terminating on 31 March the following year. Participants are required to renew participation in the Scheme each year otherwise its subscription will be terminated. If a participant joins part way through the annual period, a reduced fee is payable. Re-registration for the Schemes starts in January every year.

Confidentiality

All results are confidential. The identity of participating laboratories is known only by the APHA Quality Assurance Unit. Each laboratory is given a unique and confidential code number; this number or details of the laboratory's performance are never revealed to other individuals or organisations without written agreement. For a group of laboratories (within the same organisation or under the same ownership) arrangements can be made for managers to be informed of the individual laboratories results/identities. This would only occur with written permission of all parties.

Complaints and Appeals

The APHA Quality Assurance Unit operates an Appeals procedure and also a complaints procedure that corresponds with the Citizens Charter. Any problems will be handled in accordance with official procedures.

Suitability of Specimens

Situations may arise when the results show there is doubt of the quality / suitability of the specimen batch sent from the QAU. In this case the whole distribution may be declared void and the participating laboratories will be informed. Arrangements will then be made to repeat the test with modifications to overcome any problems.

Repeat Specimens

Repeat specimens are available (unless in short supply) to allow laboratories to investigate causes of unsatisfactory performance.

Methods of Testing

Participants should process PT samples in the same way as their routine samples. This is necessary to achieve the primary purpose of the schemes, which is to allow participants an insight into their levels of performance in routine testing work.

Different methods of testing may produce different results. It is the responsibility of the Customer to decide on the suitability of the Scheme for their laboratory.

Safety

Specimens may contain pathogens of hazard group 1 or 2 as classified by the Advisory Committee on Dangerous Pathogens (2004) "The Approved List of biological agents". Participants must ensure that their laboratory facilities and expertise are adequate to ensure the safe handling and disposal of these organisms.

APHASPTT&C January 2020

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APHA is an Executive Agency of the Department for Environment, Food and Rural Affairs and also works on behalf of the Scottish Government, Welsh Government and Food Standards Agency to safeguard animal and plant health for the benefit of people, the environment and the economy.

