

## TERMS AND CONDITIONS – SUPPLY OF SERVICES

### 1. INTERPRETATION

#### 1.1 **Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.7.

**Contract:** the contract between Oncimmune and the Customer for the supply of Services which incorporates these Conditions.

**Customer:** the person or firm who purchases Services from Oncimmune and to whom Oncimmune has agreed to provide Services.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Oncimmune:** together Oncimmune Limited, a private limited company incorporated under the laws of England and Wales (Reg. No. 04606727) having a registered place of business at Clinical Sciences Building, City Hospital, Hucknall Road, Nottingham NG5 1PB and Oncimmune (USA) LLC, a company incorporated under the laws of the State of Kansas, USA having a registered place of business at 8960 Commerce Drive, Building #6, De Soto, KS 66018.

**Oncimmune Material:** all materials, equipment, documents and other property of Oncimmune provided to the Customer including, but not limited to, Standard Operating Procedures, manuals, brochures, publications, educational material and content from Oncimmune's website.

**Order:** the Customer's order for Services as notified to Oncimmune or as set out in each of the Customer's shipping manifests which accompany Samples at the time of delivery.

**Sample:** a blood sample taken from an individual for purposes of the Test and

performance of the Services.

**Services:** EarlyCDT-Lung testing services which are to be performed on a Sample and agreed to be carried out by or on behalf of Oncimmune whereby Samples received for a Test have been handled and processed in accordance with Oncimmune's appropriate Standard Operating Procedure.

**Standard Operating Procedure:** Oncimmune's standard operating procedures regarding blood sample collection, processing and shipping requirements (which may vary according to the Sample country of origin) as provided to the Customer by Oncimmune and as may be amended by Oncimmune from time to time upon written notice to the Customer.

**Test:** the EarlyCDT-Lung test to aid in the risk assessment and early detection of lung cancer in moderate and high risk patients and to stratify indeterminate pulmonary nodules for the risk of malignancy.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. **BASIS OF CONTRACT**

2.1 The sending of a Sample to Oncimmune by the Customer constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Oncimmune accepts delivery of the Sample at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Subject to clause 2.6 and price the Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Oncimmune which is not set out in these Conditions.

- 2.4 Any samples, drawings, descriptive matter or advertising issued by Oncimmune, and any descriptions or illustrations contained in Oncimmune's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Oncimmune shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 Each time the Customer requests that Oncimmune perform Services it confirms it is capable of complying and will comply with the Standard Operating Procedures.

### **3. SUPPLY OF SERVICES**

- 3.1 Oncimmune shall use all reasonable endeavours to meet any performance dates as may be agreed from time to time between the parties for the provision of the Services, but any such dates shall be estimates only and time shall not be of the essence.
- 3.2 Oncimmune shall have the right to make any changes to the Services and/or the Standard Operating Procedures which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 3.3 The Services will be provided using reasonable care and skill and carried out by persons of reasonable skill and experience.
- 3.4 Subject to clause 3.5 Oncimmune gives no warranties or representations to the Customer (express or implied) in respect of the Services or the Test. In particular, whilst every effort is made to achieve the turn-around times as agreed between the parties from time to time for the provision of the Services, no warranty or guarantee is given that such turn-around times will be achieved in any particular instance.
- 3.5 Notwithstanding clause 3.4, Oncimmune warrants that the Test is a reasonably effective aid in the risk assessment and early detection of lung cancer in moderate and high risk individuals.
- 3.6 Upon completion of a Test and performance of the Services the Sample relating to each Contract may be destroyed or disposed of by Oncimmune unless otherwise agreed between the parties.

#### 4. CUSTOMER'S OBLIGATIONS

##### 4.1 The Customer shall:

- (a) ensure that the Sample(s) are handled in accordance with Oncimmune's Standard Operating Procedures as provided by Oncimmune to the Customer from time to time;
- (b) ensure that all Samples are taken from individuals whom a medically qualified Doctor has authorised as being suitable for the Test;
- (c) remain responsible or ensure a medically qualified Doctor remains responsible for clinical management and follow-up of all persons for whom Samples are taken;
- (d) co-operate with Oncimmune in all matters relating to the Test and the Services;
- (e) provide Oncimmune, its employees, agents and consultants with such information and materials as may reasonably be required in order to supply the Services, and ensure that such information is accurate in all material respects;
- (f) remain responsible for all costs associated with ensuring the Sample(s) are transported to Oncimmune's designated testing facility, including any necessary consumables, courier, shipping and handling costs and any applicable customs, duties and excise tax;
- (g) comply with all relevant laws, regulations and guidelines applicable to the jurisdiction in which it is situated (including any applicable data protection laws) for the collection of Samples being referred for the Services including their shipment to Oncimmune;
- (h) obtain all consents and permissions required (whether by law (including under the data protection legislation), good medical practice or otherwise) in order to permit the conduct of the Services on the Samples;
- (i) ensure all Samples have been allocated and labelled with a unique identification number and each Sample is listed in anonymised form within a shipping manifest to enable Sample traceability. The Customer shall not provide personal information (as defined in the Data Protection Act 1998) to Oncimmune for the purposes of the Services;
- (j) make no statement or representation, written or oral regarding the Test other than those statements or representations authorised by Oncimmune (see <http://www.earlycdt-lung.co.uk>) or otherwise agreed in writing by Oncimmune;
- (k) only market and offer the Test to individuals satisfying the risk entry criteria detailed in but not limited to Oncimmune's Dr FAQs as may be updated and amended from time to time (current version available at: [---

Oncimmune Ltd \(Reg No: 04606727\)](http://www.earlycdt-</a></li></ol></div><div data-bbox=)

[lung.co.uk/learn-more/brochures\\_for\\_medical\\_professionals](http://lung.co.uk/learn-more/brochures_for_medical_professionals));

- (l) make it known to individuals requesting the Services that in the event of a moderate or high level result they may require further testing such as a CT scan which if residing in the UK may or may not be available via NHS funding;
  - (m) notify Oncimmune as soon as reasonably possible and in any event within five (5) Business Days of becoming aware of any adverse matter regarding the Services and/or the Test including but not limited to:
    - (i) customer complaints regarding the Services and/or the Test,
    - (ii) any malfunction or deterioration in the characteristics and/or performance of the Test,
    - (iii) any inadequacy in the labelling or instructions for use, or
    - (iv) any medical concern connected with the characteristics or performance of the Test; and
  - (n) keep and maintain all Oncimmune Materials at the Customer's premises in safe custody at its own risk and in good condition until returned to Oncimmune and not dispose of or use Oncimmune Materials other than in accordance with Oncimmune 's written instructions or authorisations.
- 4.2 If Oncimmune's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) Oncimmune shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Oncimmune's performance of any of its obligations;
  - (b) Oncimmune shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Oncimmune's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse Oncimmune on written demand for any costs or losses sustained or incurred by Oncimmune arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

5.1 Oncimmune shall invoice the Customer monthly in arrears for each Test reported at the price agreed between the parties from time to time.

5.2 The Customer shall pay each invoice:

- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Oncimmune.
  
- 5.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of United Kingdom value added tax chargeable for the time being (**VAT**) if applicable. Where any taxable supply for VAT purposes is made under the Contract by Oncimmune to the Customer, the Customer shall, on receipt of a valid VAT invoice from Oncimmune, pay to Oncimmune such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. For the avoidance of doubt, under the current laws of England and Wales VAT is not normally charged on Tests reported to a Customer outside the United Kingdom.
  
- 5.4 If the Customer fails to make any payment due to Oncimmune under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  
- 5.5 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Oncimmune may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Oncimmune to the Customer. In the event that a withholding or deduction is made or required by law (including without limitation any tax, duty or impost) the Customer shall ensure that the amount actually received by Oncimmune after any withholding or deduction is not less than the amount Oncimmune would have received had no withholding or deduction occurred. Both Oncimmune and the Customer will use best endeavours, to the extent permissible by law, to minimise the amount any withholding or deduction (if any).
  
- 6. **INTELLECTUAL PROPERTY RIGHTS**
  
- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services, the Test and Oncimmune Materials shall be owned by Oncimmune.
  
- 6.2 The Customer acknowledges that Oncimmune is the proprietor or exclusive licensee of certain Intellectual Property Rights regarding the Test and the Services. Customer acknowledges that any attempt by it or a third party with whom it conducts business to use Oncimmune's Intellectual Property Rights including to produce a test substantially similar to the Test and/or the Services may infringe Oncimmune's Intellectual Property Rights.

- 6.3 All Oncimmune Material is the exclusive property of Oncimmune. The Customer shall not adapt, amend or reproduce any Oncimmune Material without the prior written consent of Oncimmune or use Oncimmune Material other than as authorised by these Conditions. The Customer shall at all times acknowledge Oncimmune's trademarks relating to the Test and the Services.

7. **CONFIDENTIALITY**

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and are disclosed to the Customer by Oncimmune, its employees, agents or subcontractors, and any other confidential information concerning Oncimmune's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Customer may also disclose such of the Oncimmune's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 Nothing in these Conditions shall limit or exclude Oncimmune's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1 and 3.5:
- (a) Oncimmune shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) Oncimmune's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed One Hundred Thousand Pounds sterling (£100,000).
- 8.3 Subject to clause 3.4 the terms implied by sections 3 to 5 of the Supply of Goods and

Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

9.1 Without limiting its other rights or remedies, Oncimmune may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so; or
- (b) the Customer's financial position deteriorates to such an extent that in Oncimmune's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without limiting its other rights or remedies, Oncimmune may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under any contract between Oncimmune and the Customer on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

## 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Oncimmune all of Oncimmune's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Oncimmune shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all Oncimmune Materials. If the Customer fails to do so, then Oncimmune may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.



## 11. **FORCE MAJEURE**

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Oncimmune including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Oncimmune or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2 Oncimmune shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

## 12. **GENERAL**

### 12.1 **Assignment and other dealings.**

- (a) Oncimmune may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Oncimmune, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 12.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am (local time) on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Oncimmune.

12.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).