

FARADAY VETERINARY NEUROIMAGING

THE SUPPLY OF TELERADIOLOGY SERVICES - CONDITIONS

This Contract is made up of the Commercial Terms and the Conditions. If there is any conflict between the terms of these documents, the Commercial Terms shall have priority.

This Contract has been entered into on the date on which the Customer has agreed to be bound by its terms in writing or by ticking a box confirming that it intends to be bound by the terms.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Charges"	the charges payable by the Customer for the supply of the Services by the Supplier, as agreed by the parties.
"Commercial Terms"	The commercial terms document agreed between the parties.
"Conditions"	these terms and conditions set out in clause 1 (Interpretation) to clause 11 (General) (inclusive).
"Contract"	the contract between the Customer and the Supplier for the supply of the Services in accordance with the terms of any Request, these Conditions, and the Commercial Terms.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression "change of control" shall be construed accordingly.
"Customer"	The Customer identified in the Commercial Terms.
"Customer Materials"	Each MRI Scan and all materials and data supplied by the Customer to the Supplier.
"Deliverables"	The Report and such other deliverables as are agreed within the Commercial Terms.
"Intellectual Property Rights"	patents, 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.

"MRI Requirements"	The requirements set out in Clause 5.
"MRI Scan"	An MRI Scan which meets the MRI Requirements.
"Report"	The report produced in the course of the Services.
"Request"	A request for the supply of Services.
"Services"	the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in the Commercial Terms.
"Services Start Date"	the day on which the Supplier is to start provision of the Services, as agreed within the Commercial Terms.
"Supplier"	Animal MRI Limited (Company number 14914104) whose registered office is 96 High Street, Crediton, Devon, England, EX17 3LB.
"Supplier IPRs"	all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.
"Supplier Representative"	Philippa Johnson.
"System"	The telemedicine referral feature of the Timeless Veterinary Platform provided by Timeless Veterinary Inc or such other system as the Parties may agree.

1.2 Interpretation:

- 1.2.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes fax and email.

2. COMMENCEMENT AND TERM

The Contract shall commence on the date set out in the Commercial Terms and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 1 months' written notice to terminate, expiring on or after the first anniversary of the Services Start Date.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.
- 3.2 In supplying the Services, the Supplier shall perform the Services with reasonable care and skill, using reasonable endeavours to perform the Services in accordance with the service description set out in the Commercial Terms. The Supplier shall comply with all applicable laws and regulations from time to time in force however shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- 4.1.1 Provide a MRI Scan which accords with the MRI Requirements as a DICOM format file or such other form as is set out within the Commercial Terms;
- 4.1.2 co-operate with the Supplier in all matters relating to the Services; and
- 4.1.3 provide, in a timely manner, such information as the Supplier may require, and ensure that it is accurate and complete in all material respects.

4.2 The Supplier warrants and represents that it is appropriately qualified to undertake the treatment of the animal in respect of which the MRI Scan relates and complies with all applicable laws, regulatory requirements and professional standards which apply in respect of such treatment.

4.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier:

- 4.3.1 shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 4.3.2 shall be entitled to payment of the Charges despite any such prevention or delay;
- 4.3.3 shall be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay; and
- 4.3.4 may contact the Customer to inform them of the nature of the omission in order for them to correct it.

4.4 The Supplier shall not be liable for any error or inaccuracy within the Report to the extent that it is caused by a failure of the Customer to comply with the Customer Obligations or a failure or error of the System.

4.5 Where the Supplier has identified that any report is supplied on an interim or initial basis, the Customer shall not make any clinical decision based on such Report until the Supplier has confirmed that the Customer may do so.

4.6 The Supplier may (but shall not be obliged to) submit a follow on or supplemental report at any time after submission of a Report if it considers it appropriate to do so.

5. MRI REQUIREMENTS

5.1 The MRI Requirements are as follows:

- 5.1.1 The MRI Scan shall be:
 - (a) produced in accordance with best industry practice;
 - (b) of adequate diagnostic quality and include the region of neurological localization, or clinical relevance;
 - (c) undertaken by properly trained and certified personnel of the Customer;
 - (d) in respect of domestic feline and canine species unless otherwise agreed in advance;

- (e) accompanied by the following information, together with such other information as is set out in the Commercial Terms.
 - (i) Patient and owner identification;
 - (ii) Signalment: species, age, breed, sex, neutering status, weight;
 - (iii) Study: Region (Brain, C1-T2, T3-L3, L3-CD);
 - (iv) Presenting complaint/ clinical history;
- (f) produced using a properly maintained and calibrated MRI scanner;
- (g) properly uploaded to the System.

6. PURCHASING SERVICES

- 6.1 If the Customer wishes to access the Services the Customer shall place a Request with the Supplier through the System. Each Request shall be deemed to be a separate offer by the Customer to purchase Services on the terms of this Contract. The Customer shall comply with clause 4.1 in submitting any Request.
- 6.2 Subject to clauses 6.4 and 6.5 or unless the Supplier declines the Request in accordance with clause 6.3 below, the Supplier shall use reasonable endeavours to produce the Report within the time frame set out in the Commercial Terms.
- 6.3 The Supplier may decline a Request by notifying the Customer in writing within such time following receipt of the Request as is set out in the Commercial Terms.
- 6.4 The Supplier may, by giving written notice to the Customer, give advance warning that the Supplier will be unavailable for such time as the Supplier stipulates in their notice and shall be deemed to have declined all Requests received during such period.
- 6.5 The Supplier's liability in respect of the Customer's actual losses as a result of a failure to use reasonable endeavours to produce the Report within the agreed timeframe shall be limited to the value of the Charges payable for that Report.
- 6.6 The Supplier shall assign a reference number to each Request received from the Customer and notify such reference numbers to the Customer. Each party shall use the relevant reference number in all subsequent correspondence relating to the Request.
- 6.7 A Customer may not amend or cancel the Request without the Supplier's consent.

7. INTELLECTUAL PROPERTY AND DATA PROTECTION

- 7.1 The parties shall comply with all applicable rules relating to data protection. The Supplier shall process personal information in accordance with its privacy policy.
- 7.2 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 7.3 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of the Contract. The Customer may not publish or otherwise reproduce any part of the Report or the Deliverables without written consent of the Supplier.

7.4 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the purpose of:

- 7.4.1 providing the Services to the Customer in accordance with the Contract;
- 7.4.2 maintaining records to investigate or defend against or respond to any future claims or regulatory action; or
- 7.4.3 academic study and research, teaching and publicity, as long as such Customer Materials are anonymised.

7.5 The Customer will ensure that it has an appropriate licence to utilise the System throughout the term of the Contract and shall not do anything to cause harm to the System or put at risk or cause harm to the Supplier's access to the System.

8. CHARGES AND PAYMENT

8.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 8. All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

8.2 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer monthly in arrear, on or after the last day of each month unless otherwise agreed in the Commercial Terms.

8.3 The Customer shall pay each invoice due and submitted to it by the Supplier on receipt of the invoice, to a bank account nominated in writing by the Supplier.

8.4 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 10 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Supplier may also suspend all Services until payment has been made in full.

8.5 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. LIMITATION OF LIABILITY

9.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims, details of which are available on request.

9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, or fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.3 (Liabilities which cannot legally be limited) the Supplier's total liability to the Customer shall not exceed £1,000,000.

9.5 This clause 9.5 sets out the types of loss that are wholly excluded:

- 9.5.1 loss of profits;
- 9.5.2 loss of sales or business;
- 9.5.3 loss of agreements or contracts;
- 9.5.4 loss of anticipated savings;
- 9.5.5 loss of use or corruption of software, data or information;
- 9.5.6 loss of or damage to goodwill; and
- 9.5.7 indirect or consequential loss.

9.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 or any other law in respect of quality or nature of the Services are, to the fullest extent permitted by law, excluded from the Contract.

9.7 The Supplier shall not be liable for any loss or damage caused as a result of the Customers' use of the System.

10. TERMINATION

10.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- 10.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 10.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment, or there is a change of control of the Customer.

10.3 On termination of the Contract for whatever reason:

- 10.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- 10.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- 10.3.3 termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

11. GENERAL

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.** The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent. The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.
- 11.3 **Confidentiality.**
 - 11.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.3. For the purposes of this clause 11.3, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
 - 11.3.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - 11.3.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract. The parties agree that any anonymised MRI Scans are not confidential information.

11.4 Entire agreement.

- 11.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.4.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 **Waiver.**

11.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

11.6.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** 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 11.7 shall not affect the validity and enforceability of the rest of the Contract.

11.8 **Notices.**

11.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) assuming the recipient and the sender are both in the UK; or

(b) sent by pre-paid air mail its principal place of business (in any other case) assuming the recipient and the sender are not both in the UK;

(c) sent by email to the address specified by each party.

11.8.2 Any notice shall be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by air mail, on the fourth Business Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

11.8.3 This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.9 **Third party rights.** the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.10 **Governing law and jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

