Qpoint®
External Quality Assessment for Point of Care Testing

Qpoint EQAS Terms and Conditions for Registration

Please read carefully. By agreeing to the following terms and conditions, you are entering into an **AGREEMENT** with:

Frimley Health NHS Foundation Trust of Portsmouth Road, Frimley, Surrey GU16 7UJ ("FH").

If you do not accept our terms and conditions, please do not register with the Qpoint EQAS.

INTRODUCTION

A. FH enters into this Agreement on behalf of Qpoint. Qpoint is an independent provider of External Quality Assessment Schemes ('EQAS') for point of care testing devices, as set out in the Qpoint Participant Manuals, and has developed and owns software in connection with its EQAS.

B. You are an End-User of a point of care testing device and wish to register with Qpoint's EQAS so that the quality of results obtained from your device can be assessed.

C. You enter into this Agreement for the provision of the Services (as defined in Clause 1 below) from Qpoint as a registered End-User (Participant) with Qpoint's EQAS on the terms and conditions set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires, the following terms have the follow meanings:

"Agreement"	Means this agreement concluded between the End user and Qpoint, including all schedules, appendices, specifications and other documents incorporated or referred to herein;
"EQAS Software"	Means the platform software developed and owned by FH;
"Intellectual Property Rights"	Means all patents, inventions, copyright, database rights, trade marks, service marks, logos, trade names, design rights, moral rights and other similar rights whether registerable or not (including all applications for any of the foregoing);
"Registration Fee"	Means the annual charge levied by Qpoint for their services
"Party"	Means a party to this Agreement and "parties" refers to all of the parties to this Agreement collectively
"Healthcare Professional"	Means an individual employed in their professional capacity to provide healthcare for patients. Healthcare Professionals will use point of care testing devices to generate diagnostic results on patient samples and will be accountable for patient care.
"Home User"	Means any individual using a point of care testing device for their own personal use to manage their own medical condition.
"End-User" or "Participant"	Healthcare Professional or Home User of point of care testing device, registered with the Qpoint EQAS.
"Services"	Means the services as set out in the Participant Manual and provided by Qpoint pursuant to and in accordance with this Agreement;
"Service Specification"	Means the specification of the Services as set out in the Participant Manual; and
"Staff"	Means all persons employed or engaged by Frimley Health in the provision of the Services or any activity related to or connected with the provision of the Services.

2. THE SERVICES

2.1. FH shall procure that Qpoint shall provide the Services during the term of this Agreement as defined in Clause 2.2 below.

2.2. FH shall procure that Qpoint *undertakes* to perform the Services:

2.2.1. in an efficient, effective and safe manner in accordance with:

(i) good laboratory practice;

(ii) all applicable laws and regulations; and

2.2.2. by Staff who have the requisite skills, qualifications and experience to perform the Services.

2.3 Any sums due to FH under this Agreement shall be due without deduction or set-off by the Participant from any sums due to the Participant or any Associated Company, from FH under any other contract between the parties.

3. DURATION

3.1. This Agreement shall continue in force for one calendar year from the date of issue of the first EQA sample.

4. TERMINATION

4.1. Notwithstanding the provisions of Clause 3 above, this Agreement may be terminated forthwith if either party is in breach of this Agreement and if the breach is capable of remedy does not remedy such breach within 60 (sixty) days of notification in writing.

4.2. No refund of registration fees paid to Qpoint will be made upon termination of this Agreement if Qpoint are not in breach of this Agreement.

5. INFORMATION GOVERNANCE

5.1. FH shall procure that Qpoint shall in providing the Services comply with the following as from time to time amended or replaced:

5.1.1. the NHS Confidentiality Code of Practice;

5.1.2. the NHS Information Governance Toolkit

and will use the Caldicott Guardian as appointed by Frimley Health in accordance with the guidance listed in Clause 5.1.2 above, making available on request the name and contact details of the Caldicott Guardian.

5.2. FH acknowledges their duty under the Data Protection Act 2018 and the Freedom of Information Act 2000 and hereby confirm they will comply with their obligations and duties under the said Acts and shall give all reasonable assistance where appropriate or necessary to comply with any obligations arising under the said Acts.

5.3. The Services of Qpoint are provided under the terms of the Qpoint Privacy Policy as published on the Qpoint website.

5.4. In order to provide the Services of Qpoint, it is a requirement that your personal information (including contact details) are stored and used. It is necessary for Qpoint to contact all participants by post and occasionally by other means (e.g. email and telephone). If you do not consent to Qpoint storing and using your personal data for issues related directly to scheme participation, you must not agree to these terms and conditions and the Services of Qpoint cannot be provided.

5.5. FH and Qpoint will not provide any confidential data or information of the other party in response to a freedom of information request without the other party's prior consent.

5.5 The Trust is the data controller for all personal data held in the Qpoint system but individual participants remain the data subject of the reports contained within the EQAS software.

6. MAJOR INCIDENTS

6.1. Where FH*'s* performance of its obligations under this Agreement is rendered impracticable by circumstances beyond its control (a "**Major Incident**"), FH's obligations under this Agreement shall be suspended for such time as FH can demonstrate that a Major Incident and its repercussions persist and any under performance during that time shall not constitute a matter for which FH may be considered in breach of this Agreement.

6.2. If a Major Incident continues for a period of more than three months after commencement of the Major Incident, the End-User may terminate this Agreement.

7. CONFIDENTIALITY

7.1. FH and Qpoint hereby agree that they shall during the term of this Agreement and for a period of ten (10) years thereafter, hold in confidence all information which they receive from Participants hereunder and shall not use any such information, nor disclose such information to any third party except to the extent necessary to fulfil the purposes of this Agreement, as defined in the Qpoint Privacy Policy, or except as required by governmental authorities, without the prior written consent of the other party hereto PROVIDED THAT said information shall not include information which:

i) was known to the recipient party from independent sources as documented in written records prior to such disclosure; or

ii) was in the public domain or the subject of public knowledge at the time of disclosure by the recipient party; or

iii) becomes part of the public domain or the subject of public knowledge through no default of the recipient party; or

iv) is supplied or imparted to the recipient party by a third party otherwise than in breach of legal obligations of confidentiality to the disclosing party.

7.2. End-Users acknowledge that information held by FH and /or Qpoint may be subject to disclosure under the Freedom of Information Act 2000 and that FH and/or Qpoint's obligations under this Clause 7 are subject to their obligations under that Act.

7.3. FH will ensure that at all times it, and will procure that Qpoint will ensure that at all times its employees and contractors shall comply with the Data Protection Act 2018 in providing the Services under this Agreement.

7.4. As part of the registration process with Qpoint's EQAS, End-Users are advised that personal identifiable data may be shared between device manufacturers and FH and Qpoint and also with selected third parties, as defined in the Qpoint Privacy Policy, where poor performance escalation is required.

8. COPYRIGHT AND INTELLECTUAL PROPERTY

8.1. The Qpoint® trademark is registered under the Trade Marks Registry (No. 2506024) in the name of Frimley Park Hospital NHS Foundation Trust (now known as Frimley Health NHS Foundation Trust). Use of the logo by any other individual or organisation is strictly prohibited.

8.2 No user may copy, modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, display, or in any way exploit any of the content, in whole or in part, except with the express written agreement of the Trust. Documents may be printed from the website by registered participants for their own personal use.

8.3 All Intellectual Property Rights subsisting in or used in connection with the EQAS including the EQAS Software, the format of the EQAS report, and the data content and format of Qpoint's EQAS database shall remain the absolute property of FH.

8.4 All Intellectual Property Rights arising following End-User registration and resulting from the provision of the Services including without limitation all improvements,

modifications and adaptations to any part of Qpoint's EQAS or Qpoint's Intellectual Property Rights subsisting in or used in connection with its EQAS shall be the absolute property of FH.

8.5 Qpoint may change the reports it produces at any time, including without limitation changes to the format, structure or layout of the report. All Intellectual Property Rights in any such changes (whether developed by Qpoint or any other third party) shall be the sole and absolute property of FH.

8.6 No part of the Qpoint Annual Scheme Review reports are to be used by any party for commercial or promotional purposes.

9. DISCLAIMER OF LIABILITY

9.1 The Trust disclaims any liability arising out of use of this service or for any adverse outcome from your use of the information provided by this service for any reason, including but not limited to any misunderstanding or misinterpretation of the information provided through this website.

9.2 The Trust disclaims any liability for EQAS samples that are not received by the End-User at the address provided upon registration, once the samples have been issued from the Qpoint Laboratory.

9.3 It is the responsibility of the End-User to ensure their personal details and contact information, including address, are kept up to date on the Qpoint database.

9.4 The Trust disclaims any liability for EQA test results that are posted or faxed back to Qpoint by Participants and do not arrive before the quoted deadline, resulting in a "non-return" score.

9.5 The Trust disclaims any liability for EQA test results entered incorrectly on-line by Participants through the Qpoint website. This may result in a "poor performance" or "non-return" score.

9.6 The Qpoint EQA test samples issued to Healthcare Professionals (not home users)

may be biological specimens and must be handled with the respect given to any biological fluid taken from a patient, according to local Health & Safety Policy. The Trust disclaims any liability arising from handling these samples or for any adverse outcome from processing of the samples provided by this service for any reason.

10. DISCLAIMER OF ENDORSEMENT

10.1 Reference by Qpoint to any specific commercial products, processes, or services, or the use of any trade, firm or corporation name is for operational purposes only in order to administer the scheme and does not constitute endorsement, recommendation, or favouring by the Trust.

11. DISPUTE RESOLUTION

11.1 In the event of a dispute arising between the Parties, the Qpoint Scheme Organiser and End-User shall use their best endeavours to resolve any such dispute.

11.2 If the Parties are unable to resolve any dispute within 20 (twenty) working days of the dispute arising, the matter shall immediately be referred to the chief executive of FH who will attempt to resolve the matter.

11.3 If the persons to whom the dispute is referred by the parties in accordance with Clause 11.2 above is unable to resolve it within 20 (twenty) working days following the date of the referral, then FH and the End-User shall attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's Model Mediation Procedure.

11.4 In the event of mediation failing to resolve any dispute, Clause 13.3 shall apply PROVIDED THAT neither party will commence legal proceedings against the other until 30 (thirty) days after mediation in accordance with Clause 11.3 above has failed to resolve the dispute.

12. NOTICES

12.1 Any notice or other document to be served on any party under the provisions of or in connection with this Agreement shall be in writing and shall be sufficiently given if it is left or delivered or sent:

i. by hand;

ii. by first class post;

iii. by registered post; or

iv. by email

to FH at the address referred to above (or such other address that party may from time to time designate by written notice to the other party for such purpose) and to the End-User at the address held within the Qpoint EQAS database.

12.2 Any notice or other document shall be deemed to have been received by the addressee 2 (two) working days following the date of dispatch of the notice or other document by post or where the notice or other document is sent by hand or by electronic media simultaneously with the delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was dispatched.

13. ENTIRE AGREEMENT - APPLICABLE LAW

The Joint Working Group for Quality Assurance (JWG) is a multidisciplinary group accountable to the Royal College of Pathologists for the oversight of performance in external quality assurance schemes (EQA) in the UK. Membership consists of the Chairmen of the National Quality Assurance Advisory Panels (NQAAPs), and representatives from the Institute of Biomedical Sciences, the Independent Healthcare Sector, the Department of Health and CPA (UK) Ltd.

Although the JWG conditions of EQA scheme participation (August 2010) apply to clinical laboratories, the same approach is adopted for good governance of POCT. The JWG reports

to the Care Quality Commission. Upon registration onto any Qpoint scheme, it is implied that you agree to the relevant JWG conditions of EQA scheme participation (found below). As the Qpoint scheme is open to a range of participants (e.g. clinical laboratories and self-testing patients), the entire JWG conditions are included. If you have any concerns, or do not agree with any of the conditions stated, please contact Qpoint at the earliest opportunity to discuss.

13.1 The Head of a laboratory is responsible for registering the laboratory with an appropriate accredited EQA scheme.

13.2 The laboratory should be registered with available EQA schemes to cover all the tests that the laboratory performs as a clinical service.

13.3 EQA samples must be treated in exactly the same way as clinical samples. If this is not possible because of the use of non-routine material for the EQA (such as photographs) they should still be given as near to routine treatment as possible.

13.4 Changes in the test methodology of the laboratory should be notified in writing to the appropriate scheme organiser and should be reflected in the EQA schemes with which the laboratory is registered.

13.5 Samples, reports and routine correspondence may be addressed to a named deputy, but correspondence from Organisers and NQAAPs concerning persistent poor performance (red – see below) will be sent directly to the Head of the laboratory or, in the case of the independent healthcare sector, the Hospital Executive Director.

13.6 The EQA code number and name of the laboratory and the assessment of individual laboratory performance are confidential to the participant and will not be released by Scheme Organisers without the written permission of the Head of the laboratory to any third party other than the Chairman and members of the appropriate NQAAP and the Chairman and members of the JWG. The identity of a participant (name of

laboratory and Head of Department) and the tests and EQA schemes for which that laboratory is registered (but not details of performance) may also be released by the Scheme Organiser on request to the Health Authority, Hospital Trust/Private Company in which the laboratory is situated after a written request has been received.

13.7 A NQAAP may, with the written permission of the Head of a laboratory, correspond with the Authority responsible for the laboratory, about deficiencies in staff or equipment which, in the opinion of the NQAAP members, prevent the laboratory from maintaining a satisfactory standard.

13.8 Laboratories' EQA performance will be graded using a traffic light system; green will indicate no concerns, amber poor performance, red persistent poor performance, with black being reserved for the tiny number of cases that cannot be managed by the Organiser or NQAAP and that have to be referred to the JWG. The criteria for poor performance (amber) and persistent poor performance (red) are proposed by the EQA scheme Steering Committee in consultation with the EQA Provider/Scheme Organiser and approved by the relevant NQAAP.

13.9 When a laboratory shows poor (amber) performance the Organiser will generally make contact with the participant in accordance with the Scheme Standard Operating Procedure for poor performance. Within 2 weeks of a laboratory being identified as a persistent poor performer (red), the Organiser will notify the Chairman of the appropriate NQAAP together with a resume of remedial action taken or proposed. The identity of a persistently poor performing laboratory (red) will be made available to members of the NQAAP and JWG. The NQAAP Chairman should agree in writing any remedial action to be taken and the timescale and responsibility for carrying this out; if appropriate, this letter will be copied to accreditation/regulatory bodies such as CPA (UK) Ltd, UKAS and HFEA who may arrange an urgent visit to the laboratory. Advice is offered to the Head of the Laboratory in writing or, if appropriate, a visit to the Laboratory from a NQAAP

member or appropriate agreed expert may be arranged.

13.10 If persistent poor performance remains unresolved (black), the NQAAP Chairman will submit a report to the Chairman of the JWG giving details of the problem, its causes and the reasons for failure to achieve improvement. The Chairman of the JWG will consider the report and, if appropriate, seek specialist advice from a panel of experts from the appropriate professional bodies to advise him/her on this matter. The Chairman of the JWG will be empowered to arrange a site meeting of this panel of experts with the Head of the Department concerned. If such supportive action fails to resolve the problems and, with the agreement of the panel of experts, the Chairman of the JWG will inform the Chief Executive Officer, or nearest equivalent within the organisation of the Trust or Institution, of the problem, the steps which have been taken to rectify it and, if it has been identified, the cause of the problem. The Chairman of the JWG also has direct access and responsibility to the Professional Standards Unit of the Royal College of Pathologists. Should these measures fail to resolve the issues; the laboratory will be referred to the Care Quality Commission for further action.

13.11 Problems relating to EQA Schemes, including complaints from participating laboratories, which cannot be resolved by the appropriate Organiser, Steering Committee or NQAAP, will be referred to the Chairman of the JWG.

Joint Working Group for Quality Assurance in Pathology, August 2010.

14. ENTIRE AGREEMENT - APPLICABLE LAW

14.1 This Agreement and the documents referred to herein represent the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any prior written or oral agreements.

14.2 The language of this Agreement shall be the English language and all

communications between the parties shall be written or spoken in the English language.

14.3 This Agreement shall be governed by and construed in accordance with English law and the parties agree to the exclusive jurisdiction of the English courts.

14.4 The headings of this Agreement are inserted for convenience only and do not form part thereof.

If there are any questions regarding terms and conditions, you may contact us using the following link https://nhsqpoint.org.uk/contact.aspx