

**ROYAL BROMPTON AND HAREFIELD NHS FOUNDATION TRUST
GENERAL CONDITIONS FOR SECOND OPINION SERVICES**

THE CUSTOMER'S ATTENTION IS DRAWN TO THE LIMITATIONS OF LIABILITY CONTAINED IN THESE CONDITIONS AND IN PARTICULAR TO THE PROVISIONS OF CLAUSE 7

1. BASIS OF CONTRACT

- 1.1 These terms and conditions, as amended from time to time in accordance with clause 10.5 (these “**Conditions**”), apply to the contract (the “**Contract**”) between Royal Brompton and Harefield NHS Foundation Trust (“**us**” or “**we**” or “**our**”) and the person or firm who purchases the service from us (“**you**” or “**your**”).
- 1.2 The “**Service**” comprises:
- (a) the consideration by one of our consultants (the “**Consultant**”) of the medical records, x-rays, reports and any other documents (the “**Medical Records**”) provided by you to us either in electronic format (uploaded via the second opinion request form (the “**Form**”) completed by you on our [website](#) or in hard copy format (sent at your risk via overland courier or postal services) relevant to the opinion requested by you (the “**Second Opinion**”), the details of which are more particularly described in the Form; and
 - (b) the preparation and delivery of a report (the “**Report**”) by the Consultant in relation to the Second Opinion requested,
- and although time shall not be of the essence for performance of the Service, we shall aim to deliver the Report within 5 working days (being a day, other than a Saturday, Sunday or a public holiday in England, when banks in London are open for business). You acknowledge that turnaround times may vary if additional information is required or the Medical Records are indicative of a particularly complex case, but we shall keep you informed of anticipated turnaround times.
- 1.3 We shall have the right to make any changes to the Service which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Service, and we shall notify you in any such event.
- 1.4 These Conditions and the Form (as completed and submitted to us by you) comprise the Contract. The Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Contract.
- 1.5 As the Service is being sought by you via our website, by entering into this Contract you are also agreeing to the terms of use posted [there](#) and that those terms also form part of the Contract.
- 1.6 The Contract shall not be legally binding on either you or us until you have paid the Fees and we have provided you with written confirmation that we have received all the necessary information we require to provide the Service (“Confirmation Email”).
- 1.7 These Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 1.9 For the avoidance of doubt, you may or may not be the person to whom the Medical Records relate (the “**Patient**”).

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2. YOUR RIGHTS, OBLIGATIONS AND REPRESENTATIONS

2.1 You shall:

- (a) pay the Fees in accordance with clause 4 below;
- (b) ensure that information provided in the Form and the Medical Records are complete and accurate;
- (c) co-operate with us in all matters relating to the Service; and
- (d) provide us with any additional information as we may reasonably require in order to provide the Service, and to the best of your ability, ensure that such information is accurate in all material respects.

2.2 By entering into this Contract, you represent that you have the right to disclose the Medical Records to us and that the disclosure of the Medical Records does not violate any applicable law or the intellectual property rights of others.

2.3 If you are entering into this Contract as an individual in your capacity as a private individual and not on behalf of or in the course of any business, you shall have the right to cancel this Contract within 7 days of receipt of a Confirmation Email.

3. OUR RIGHTS, ASSUMPTIONS AND QUALIFICATIONS

3.1 The provision of the Service and the Report is based on the following assumptions:

- (a) you have the right to provide copies of the Medical Records to us;
- (b) the Medical Records (if not originals) are true and accurate copies of the originals;
- (c) there is no other fact, matter or document, other than those set out in the Form and the Medical Records, which would, or might affect our opinion in preparation of the Report; and
- (d) any appropriate diagnostic images on a CD disk or memory stick are of good quality and high definition.

3.2 You acknowledge and accept that the Service is provided subject to the qualifications set out below:

- (a) the Service is not intended to replace an in-person consultation;
- (b) the Report shall be limited to the extent that information usually obtained through an in-person examination is not available to the Consultant when forming their opinion and preparing the Report and that lack of such information may affect the Consultant's ability to provide a diagnosis;
- (c) the Report shall not be suitable for use or to be relied upon in any legal proceedings, including but without limitation, any legal proceedings against any other healthcare practitioner;
- (d) the Consultant shall only examine the Medical Records;
- (e) neither we nor the Consultant are responsible for investigating or verifying the accuracy or completeness of the Medical Records;
- (f) subject to (g) below, the Report shall be addressed to you solely for your own benefit or the benefit of the Patient. It may not be disclosed to or relied upon by any other person without our prior written consent;

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(g) the Report may be disclosed on a non-reliance basis by you if you are the Patient, or if you are not the Patient, as instructed by the Patient, to any other provider of medical care to the Patient or the Patient's professional advisors or insurers.

3.3 If you have not terminated this Contract within the time period set out in clause 2.3 and we are unable to provide the Service due to a lack of information or co-operation from you, we shall not be required to repay any of the Fees you have paid.

4. CHARGES AND PAYMENT

4.1 The amount payable by you for the Service ("**Fees**") shall be as detailed on the website.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 All intellectual property rights (including but not limited to copyrights) in or arising out of or in connection with the Service shall be owned by us.

6. DATA PROTECTION AND CONFIDENTIALITY

6.1 We acknowledge our legal obligations arising in relation to the provision of safe and efficient healthcare services, including but not limited to our obligations arising under the Data Protection Act 1998 and under the common law duty of confidentiality.

6.2 We shall keep the Medical Records and any other information of a personal and/or confidential nature provided by you in confidence and shall restrict disclosure of such confidential information to such of our employees, agents or consultants as need to know for the purpose of providing the Service, and shall ensure that such employees, agents or consultants are aware of the personal and/or confidential nature of the information and are trained in the policies and procedures we have in place which pertain to the controlling and processing of personal and/or confidential information and do not share the information with anyone who is not authorised to receive it.

6.3 You acknowledge that any information uploaded via our website or delivered via courier or postal system is done so at your own risk. Notwithstanding this fact, we acknowledge that our obligation is to keep information on our server secure and to maintain hard copy information secure once it has arrived by post.

6.4 Our policy regarding how personal data is stored, processed and managed is set out [here](#) ("**the Policy**"). (By agreeing to these Terms, you are also agreeing to the operation of the Policy by us and it shall form part of the Contract.

6.5 If you are resident outside the European Economic Area, you agree to the delivery of the Report to you and acknowledge that we do not have control over the safeguards in place in your country or territory in matters relating to data protection and confidentiality.

6.6 Nothing in this clause 6 shall prevent us from disclosing the Medical Records or any other information of a personal and/or confidential nature:

- (a) which we are required to disclose in order to comply with the law;
- (b) as required by any regulatory or supervisory body; or
- (c) to legal or professional representatives or advisors.

6.7 This clause 6 shall survive termination of the Contract.

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7. LIMITATION OF LIABILITY

- 7.1 Nothing in these Conditions shall limit or exclude our liability for fraud or fraudulent misrepresentation, or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or any other liability that can not lawfully be limited or excluded.
- 7.2 Subject to clause 7.1:
- (a) we shall not be liable to you, 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 including any losses that may result from a deliberate breach of the Contract by us, our employees or consultants; and
 - (b) our total liability to you 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, including losses caused by a deliberate breach of the Contract by us, our employees or consultants shall not exceed the value of the Fees.
- 7.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4 This clause 7 shall survive termination of the Contract.

8. TERM AND TERMINATION

- 8.1 These Terms will continue to apply to you until terminated by either you or us. If you or we terminate these Terms you agree that we shall have no liability or responsibility to you and we will not refund any Fees you have paid, to the fullest extent permitted by law.
- 8.2 We may terminate the Contract with immediate effect by giving you written notice. If our decision to terminate is not due to any action or omission by you and is not due to the circumstances described in clause 3.3, we shall repay the Fees paid to you.
- 8.3 Any clause of these Terms which expressly states, or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect after termination or expiry of this agreement.

9. GENERAL

- 9.1 Any notice or other communication given in connection with this Contract shall be in writing and shall be delivered to the other party by email, which shall be deemed to have been received on the same day unless transmission was after 15:00 (GMT), in which case, the email shall be deemed to have been received the next working day after transmission.
- 9.2 If any clause in these Terms (or part thereof) 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 clause or part thereof 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.
- 9.3 No party who is neither you nor us shall have any rights under or in connection with this Contract.

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- 9.4 You shall not, without our prior written consent assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under this Contract.
- 9.5 No failure or delay by either you or us in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy
- 9.6 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall be notified to you. You may not introduce any variation without our prior written consent.

10. GOVERNING LAW AND JURISDICTION

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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.