



**Terms and Conditions ("Conditions") of Kiwa Ltd for the performance of Services: updated Feb-2018**  
**These Conditions are used by Kiwa Ltd and its trading divisions**

**Condition 1. Definitions and interpretation**

1.1 In these Conditions, the following words and expressions shall have the following meanings:

**Additional Work:** all work carried out by the Contracted Party during or after the performance of the Agreement, which is in addition to, or supplemental to, the Services;

**Agreement:** any agreement that is formed with respect to performance of Services by the Contracted Party for the Client (including any subsequent variation thereto);

**Certificate:** the certification document prepared by the Contracted Party and delivered to the Client (in such format as may be updated from time to time), and "**Certification**" shall be construed accordingly;

**Client:** the party that enters into the Agreement with the Contracted Party;

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with the Services, including but not limited to:

(a) the existence and terms of the Agreement;

(b) any information that would be regarded as confidential by a reasonable business person relating to:

(i) the business, affairs, customers, clients, suppliers of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(iii) any information developed by the parties in the course of carrying out the Agreement;

**Contracted Party:** Kiwa Ltd or the direct or indirect subsidiary of Kiwa Ltd that enters into the Agreement;

**Kiwa Certification Mark:** means a specific type of certification mark or trade mark issued by the Contracted Party;

**Quotation:** the proposal submitted by the Contracted Party to the Client with respect to the provision of Services by the Contracted Party;

**Results:** the outcome of the performance of the Services by the Contracted Party;

**Scheme Regulations:** the applicable Kiwa qualification criteria (as made available to the Client (and as the same may be updated from time to time)) which a product or service must meet in order to be awarded Certification; and

**Services:** the certification services agreed explicitly between the parties which are to be performed by the Contracted Party within a Quotation including any goods or materials forming part of such performance, and where the context dictates, "**Additional Work**" shall be interpreted to be part of the Services and any Conditions including references to the Services shall be construed accordingly.

1.2 Condition headings shall not affect the interpretation of these Conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 The Agreement shall be binding on, and enure to the benefit of, the parties to the Agreement and their respective personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 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.

1.13 References to a "**party**" or the "**parties**" are to a party or the parties to the Agreement and include a reference to that party's, or those parties', successors and permitted assigns.

**Condition 2. Applicability**

2.1 Unless explicitly agreed otherwise in writing or otherwise stipulated in the Quotation, these Conditions apply to all Quotations, Agreements and all other legal relationships between the Contracted Party and the Client.

2.2 Changes, additions and/or extensions of these Conditions, and/or stipulations varying from these Conditions, will only be binding on the Contracted Party if they have been agreed on between the parties explicitly and in writing.

2.3 The applicability of any general or specific terms and conditions or stipulations of the Client is explicitly rejected by the Contracted Party, unless explicitly agreed otherwise in writing in advance.

2.4 A Client in respect of whom these Conditions have applied is also deemed to have agreed to the application of these Conditions to subsequent Quotations submitted by the Contracted Party, to subsequent Agreements concluded and to be concluded by the Contracted Party with the Client and to all other subsequent legal relationships between the Contracted Party and the Client.

2.5 If any provision or part-provision of these Conditions 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 Condition 2.5 shall not affect the validity and enforceability of the rest of these Conditions.

**Condition 3. Formation of the Agreement**

3.1 Unless stated otherwise, the Quotations will be subject to contract and can always be revoked by the Contracted Party. Quotations will be valid for 1 month from date of issue, unless agreed otherwise in writing.

3.2 Quotations shall only be deemed accepted by the Contracted Party, and no contract shall come into existence between the Client and the Contracted Party until, after the Client places an order in response to a Quotation and either (i) the Contracted Party has issued written confirmation of its acceptance of such order "**Order Acknowledgement**"; or (ii) the Contracted Party commences performance of the Services; whichever occurs earlier.

3.3 All images, drawings, statements about measurements and weights, calculations, statements concerning capacities, results and/or expected performance et cetera, provided by the Contracted Party will not be binding on the Contracted Party and are only meant to give a general representation of the Services to be rendered by the Contracted Party.

3.4 If the Client provides the Contracted Party with documents, data, drawings et cetera upon its request for a Quotation, the Contracted Party should be able to assume their correctness and will base its Quotation thereon.

**Condition 4. Performance of the Agreement**

4.1 The Contracted Party is not obliged to do more than perform the Agreement by using reasonable endeavours to carry out the Services in accordance with good industry practice. Further obligations only exist if and to the extent that such has been agreed on in writing by the Contracted Party.

4.2 Notwithstanding the provision of the Services by the Contracted Party to the Client, the Client shall remain responsible for fulfilling its Certification requirements under applicable laws and regulations, including the implementation of appropriate changes and

- recommendations made within the Results. Where the Services relate to the Certification of products in ongoing production, the Client shall retain all responsibility for maintaining consistency in the products.
- 4.2 The Agreement is always entered into for an indefinite period of time, unless otherwise agreed in writing or unless terminated earlier in accordance with Conditions 15 or 16.
  - 4.3 Any timescales stated by the Contracted Party, including the periods for performance of the Agreement, are indicative and can never be considered strict deadlines. Time is not of the essence in respect to delivery of the Results or performance of the Services.
  - 4.4 If the Contracted Party and the Client agree that the Agreement will be changed, supplemented and/or extended pursuant to Condition 2.2, they will renegotiate the consequences for the price, quality and moment of completion, among other things. Changes to, additions to and/or extensions of the Agreement will only be binding if they have been agreed between the parties in writing.
  - 4.5 The Contracted Party will only be obliged to perform Additional Work if the Contracted Party has provided an Order Acknowledgement to the Client for the performance of such Additional Work and the Contracted Party is satisfied that any payment or provision of security required has been provided by the Client. In the absence of specific agreement in writing between the parties, any Additional Work will be carried out by the Contracted Party at prices that are based on rates equivalent to the Services to which they relate.
  - 4.6 The Client shall use any drawings, designs, specifications, locations, instructions, inspection regulations et cetera provided by the Contracted Party strictly in accordance with the Contracted Party's instructions.
  - 4.7 The Client shall arrange that all deliverables required by the Contracted Party for performance of the Services are provided to the Contracted Party in good time. If any deliverables required for the performance of the Agreement have not been provided to the Contracted Party in good time, the Contracted Party will be entitled to delay its performance of the Agreement, suspend performance of the Agreement and/or charge additional costs (ensuing from the delay) to the Client at the Contracted Party's standard rates.
  - 4.8 The Client shall arrange that facilities are made available to the Contracted Party free of charge, including auxiliary staff, auxiliary plant and equipment, to enable the Contracted Party to carry out the Services at the Client's site and/or to the Client's installations safely and the Client shall point out any potentially dangerous situations to the Contracted Party in writing and without delay.
  - 4.9 If auxiliary staff, auxiliary plant and equipment provided by the Client fails to comply with applicable health and safety laws and regulations, the Contracted Party reserves the right to suspend the performance of the Services and/or not to perform the Services at all. In that case, the Client will be obliged to compensate the Contracted Party for all resulting costs (including travelling expenses and travelling time), damage and loss on an indemnity basis.
  - 4.10 During stays in the Client's buildings or at the Client's sites, the Contracted Party will (where notified in writing) obey the applicable company and other rules and comply with all reasonable directions given by or on behalf of the Client. During stays in the Contracted Party's buildings or at the Contracted Party's sites, the Client will obey the applicable company and other rules and comply with all reasonable directions given by or on behalf of the Contracted Party.
  - 4.11 From time to time, the Contracted Party, a regulatory third-party observer, or auditors/inspectors may need to carry out unannounced full or part visits of any premises used by the Client in connection with the Services. These are to satisfy the requirements of Scheme Regulations and the Contracted Party's contractual obligations. The Contracted Party is entitled to charge reasonable expenses incurred in arranging and attending such visits. The Client shall be notified (where possible) in advance of the name and status of the representative from the Contracted Party, proposed third-party observer or auditor/inspector (as applicable).
  - 4.12 If it has been agreed that the Agreement will be performed in phases, the Contracted Party may suspend performance of such parts as pertain to a subsequent phase until the Client has approved the Results of the preceding phase in writing.
  - 4.13 If the Agreement pertains to sample analysis, the Client is responsible for the selection, representation, designation of codes, brand and product names and for making the analysis samples available to the Contracted Party, unless otherwise agreed in writing. If the Contracted Party is required to undertake sampling work at the Client's premises, the Contracted Party undertakes to use all reasonable endeavours to minimise disturbance of the site. Samples received by the Contracted Party for testing shall bear either a Contracted Party applied sample reference, and/or the Client's own reference unless otherwise notified. No sampling certificates, apart from those carried out by the Contracted Party, can be accepted as independently verified sampling, but may be included in the Results (if required), along with any photographic material.
  - 4.14 If the Contracted Party deems it desirable or necessary, for purposes of the correct or timely performance of the Services, it is authorised to subcontract any of its obligations hereunder to a third party. Should the Contracted Party subcontract any of its obligations hereunder, it agrees to only outsource the Services to a third party that has the accreditation and/or certificates required for the Services.
  - 4.15 The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or resulting Agreements to third parties.
  - 4.16 The Client will not exert improper pressure on the Contracted Party and employees of the Contracted Party in the performance of the Services. The Contracted Party operates non-discriminatory policies and procedures as part of its product certification activities, thereby making the Services accessible to all applicants.
  - 4.17 Any failure in the performance of the Agreement discovered by the Client must be reported to the Contracted Party immediately and in writing with a clear description, failing which the Contracted Party is entitled not to deal with, or respond to, this report. The Client cannot enforce any rights if the notification to the Contracted Party takes place more than 10 calendar days after the time when the Client could reasonably have discovered the failure. If the Client's report is deemed well-founded and the notification was made within the stated period, the Contracted Party has the option, without being obliged to pay any further compensation, to either remedy the failure in the Services or to issue a credit note for the Services limited to the specific fees relating to the area of failure charged to the Client up until that point in time), and this shall be the Client's sole remedy in this respect.
  - 4.18 All juristic or other acts and actions performed by an officer or employee of the Client within the scope of the formation, performance and amendment of an Agreement between the Contracted Party and the Client will be deemed to have been performed on behalf of the Client and are binding on the Client. In dealings with the Contracted Party, the Client cannot rely upon the fact that in respect of these acts or actions there is no authority to legally represent or bind the Client.

#### **Condition 5. Prices and rates**

- 5.1 All prices are in pounds sterling (unless a different currency is specified in the Quotation) and, unless agreed otherwise in writing, always exclusive of VAT, travelling and accommodation expenses, the production of additional technical documentation (e.g. method statements, risk assessments et cetera), meeting/site consultation fees, and waiting hours/delays beyond the Contracted Party's control. For the avoidance of doubt, any costs relating to work performed or deliveries made by third parties will be charged separately by the Contracted Party to the Client (and not invoiced by the third party directly to the Client) unless otherwise specified in the Quotation.
- 5.2 The Contracted Party shall have the right at any time to increase the prices by any amount attributable to any variation in (i) the cost of materials, labour or production costs, or (ii) exchange rates, and in each case between the date of formation of the Agreement and the date on which the Services commence pursuant to these Conditions. The Client is entitled to terminate the Agreement if the increase in the prices and rates amounts to more than 10% a year. In that case, termination must take place immediately after the Client learns of the increase in the prices and rates.

#### **Condition 6. Liability**

- 6.1 Nothing in the Agreement shall limit or exclude the Contracted Party'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).
- 6.2 Subject to Condition 6.1, the Contracted Party shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of or damage to goodwill;
  - (f) loss of use or corruption of software, data or information; or
  - (g) any indirect or consequential loss.
- 6.3** Subject to Conditions 6.1 and 6.2, the Contracted Party's total liability to the Client whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the greater of £100,000 and 200% of the average annual prices paid by the Client to the Contracted Party (calculated by reference to the prices paid in successive 12 month periods from the date of the Agreement).
- 6.4** The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 6.5** The Contracted Party is only liable for the Services carried out by the Contracted Party or under its responsibility and the Contracted Party does not warrant data received from third parties if it has not been stated explicitly that these data were examined by the Contracted Party and found to be correct. However, if the Client, or a third party who acts as the Client's supplier, accepts recommendations, designs, sketches, drawings, models, specifications et cetera from the Contracted Party, whether or not after its own examination, the Contracted Party is no longer liable for any damage or loss caused by the application of such recommendations, designs et cetera.
- 6.6** Except for equipment supplied by the Contracted Party, any liability on the part of the Contracted Party expires after 6 months have passed, to be calculated from the day of termination of the Agreement or part of the Agreement, unless the Client has instituted legal action against the Contracted Party within these periods. Unless otherwise agreed in writing, the Contracted Party gives a 1 year warranty on the supply of equipment it delivers, to be counted from the date of delivery, as far as the efficiency of the design and the quality of materials used are concerned. If a third party from whom the Contracted Party purchases all or part of the equipment concerned gives a more limited warranty, the terms of such warranty shall apply to the Agreement and the Contracted Party shall be entitled to notify the Client upon delivery of the equipment concerned that the warranty will be adjusted accordingly.
- 6.7** The Client will indemnify the Contracted Party, with respect to damage or loss caused by or as a direct consequence of the performance of the Services, against claims from third parties in respect of whom the Contracted Party cannot rely upon these terms and conditions. For the purposes of this Condition 6.7, "third parties" also include the Client's staff and other persons whose services the Client uses in the performance of its work.
- 6.8** The Client indemnifies the Contracted Party against all third-party claims and claims for compensation with respect to certificates, recommendations, reports, designs, drawings et cetera from the Contracted Party if they have been made available to those third parties by the Client, whether or not with the Contracted Party's consent.
- 6.9** The Client is fully liable for damage or loss at the Contracted Party's premises caused by contamination of the equipment provided or by improper packaging of equipment to be delivered as well as for the resulting consequential damage or loss.
- 6.10** The Contracted Party is not liable vis-à-vis the Client for infringements of third-party rights or statutory provisions that apply outside the UK, unless those rights and provisions were communicated to the Contracted Party by the Client in writing prior to commencement of the Agreement.
- 6.11** The Contracted Party is not liable for damage or loss of any nature whatsoever that was caused by the Contracted Party's reliance on incorrect and/or incomplete information provided by the Client and/or information not provided in sufficient time.
- 6.12** The limitations of the Contracted Party's liability included in these Conditions do not apply if the damage or loss was caused by wilful default of the Contracted Party.
- 6.13** The Contracted Party accepts no responsibility or liability whatsoever arising as a result of any claims, actions, proceedings, demands, liabilities, costs, expenses or any other losses suffered (save for death or personal injury) or incurred by the Client arising from any failure of the Client's products to:
- (a) achieve Certification; or
  - (b) be compatible in the territory for which compliance approval is obtained, arising from any direct or indirect misrepresentation or accuracy of information or data supplied by the Client to the Contracted Party at any time during the project and upon which the Contracted Party acted and relied.

#### **Condition 7. Non-disclosure**

- 7.1** The Client will only use the Quotation (and once the Agreement is in place, any proposals for changes, additions to and/or extensions of the Agreement) to evaluate its interest in making an order for Services.
- 7.2** Both parties shall keep secret all Confidential Information obtained from the other party or from another source in the course of the Agreement.
- 7.3** The Contracted Party will not make the Results obtained from the performance of the Agreement available to third parties for a period of 1 year after the date of delivery of the Results by the Contracted Party.
- 7.4** The obligations to observe secrecy, referred to in Conditions 7.2, 7.3 and 7.6 of this Condition 7, do not apply to Confidential Information that:
- (a) is of a general nature, i.e. that do not specifically pertain to the Client's own business operations and/or work;
  - (b) was already in the Contracted Party's possession;
  - (c) is generally known and/or becomes generally known, without this being the result of any imputable acts or omissions of the Contracted Party;
  - (d) the Contracted Party obtained from a third party in a lawful manner or from its own research, without using data or results that are not accessible to third parties;
  - (e) have not been or will not be regarded as confidential in consultation with the Client;
  - (f) must be disclosed pursuant to the law or a regulation based thereon;
  - (g) is available to the public; or
  - (h) forms part of an application to a third-party certification agency of a compliance file to be held for possible inspection by a third-party certification agency, as required by the Agreement.
- 7.5** The obligation to observe secrecy referred to in Conditions 7.3 and 7.6 does not apply:
- (a) if and as a result of disclosure by the Client to third parties, the Contracted Party deems it necessary to provide an explanation to third parties;
  - (b) if secrecy is in violation of statutory regulations;
  - (c) if inspection is requested for internal or external audits to grant or extend accreditations of laboratory, inspection activities and/or of product and management system certification schedules; or
  - (d) if there is a danger to people or objects.
- If possible, the parties shall consult each other in advance of disclosing Confidential Information pursuant to the provisions of this Condition 7.5.
- 7.6** At the Client's request, the Contracted Party will keep secret the Client's name and the fact that the research has been conducted.
- 7.7** In the case of the application of Condition 7.5(c), the Contracted Party shall procure that its auditors observe secrecy with respect to the data provided for inspection.

- 7.8 In the case of application of the provisions of Condition 4.14, third parties who are involved in the performance of the Agreement may be provided with data subject to secrecy, as per Condition 7. The Contracted Party shall procure that those third parties observe secrecy as per Condition 7 with respect to the data provided.
- 7.9 The Client shall observe secrecy with respect to the Contracted Party's corporate information whose confidentiality is established or should reasonably be known to the Client. The Client shall also impose the obligation to observe secrecy on the members of staff or third parties engaged by it.

#### **Condition 8. Results**

- 8.1 Within the scope of the business operations of its own company, the Client is entitled to the full and free use of the Results provided to the Client by the Contracted Party. The Contracted Party can at any time refuse to issue a Certificate or revoke an issued Certificate if:
- (a) in its considered opinion, the Client does not comply with the Scheme Regulations or fails to continue to maintain the requirements of the Scheme Regulations that the Client is certified against, or fails to display the Kiwa Certification Mark correctly; or
  - (b) the Client has failed to pay for renewal of the Certificate,
- and in such circumstances, the Client will be required to return the Certificate and any scheme related documentation and any previously renewable Certificate shall expire at the end of the paid-up period.
- 8.2 The provisions of Condition 8.1 apply on the understanding that the intellectual and industrial property rights of the Results are at all times vested in the Contracted Party, except for third-party rights and with due observance of the provisions of Condition 11.
- 8.3 The Contracted Party is entitled to use or cause the use of the Results of the Agreement at no cost for its business operations or for third parties. This shall not relieve either party of their obligations at Condition 7 in respect of preventing disclosure of Confidential Information.
- 8.4 Subject to Condition 8.3, the Contracted Party has the right to use, or allow others to use, the knowledge and experience obtained from the performance of the Agreement, including calculation methods, software and experimental working methods resulting from the performance of the Agreement (on a free of charge basis) for its business operations or for the benefit of third parties, to the extent that the development thereof was not the purpose of the Services provided to the Client.
- 8.5 The Contracted Party will keep items, such as samples made available to the Contracted Party in connection with the Agreement or remainders thereof, for 2 weeks after the date on which all Results were communicated to the Client, unless such is reasonably impossible or if other arrangements were made within the Quotation. The associated costs will be deemed to be included in the sum stated in the Quotation. If the Client has not arranged within this period for the returning of the items in question, the Contracted Party will be at liberty to destroy the items or the Contracted Party may take other measures at its own discretion with respect to the items in question. Costs involved in storage longer than described above in this Condition 8.5 will be payable by the Client.

#### **Condition 9. Ownership, disclosure and use of documents**

- 9.1 Subject always to Condition 7.3, any reports, certificates, recommendations, designs, sketches, drawings, models et cetera that were used for any Quotation and/or for the performance of the Agreement and/or have been included in the Results are and will remain the Contracted Party's property and the Contracted Party reserves all intellectual property rights in the same (as set out at Condition 11).
- 9.2 Without the Contracted Party's prior written consent, the Client will not be authorised, with respect to the Contracted Party's documents, such as reports, recommendations, designs, sketches, drawings, models et cetera:
- (a) to disclose them or allow their inspection by third parties;
  - (b) to use them or allow them to be used for instituting claims, conducting legal proceedings, or for recruitment purposes; or
  - (c) to use the Contracted Party's name in any connection with disclosing part or parts of a document issued by the Contracted Party or for the purposes referred to in Condition 9.2(b) above.
- 9.3 The provisions of Conditions 9.2(a) and 9.2(c) do not apply to quality surveys, test reports and inspection reports. Disclosure of these reports by the Client is permitted, provided they are disclosed in full, without any additions or omissions. Stipulations varying from these Conditions or publication in a language other than English shall be subject to the Contracted Party's prior permission in writing.
- 9.4 The Client will at all times be obliged to render all cooperation to the Contracted Party in order to give an explanation or provide comments, to third parties if:
- (a) the Client discloses Results in a manner that may give rise to an incorrect representation of the facts, misunderstandings et cetera;
  - (b) the Client refers to the standards and requirements applied by the Contracted Party, such as inspection requirements; or
  - (c) the Client does anything else within the contemplation of this Condition 9.

#### **Condition 10. 3rd Party Patent and Copyright**

- 10.1 The Contracted Party is not obliged to research patent rights of third parties. Neither will the Contracted Party be obliged to research the possibility of patenting.
- 10.2 The copyright in all drawings, reports, specifications, calculations, and other similar documents provided by either party in connection with the Agreement shall remain vested in that party or that part's licensor, as applicable.

#### **Condition 11. Intellectual Property**

- 11.1 Only the Contracted Party is entitled to apply for a patent in respect of an invention, process or product connected to this Agreement in its name and at its expense.
- 11.2 The Client may only make a patent application contrary to the provisions of Condition 11.1 after obtaining the prior written permission of the Contracted Party. In that case, the Client will grant the Contracted Party a licence (and right to sub-licence) for no consideration with respect to the use of the invention for its own purposes and those of third parties. The Client shall also reimburse the Contracted Party for the sum that the latter is obliged to pay the inventor pursuant to applicable law or employment conditions.
- 11.3 The Contracted Party and the Client will inform each other as soon as possible of any Results that are, in their opinion, capable of being patented.
- 11.4 The Contracted Party and the Client shall provide each other with all required cooperation (charged at reasonable costs) in the filing of patent applications in accordance with the provisions of this Condition 11.
- 11.5 The Contracted Party and its licensors shall retain ownership of all intellectual property rights in the Results. The Contracted Party grants the Client a fully paid-up, worldwide, non-exclusive, non-sub-licensable, royalty-free licence during the term of the Agreement to copy and modify the Results for the purpose of receiving and using the Services in its business.
- 11.6 The Client:
- (a) warrants that the receipt and use of the Results shall not infringe the rights, including any intellectual property rights, of any third party; and
  - (b) shall indemnify the Contracted Party in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Contracted Party as a result of or in connection with any claim brought against the Contracted Party, its agents, subcontractors or consultants for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt or use of the Results.

#### **Condition 12. Force majeure**

- 12.1 Force majeure on the Contracted Party's part is understood to mean: circumstances that prevent the fulfilment of the Agreement and for which the Contracted Party cannot be blamed, regardless of whether those circumstances were foreseeable when the Agreement was concluded. The obligations of the Contracted Party will be suspended during the period of force majeure.

- 12.2 The circumstances referred to in Condition 12.1 include, but are not limited to: war, fire and other destructions, business interruptions, strikes, government measures, a general lack of the items or services required to fulfil the agreed performance and non-foreseeable standstills at third parties on which the Contracted Party depends for the performance of the Agreement.
- 12.3 The Contracted Party is also entitled to rely upon force majeure if the circumstance that prevents fulfilment or continued performance takes effect after the date on which the Contracted Party should have fulfilled its obligations.
- 12.4 If the period in which fulfilment of the obligations by the Contracted Party is not possible due to force majeure lasting longer than 1 month, both parties will be entitled to terminate the Agreement without any obligation to pay compensation.
- 12.5 If force majeure occurs at a time when the Contracted Party had already partially fulfilled its obligations or can only partially fulfil its obligations, it will be entitled to separately invoice the part that has already been performed or the part to be performed, and the Client is then obliged to pay this invoice as if it concerned a separate Agreement entirely.

**Condition 13. Payment, retention of title, collection charges**

- 13.1 Payment must be made by the Client to the Contracted Party in pounds sterling (unless a different currency is specified in the Quotation), without deduction or set-off, within 30 days of the invoice date, unless agreed otherwise in writing. Payments can be made by debit card, credit card, cheque or BACS. The Contracted Party does not accept American Express. Any objections to the invoice, which must also be submitted within the 30-day period stated within this Condition 13.1, do not suspend the Client's payment obligation.
- 13.2 If the Client fails to effect payment within the period set out at Condition 13.1, it shall legally be deemed to be in default of payment and the Contracted Party shall be entitled, without any notice of default being required, to charge the Client from the due date any interest on the entire amount due, calculated at 8% above the base rate of Bank of England. In addition, the Contracted Party will be entitled to recover all costs and expenses incurred in collecting the amount due on an indemnity basis.
- 13.3 The Client shall be liable to pay to the Contracted Party, on demand, all reasonable costs, charges or losses sustained or incurred by the Contracted Party (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Contracted Party confirming such costs, charges and losses to the Client in writing.
- 13.4 In the absence of payment in due time of any invoice (pursuant to Condition 13.1), all outstanding invoices, even invoices whose payment term has not yet expired, will become immediately due and payable by the Client.
- 13.5 The Contracted Party can at all times send interim invoices and/or require advance payments and/or require that the Client provide appropriate security, at the Contracted Party's discretion.
- 13.6 Payments made by the Client will always first be used to pay all outstanding interest and costs and secondly to pay invoices due and payable which have been outstanding for the longest period of time, even if the Client states that the payment concerns a later invoice.
- 13.7 With respect to payments and settlements, the Contracted Party's records will be binding at all times.
- 13.8 The Client will not be entitled to suspend any payment obligation vis-à-vis the Contracted Party.
- 13.9 Title to all Services and Results performed by the Contracted Party ("**Deliverables**") shall not pass to the Client until the Contracted Party receives payment in full (in cash or cleared funds) for the Deliverables and any other goods that the Contracted Party has supplied to the Client in respect of which payment has become due, in which case title to the Deliverables shall pass at the time of payment of all such sums.
- 13.10 Until title to the Deliverables has passed to the Client, the Client shall:
  - (a) store the Deliverables separately from all other goods held by the Client so that they remain readily identifiable as the Contracted Party's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Deliverables;
  - (c) maintain the Deliverables in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Contracted Party immediately if it becomes subject to any of the events listed in Conditions 16.1(c) to (h); and
  - (e) give the Contracted Party such information relating to the Deliverables as the Contracted Party may require from time to time.
- 13.11 If before title to the Deliverables passes to the Client the Client becomes subject to any of the events listed in Conditions 16.1(c) to (h), then, without limiting any other right or remedy the Contracted Party may have, the Contracted Party may at any time:
  - (a) require the Client to deliver up all Deliverables in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (b) if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Deliverables are stored in order to recover them.
- 13.12 The Results may be withheld by the Contracted Party should any payment be outstanding at completion of the Agreement.

**Condition 14. End of the Agreement**

- 14.1 The date of the Contracted Party's final invoice is regarded as the date of termination of the Agreement, unless agreed otherwise, and provided that certain Conditions (including Conditions 7 and 13 shall survive termination).
- 14.2 If there is no such invoice (as described at Condition 14.1 above), the Contracted Party will determine the date on which the Agreement can reasonably be deemed to have been terminated.

**Condition 15. Termination, interruption or extension of the order**

- 15.1 If any Order Acknowledgement is cancelled by the Client, the Contracted Party will charge the Client cancellation costs as follows:
  - (a) the cancellation takes place less than 2 weeks but more than 1 week prior to the start of the performance of the Agreement – 60% of the total sums as set out within the Quotation;
  - (b) the cancellation takes place less than 1 week prior to the start of the performance of the Agreement: 90% of the total sums set out within the Quotation.
- 15.2 In the event of a cancellation pursuant to Condition 15.1, the Client will compensate the Contracted Party for all costs and damage or loss resulting from the Client's termination, cancellation or interruption of an Agreement, without prejudice to the Contracted Party's right to take legal action.
- 15.3 In any case, the Contracted Party will be entitled to terminate the Agreement if an interruption by the Client lasts longer than 6 months, without being obliged to pay the Client any compensation. The effective date of an interruption is the date of the letter from the Client or Contracted Party in which the interruption is announced or, in the absence thereof, the date of the letter describing the interruption.
- 15.4 In the case of a delay or extension of the work involved in the Agreement, the Contracted Party may charge additional costs if the delay or extension cannot be attributed to the Contracted Party.

**Condition 16. Termination**

- 16.1 Without affecting any other right or remedy available to it, the Contracted Party may terminate the Agreement with immediate effect by giving written notice to the Client if:
  - (a) the Client commits a material breach of any term of the Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
  - (b) the Client repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
  - (c) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect

- of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f) the Client (being an individual) is the subject of a bankruptcy petition or order;
  - (g) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company); or
  - (i) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 16.2** Where the Contracted Party terminates the Agreement pursuant to Condition 16.1, every claim by the Contracted Party against the Client (including any issued invoices) will be due and payable immediately and in one lump sum.
- 16.3** In accordance with the Scheme Regulations, upon termination of the Agreement, the Certificate and any associated documentation shall immediately cease to be valid and shall be returned to the Contracted Party.
- 16.4** Upon termination of the Agreement (for any reason), the Client shall return any materials and equipment provided to it by the Contracted Party and the Client's licence under Condition 11.5 shall be expire immediately.

#### **Condition 17. Miscellaneous**

- 17.1** With the exception of statements made fraudulently, the Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements between the parties relating to such matters and no party has relied upon any representation save for a representation expressly set out in the Agreement
- 17.2** A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 17.3** The rights of the Contracted Party to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.
- 17.4** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party and each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.5** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 17.6** Any notice or other communication given to a party under or in connection with the Agreement 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); or
  - (b) sent by email to the following email addresses:  
Contracted Party – email [uk.enquiries@kiwa.com](mailto:uk.enquiries@kiwa.com)  
Client – such email address of the Client as notified to the Contracted Party on or prior to commencement of the Agreement
- 17.7** Any notice or communication shall be deemed to have been received:
- (c) if delivered by hand, on signature of a delivery receipt; and
  - (d) if sent by next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - (e) if sent by email, at the time of transmission, or, if this time falls outside Business Hours, at 9.00 am on the next Business Day after transmission.
- 17.8** Conditions 17.6 and 17.7 above do 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, nor do they apply to the service of any form of notice to terminate the Agreement; and, for the avoidance of doubt, any such notice to terminate the Agreement must be in writing and delivered by mail.
- 17.9** The Contracted Party has committed to a Modern Slavery Statement, available on request.

#### **Condition 18. Applicable law**

- 18.1** The Agreement, 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.
- 18.2** 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).

#### **Condition 19. Complaints**

- 19.1** If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in these Conditions, the parties shall follow the procedure set out at [https://www.kiwa.co.uk/uploadedFiles/Contact\\_Us/Kiwa%20Complaints%20Procedure.pdf](https://www.kiwa.co.uk/uploadedFiles/Contact_Us/Kiwa%20Complaints%20Procedure.pdf), as amended from time to time.
- 19.2** The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Condition 18, which Condition shall apply at all times.

**Kiwa Limited** Registered at Companies House (03473056) Registered office at Kiwa House Malvern View Business Park, Stella Way, Bishops Cleeve, Cheltenham, Gloucestershire GL52 7DQ