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## GENERAL SERVICES TERMS AND CONDITIONS

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### BACKGROUND:

BMC Analysis (the "Service Provider") has reasonable skill, knowledge, and experience in the mineral mining field to provide laboratory testing services to business clients. These Terms and Conditions shall form the basis of contracts for the provision of services by the Service Provider to its clients.

### 1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Applicable Laws"</b>	means all laws, statutes, regulations, and similar instruments from time to time in force applicable to the Parties, the Services, and to the Contract;
<b>"Business Day"</b>	means Monday to Friday, excluding public and statutory holidays;
<b>"Business Hours"</b>	means 08:30 to 17:00 on a Business Day;
<b>"Client"</b>	means the party procuring the Services from the Service Provider under the Contract;
<b>"Client Documentation"</b>	means any and all information, documents, and other materials provided by the Client to the Service Provider in relation to the provision of the Services including, but not limited to, any such materials set out in the Order;
<b>"Client Samples"</b>	means any relevant mineral-related substance provided in sealed non-tampered packaging sent by the Client to the Service Provider for the purpose of laboratory testing or inspection that remains the property of the Client until disposal;
<b>"Commencement Date"</b>	means the date on which the Contract shall enter into effect, as set out in Clause 2 (Basis of Contract);
<b>"Confidential Information"</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>"Contract"</b>	means the contract entered into by the Service Provider and the Client for the provision of Services in accordance with and on the basis of these Terms and Conditions;

- “Data Protection Legislation”** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
- “Fees”** means any and all sums due under the Contract from the Client to the Service Provider in consideration of the Services, as set out in Clause 5 (Fees, Payment, and Records);
- “Intellectual Property Rights”** means patents, patent applications (inclusive of patent application rights), rights to inventions, copyright and related rights, trademarks, service marks, business names, domain names, rights in get-up and trade dress, confidential trade design rights (registered or unregistered), laboratory testing processes per substance type, goodwill and the right to passing off actions, design rights, database rights, rights subsisting in software, rights to use confidential information and the right to protect the same, and any and all other intellectual property rights, whether registered or unregistered, including applications and the right to apply for (and be granted) renewals or extensions of, and rights to claim priority from, any such rights and any and all equivalent rights or other forms of protection subsisting now or in the future anywhere in the world;
- “Order”** means the Client’s order for the Services as set out in the Client’s written acceptance of the Service Provider’s quotation or receipt of Client Samples;
- “Service Report”** means any documents reporting on sample data, laboratory data, laboratory testing data, data calculation, measurements, quality inspections, comparison with other laboratory testing results relevant to the Client Sample, estimates, certificates, notes, records, memoranda prepared by the Service Provider in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or service activities performed;
- “Services”** means preparation of the Client Sample including pre-testing, laboratory testing assessments, quality assurance checks, inspection (as set out in; Clause 3 of this Agreement, a relevant Service Provider quotation/estimate/invoice or a Client purchase order, as applicable) to be provided by the Service Provider, with a Service Report where relevant, to the Client in accordance with the Contract, as fully defined in the Specification;

**“Service Provider Equipment”** means any and all equipment including computer hardware, systems, laboratory equipment and equipment required for storage of Client Samples provided and used by the Service Provider in relation to the provision of the Services (whether directly or indirectly);

**“Specification”** means the description of testing or inspection requirements in the provision of Services and specification of the Services as agreed in writing by the Client and the Service Provider.

- 1.2 Any reference to “writing”, and any similar expression, includes a reference to any communication sent by electronic communications.
- 1.3 Unless expressly stated otherwise, legislation or a provision thereof is a reference to that legislation or provision as amended or re-enacted from time to time.
- 1.4 Unless expressly stated otherwise, legislation or a provision thereof, shall include all subordinate legislation made from time to time under that legislation or provision.
- 1.5 A reference to “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time.
- 1.6 A reference to “the Contract” is a reference to the contract between the Parties as defined above in sub-Clause 1.1 and further set out below in Clause 2 (Basis of Contract).
- 1.7 A reference to a "Party" or the "Parties" refer to the parties to the Contract.
- 1.8 A reference to any other agreement or document is a reference to that agreement or document as amended or supplemented at the relevant time.
- 1.9 Any obligation on either Party not to do a particular thing includes an obligation to not allow that thing to be done.
- 1.10 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Contract.
- 1.11 Words communicating the singular number shall include the plural and vice versa.
- 1.12 References to any gender shall include any other gender.
- 1.13 References to persons shall include natural persons, corporate, or unincorporated bodies (whether or not the same have a separate legal personality).
- 1.14 References to a company shall include companies, corporations, or other bodies corporate, however so and wherever incorporated or established.

## 2. **Basis of Contract**

- 2.1 An Order shall constitute a contractual offer by the Client to procure Services from the Service Provider in accordance with and on the basis of these Terms and Conditions.
- 2.2 An Order shall be deemed to be accepted by the Service Provider upon the Service Provider’s issuing its acceptance of that Order in writing.
- 2.3 Upon the Service Provider’s issuing of written acceptance under sub-Clause 2.2, a Contract shall come into existence between the Client and the Service Provider. The date of the Service Provider’s written acceptance shall be the Commencement Date of the Contract.

- 2.4 These Terms and Conditions shall form the basis of the Contract. Subject to Clause 18 (Variation) and to Clause 10 (Data Processing), any other terms that the Service Provider seeks to impose or incorporate into the Contract, or which are implied by trade custom, practice, or course of dealing shall be excluded from the Contract.
- 2.5 No advertising, promotional literature, descriptive matter, drawings, samples, catalogues, brochures, or similar material issued or published by the Service Provider in any format or medium shall form part of the Contract or have any contractual force. Such material is provided by the Service Provider only for promotional purposes and for providing an approximate description of the services available from the Service Provider.
- 2.6 Pricing presented in a Service Provider "Fee List" document are subject to the Contract commitments.
- 2.7 The service provider accepts no liability regarding how the data contained in the simplified report template issued is being used and will keep a local copy.

### 3. **Provision of the Services and Service Provider's Obligations**

- 3.1 With effect from the Commencement Date, the Service Provider shall, throughout the term of the Contract, provide the Services to the Client.
- 3.2 The Service Provider shall ensure that the Services conform at all times with the Specification in all material respects.
- 3.3 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing industry standards in the United Kingdom.
- 3.4 The Service Provider shall aim to acknowledge Orders within 24 hours of receipt and use reasonable endeavours to meet any performance dates set out in the Order or as the Client may notify to the Service Provider from time to time. Such dates shall be estimates only, however, and time shall not be of the essence in the provision of the Services.
- 3.5 The Service Provider shall act in accordance with all reasonable instructions issued by the Client provided that such instructions are compatible with the Specification.
- 3.6 The Service Provider shall ensure that any and all of its personnel involved in the provision of the Services are suitably skilled, qualified, and experienced to perform the part(s) of the Services to which they are assigned.
- 3.7 The Service Provider shall provide the Service Provider Equipment, which shall include all equipment required for the provision of the Services.
- 3.8 The Service Provider shall use any Client Samples provided by the Client (including via a third party as instructed by the Client) from time to time only to the extent reasonably necessary for and only for the purposes of the provision of the Services.
- 3.9 The delivery of the Client Samples is the sole responsibility of the Client (including when the Client instructs a third party to send the Client Sample on behalf of the Client) during transit to and from the Service Provider's premises. If the mandatory seal on the Client Sample packaging has been broken or damaged then the Client Sample may be rejected and the status will be included in the Service Report.
- 3.10 If the Client sends a Client Sample not confirmed in the Order or Specification, the Service Provider will offer to send the Client Sample to another laboratory that may be subject to additional fees and written consent from the Client. Should the Client decline, the Client can arrange for the return

of the Client Sample or send a written instruction to dispose of the Client Sample.

- 3.11 The Client acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that the facts and representations set out in the Service Reports represent the Service Provider's analysis of facts, information, documents, and/or other materials relating to the Client Samples for a specific Order in existence at the time of the performance of the Services only.
- 3.12 The Service Provider shall hold any and all Client Samples in safe custody however the Service Provider is not accountable for the condition of the stored Client Sample.
- 3.13 The Service Provider shall return or dispose of Client Materials in its possession on the Client's written instruction or after twelve months as stated on the Service Report certificate provided to the Client:
- a) If the Client requests the Service Provider to assign their Client Sample to a recycling company as specified by the Client, upon the Service Provider confirmation the Client Sample transitions to the ownership of the Service Provider.
  - b) As a default process, the Client Sample will be disposed of after twelve months in storage at the Service Provider premises.
- 3.14 Should the Client be dissatisfied with the Service Report results after comparison with other laboratories, the Service Provider may offer to re-test the Client Sample and send a revised Service Report to the Client however, this is not guaranteed under this Contract.

#### 4. **Client's Obligations**

- 4.1 The Client shall ensure that all information that it provides in the Order and the Specification shall be complete and accurate.
- 4.2 The Client shall provide:
- a) all co-operation that is reasonably required by the Service Provider to enable the Service Provider to provide the Services;
  - b) any and all Client Samples that are agreed upon by the Parties, together with any necessary written authorisation and instructions relating to the Client Samples, to enable the Service Provider to provide the Services;
- 4.3 The Client may from time to time issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions shall be compatible with the Specification and will not be binding under this Contract, unless conducted as per Clause 18 (Variation)
- 4.4 In the event that the Service Provider requires the decision, approval, consent, authorisation, or any other communication from the Client in order to continue with the provision of the Services (or any part thereof) at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.5 In the event that any licences or consents are required to enable the Service Provider to provide the Services, the Client shall obtain the same before the date on which the provision of the Services is due to begin (in accordance with sub-Clause 3.1) and shall maintain the same to the extent required for the provision of the Services throughout the term of the Contract.

- 4.6 Any failure or delay in the provision of the Services by the Service Provider which results from the Client's failure or delay in complying with any of its obligations under the Contract or any other act or omission of the Client shall not be the responsibility or fault of the Service Provider.
- 4.7 If the Client cancels the Contract in respect of all or any part of the Services at any time upon giving written notice to the Service Provider the total fees for the Services in the Order are due to be paid.

## 5. Fees and Payments

- 5.1 The Fees shall be set out in the "Fees List" and additional fees will be confirmed and approved by the Client in writing. The Fees shall be the full and only consideration payable to the Service Provider with respect to its provision of the Services, unless specified by the Service Provider and with written consent by the Client. All courier costs to send or return Client Samples are paid by the Client.
- 5.2 Unless the Parties agree otherwise in writing, the Fees shall include all costs and expenses incurred by the Service Provider, whether directly or indirectly, in connection with the provision of the Services.
- 5.3 The Service Provider shall invoice the Client upon the completion of the Services.
  - a) the Service Provider shall have the right to charge the Client for any reasonable expenses incurred by the personnel that it engages in the provision of the Services including, but not limited to, travel expenses, accommodation expenses, subsistence, and any other associated expenses, and for the cost of any services procured from third parties by the Service Provider necessary for the performance of the Services, and for the cost of any materials required.
- 5.4 The Service Provider shall invoice the Client upon the provision of the Service Report.
- 5.5 The Client agrees that it will reimburse the Service Provider for any expenses incurred relating to the provision of the Services that are agreed in writing and is wholly responsible for any freight or customs clearance fees relating any testing samples.
- 5.6 All payments required to be made pursuant to the Contract in consideration of the Services shall be made within 30 days of receipt of the relevant invoice by the Service Provider.
- 5.7 All payments required to be made pursuant to the Contract in consideration of the Services shall be made in British pounds in cleared funds via money transfer to the given bank account for the full amount (with no bank charges deductions applied) in accordance with the Service Provider's invoice.
- 5.8 Where any payment is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.9 All sums payable by the Client under the Contract shall be exclusive of VAT. In the event that any taxable supply for VAT purposes is made under the Contract by the Service Provider to the Client, the Client shall, upon receipt of a valid VAT invoice from the Service Provider, pay to the Service Provider such additional sums in respect of VAT as are chargeable on the supply of the Services at the same time that payment is due for the provision of the Services.
- 5.10 If the Client receives an invoice and reasonably believes that it is incorrect, it may dispute that invoice in good faith as follows:
  - a) the Client shall notify the Service Provider in writing as soon as reasonably possible and practicable but no later than within 7 Business Days of receipt of the invoice;

- b) the Client shall not be deemed to be in breach of the Contract for failure to pay the disputed sums while such a dispute is ongoing;
- c) the Client shall pay any sum which is not in dispute by the due date for payment;
- d) following the resolution of the dispute, the Client shall pay the sum agreed between the Parties including any interest charged on that sum by the Service Provider, as calculated in accordance with sub-Clause 5.11 (from the original due date for payment);
- e) following the resolution of the dispute, in the event that either Party is required to make a balancing payment, that Party shall make such payment within 7 Business Days and, in the event that the Service Provider is required to issue a credit note, it shall issue the same within 30 days.

5.11 Without prejudice to sub-Clause 14.2a)(termination for late payment), any sums which remain unpaid by the due date for payment under the Contract shall incur interest on a daily basis at a rate of 5% per annum above the base rate of the Bank of England from time to time from the due date for payment until payment is made in full of any such outstanding sums, whether before or after judgment.

5.12 All sums due under the Contract shall be paid in full without any set-off, withholding, deduction, or counterclaim except any withholding or deduction (if any) of tax that is required by law.

## 6. Intellectual Property Rights

- 6.1 The Service Provider (and, where applicable, its licensors) shall retain ownership of the Intellectual Property Rights subsisting in any Services and Service Reports including certificates produced by the Service Provider.
- 6.2 Prior to this Contract, all Intellectual Property Rights in any Service Reports, certificates, documents or any other material created by the Service Provider is owned by the Service Provider. For Services delivered to the Client under this Contract, the Client shall have the right to use any Service Reports, certificates and documents or any other material provided by the Service Provider subject to Confidentiality and Data Protection obligations.
- 6.3 Any use by the Client of the name "BMC" or "BMC Analysis" or any of the Service Provider's trademarks or brand names for any marketing, media or publication purposes must have written approval by the Service Provider in advance. In the event of unauthorised use, the Service Provider reserves the right to terminate this Agreement immediately.
- 6.4 The Client shall grant to the Service Provider a non-exclusive, fully paid-up, royalty-free, licence to use, copy, and modify the Client Documentation for the term of the Contract only to the extent reasonably necessary for and only for the purposes of the provision of the Services.
- 6.5 The Service Provider retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by the Service Provider to the Client) and the provision of the Services to the Client.
- 6.6 In the provision of any certificates delivered as part of the Services, the use of certification marks may be subject to national and international laws and regulations.

## 7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the

other Party (such authorisation not to be unreasonably withheld), it shall, at all times during the term of the Contract and after its termination or expiry:

- a) keep confidential all Confidential Information;
- b) not disclose any Confidential Information to any other party;
- c) not use any Confidential Information for any purpose other than as contemplated by the Contract; and
- d) ensure that (as applicable) none of its employees, directors, officers, agents, or sub-contractors does any act which, if done by that Party, would be a breach of the provisions of this Clause 7.

7.2 Subject to sub-Clause 7.3, either Party may disclose any Confidential Information to:

- a) any sub-contractors, substitutes, or suppliers;
- b) any governmental or other authority or regulatory body;
- c) any employee or officer of that Party or of any of the aforementioned persons, parties, or bodies.

7.3 Disclosure under sub-Clause 7.2 may be made only to the extent that it is necessary for the purposes contemplated by the Contract, or as required by law. In each case, the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 7.2b) or is an authorised employee or officer of such a body, the Party disclosing the Confidential Information under sub-Clause 7.2 must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

7.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.

7.5 When using or disclosing Confidential Information under sub-Clause 7.4, the Party using or disclosing that Confidential Information must ensure that it does not use or disclose any part of that Confidential Information which is not public knowledge.

7.6 With respect to storage of Client Samples and Client Documentation, the Client acknowledges that the Service Provider may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

7.7 No licence of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

7.8 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of the Contract for any reason.

## 8. **Applicable Laws**

8.1 The Service Provider shall, at all times, and at its own expense when performing its obligations under the Contract, comply with the Applicable Laws;

8.2 Each Party shall inform the other Party as soon as reasonably possible and practicable when it becomes aware of any changes to the Applicable Laws.



**9. Data Protection**

The Service Provider shall only use the Client's personal data as set out in the Service Provider's Privacy Policy available from the Service Provider's website.

**10. Data Processing**

10.1 In this Clause 10, the terms "personal data", "processing", "data subject", "controller", "processor", and "personal data breach" shall have the meanings defined in Article 4 of the UK GDPR, and the terms "Data Processor" and "Data Controller" shall have the same meanings as "processor" and "controller" respectively. The term "domestic law" means the law of the United Kingdom or a part thereof.

10.2 The Parties shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 10 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.

10.3 For the purposes of the Data Protection Legislation and for this Clause 10, the Client shall be the "Data Controller", and the Service Provider shall be the "Data Processor".

10.4 The scope, nature, and purpose of the processing; the duration of the processing; the type(s) of personal data; and the category or categories of data subject shall be set out in the Order.

10.5 The Data Controller shall (without prejudice to the generality of sub-Clause 10.2) ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to and the lawful collection of personal data by the Data Processor for the purposes described in the Order for the duration of the Contract.

10.6 The Data Processor shall (without prejudice to the generality of sub-Clause 10.2), with respect to any personal data processed by it in relation to its performance of any of its obligations under the Contract:

- a) process the personal data only on the written documented instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by domestic law. The Data Processor shall promptly notify the Data Controller before carrying out such processing unless it is prohibited from doing so by that law;
- b) ensure that it has in place appropriate technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage, or destruction. Such measures shall be appropriate and proportionate to the potential harm resulting from such events and to the nature, scope, and context of the personal data and processing involved, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be set out in the Privacy Policy.
- c) ensure that any and all persons with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
- d) not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
  - i. the Data Controller and/or the Data Processor has/have provided appropriate safeguards for the transfer of personal data;
  - ii. affected data subjects have enforceable rights and effective legal remedies;

- iii. the Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
- iv. the Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data;
- e) assist the Data Controller, at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to impact assessments, security, breach notifications, and consultations with supervisory authorities or other applicable regulatory authorities (including, but not limited to, the Information Commissioner's Office);
- f) notify the Data Controller without undue delay of any personal data breach of which it becomes aware;
- g) on the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination or expiry of the Contract unless it is required to retain any of the personal data by domestic law;
- h) maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 10 and to allow for audits, including inspections, by the Data Controller and/or any party designated by the Data Controller. The Data Processor shall inform the Data Controller immediately if, in its opinion, any instruction infringes the Data Protection Legislation and indemnify the Data Controller against any loss or damage suffered by the Data Controller as a result of any breach by the Data Processor of its obligations under this Clause 10.

10.7 The Data Processor shall not sub-contract any of its obligations with respect to the processing of personal data under this Clause 10 to another processor without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints another processor, the Data Processor shall:

- a) enter into a written contract with the other processor, which shall impose upon that other processor substantially the same obligations as are imposed upon the Data Processor by this Clause 10, which the Data Processor shall ensure shall reflect the requirements of the Data Protection Legislation at all times;
- b) ensure that the other processor complies fully with its obligations under that agreement and the Data Protection Legislation; and
- c) remain fully liable to the Data Controller for the performance of that other processor's obligations and the acts or omissions thereof.

## 11. Insurance

The Service Provider shall, for the term of the Contract:

11.1 take out and maintain professional indemnity and employers' liability insurance (applicable to the Service Provider employees only) with a reputable insurance company to cover the liabilities that may arise under or in connection with the Contract;

11.2 expressly disclaim any liability to the Client as an insurer or guarantor.

## 12. Liability

12.1 Nothing in the Contract shall limit or exclude either Party's liability under or in relation to the Contract for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, for the wilful misconduct of either Party or that of its employees, or agents, for any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (relating to title and quiet possession), or any other form of liability which cannot be limited or excluded by law.

12.2 Nothing in this Clause 12 shall exclude or limit either Party's payment obligations under the Contract.

12.3 Neither Party shall have the right to benefit from any of the exclusions or limitations of liability set out in this Clause 12 in respect of any liability under or in relation to the Contract which arises out of the deliberate default of either that Party or of that Party's employees or agents.

12.4 Nothing in this Clause 12 shall exclude claims under or in relation to the Contract for direct financial loss that are not expressly excluded by categories (a) to (k) of sub-Clause 12.5.

12.5 Subject to sub-Clauses 12.1 to 12.4 and to any other provision to the contrary in the Contract, neither Party shall be liable under or in relation to the Contract for any loss suffered by the other, whether suffered directly or indirectly, or whether immediate or consequential, arising in contract, tort (including negligence), breach of statutory duty, or otherwise, which falls within any of the following categories:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of business opportunity;
- d) loss of agreements or contracts;
- e) loss or expense of requesting additional Client Samples
- f) any incorrect results in any Service Reports arising from any false, unclear, incomplete, or misleading information provided by the Client to the Service Provider;
- g) loss of anticipated savings;
- h) loss or corruption of data or information;
- i) loss of, or damage to, goodwill or reputation;
- j) indirect or consequential loss or special damages, even in the event that the relevant Party was aware of the circumstances in which the same could arise;
- k) the Client's failure to comply with any applicable law and regulation.

12.6 Subject to sub-Clauses 12.1, 12.2, 12.3, 12.4, and 12.5, the total aggregate liability of the Service Provider under or in relation to the Contract for any and all related or unrelated acts or omissions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to an amount equal to the fees paid by the Client and/or its suppliers to the Service Provider for the Services performed for an Order in accordance with the Contract.

12.7 Subject to sub-Clause 12.1, 12.2, 12.4, and 12.5, the total aggregate liability of the Client under or in relation to the Contract for all related or unrelated acts or omissions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not be limited.

12.8 The Client's liability referred to in sub-Clause 12.7 shall not be reduced by any sums awarded by any court or arbitrator using their statutory or procedural powers in relation to the costs of

proceedings or interest for late payment.

12.9 The Client must make any claims within 90 days after the Client becomes aware of any circumstances giving rise to any such claim against the Service Provider.

12.10 Subject to the above provisions of this Clause 12, the Client's rights under the Contract shall be in addition to, and not exclusive of, any common law rights or remedies.

### 13. **Force Majeure**

13.1 For the purposes of the Contract, "Force Majeure Event" means, in relation to either Party, any circumstances beyond that Party's reasonable control including, but not limited to, any strike, lockout, or other form of industrial action; shortage of components or raw materials; lack of, interruption to, or failure of any utility service, or lack of available facilities; collapse of buildings, fire, explosion, accident, acts of God, storm, flood, drought, earthquake, epidemic, pandemic, or other natural disaster; terrorist attack, civil commotion or riots, war, civil war, threat of preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations; nuclear, chemical, or biological contamination, or sonic boom, or failing to grant a necessary licence or consent, or any similar or dissimilar circumstances.

13.2 If any Force Majeure Event occurs in relation to either Party which affects or may affect that Party's performance of its obligations under the Contract, the affected Party shall notify the other Party as soon as reasonably possible and practicable of the nature and extent of the circumstances in question. The affected Party shall use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.3 Subject to compliance with sub-Clause 13.2, neither Party shall be deemed to be in breach of the Contract or shall otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that performance of that obligation is prevented, hindered, or delayed by a Force Majeure Event of which it has notified the other Party, and the time for that performance shall be extended accordingly.

13.4 If the performance by either Party of any of its obligations under the Contract is prevented, hindered, or delayed by a Force Majeure Event for a continuous period in excess of 90 days the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

### 14. **Termination**

14.1 Without prejudice to any other right or remedy available to it, either Party may terminate the Contract by giving the other Party 30 days written notice.

14.2 Without prejudice to any other right or remedy available to it, either Party may terminate the Contract immediately by giving written notice to the other Party in the event that:

- a) the other Party does not pay any sum due under the Contract when it is due to be paid and such sum remains outstanding for at least 30 days after receiving written notification to pay that sum;
- b) the other Party commits a material breach of any term of the Contract and (if that breach is capable of remedy) does not remedy that breach within 30 days after receiving written notification to do so;

- c) the other Party threatens to, or does, suspend, payment of its debts as they fall due, admits that it is unable 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 (as if the meaning of the words “it is proved to the satisfaction of the courts” contained in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 did not appear in those sections), or (being an individual) is deemed either to be unable to pay its debts or as having no reasonable prospect of paying its debts, 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 applies;
- d) the other Party begins negotiations with any class or all of its creditors about the rescheduling of any of its debts, or proposes any compromise or arrangements with any of its creditors or enters into the same, other than (being a company) solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that other Party;
- e) the other Party applies to the court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or otherwise in connection with the winding up of the other Party (being a company, limited liability partnership, or a partnership) other than solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that Party;
- g) an application is made to the court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other Party (being a company, limited liability partnership, or a partnership);
- h) the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint, or has appointed, an administrative receiver;
- i) a person becomes entitled to appoint a receiver over any or all of the assets of the other Party, or a receiver is appointed over all or any of the assets of the other Party;
- j) the other Party (being an individual) is the subject of a bankruptcy petition, application, or order;
- k) a creditor or encumbrancer of the other Party 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 part of the other Party’s assets and such attachment or process is not discharged within 30 days;
- l) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject, that has a similar effect to any of the events set out above in sub-Clauses 14.2(c) to (k) (inclusive);
- m) the other Party ceases or suspends, or threatens to cease or suspend, carrying on all or a substantial part of its business;
- n) the other Party (being an individual) dies, or due to illness or incapacity (whether mental or physical), becomes incapable of managing their own affairs or becomes a patient under any mental health legislation; or

o) there is a change of control of the other Party (within the meaning of section 1124 of the Corporation Tax Act 2010).

14.3 For the purposes of sub-Clause 14.2b), a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

## 15. **Effects of Termination**

Upon the termination or expiry of the Contract for any reason:

- 15.1 any sum owing by either Party to the other Party under the Contract shall become immediately due and payable;
- 15.2 the Service Provider shall immediately return any and all Client Materials in its possession. The Service Provider shall be fully and solely responsible for Client Materials in its possession until they are returned to the Client and shall not use the same for any purpose which is not connected with the Contract.
- 15.3 each Party shall (except to the extent referred to in Clause 7 (Confidentiality)) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;
- 15.4 termination or expiry shall not affect or prejudice any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination or expiry including, but not limited to, the right to claim damages or any other remedy in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.5 any provision of the Contract which either expressly or by implication is intended to continue in force or come into force after or upon the termination or expiry of the Contract shall remain in full force and effect.

## 16. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## 17. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.

## 18. **Variation**

Other than as set out in these Terms and Conditions, no variation of the Contract including, but not limited to, the introduction of any additional terms and conditions, shall be effective unless it is made in writing and signed by the Parties (or their authorised representatives).

19. **Severance**

In the event that one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.

20. **Assignment and Sub-Contracting**

20.1 The Contract shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

21. **Third Party Rights**

21.1 No part of the Contract shall be intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

21.2 Subject to this Clause 21, the Contract shall continue and be binding on the transferee, successors and assigns of either Party as required.

22. **Relationship of the Parties**

Nothing in the Contract shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Contract.

23. **Notices**

23.1 All notices under the Contract shall be in writing and deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

23.2 All notices under the Contract shall be addressed to the postal address or email address as notified in writing by either Party to the other from time to time.

23.3 Notices shall be deemed to have been duly given:

a) when delivered, if delivered by courier or other messenger during Business Hours as defined herein, on signature of a delivery receipt; or

b) when sent, if sent by email and a successful confirmation of receipt or read receipt is generated during the normal business hours of the recipient or, if sent outside the recipient's normal business hours, when such business hours resume;

24. **Entire Agreement**

24.1 The Contract constitutes the entire agreement between the Parties with respect to its subject matter.

24.2 Each Party acknowledges that, in entering into the Contract, it shall not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in the Contract.

25. **Law and Jurisdiction**

25.1 The Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.