



**TERMS AND CONDITIONS**

**SERVICE SUPPLY**

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**1. INTERPRETATION**

1.1 The following definitions and rules of interpretation apply in these conditions:

**Allergen Checker:** Allergen Checker Limited, incorporated in England and Wales with company number: 09064656 and with its registered office at Hillview House, Leylands Farm Business Park, Colden Common, Winchester, SO21 1TH

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 6 (Charges and payment).

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.

**Contract:** any contract between Allergen Checker and the Client for the supply of Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Client:** the person or firm who purchases Services from Allergen Checker.

**Client Default:** has the meaning set out in clause 5.2.

**Data Protection Legislation:** (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Deliverables:** all Documents, products and materials developed by Allergen Checker or its agents, subcontractors, consultants and employees in relation to the Services in any form, including a record of data compiled by Allergen Checker in order to produce a list of allergens for the Client and all lists of allergens so produced.

**Document:** includes, in addition to any document in writing, any drawing, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**GDPR:** General Data Protection Regulation ((EU) 2016/679).

**Intellectual Property Rights:** copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future

in any part of the world.

**Request:** any communication (written or verbal) from the Client to Allergen Checker describing the Services that it requires.

**Services:** the services supplied by Allergen Checker to the Client as set out in the Summary of Service.

**Summary of Instructions:** the written Request entitled Summary of Instructions setting out the terms of the Request or such written acceptance of the Request as Allergen Checker may provide from time to time.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.3 The Summary of Instructions form part of the Contract and shall have effect as if set out in full in the body of these Conditions. Any reference to the Contract includes the Summary of Instructions.

1.4 A reference to **writing** or **written** includes email.

1.5 References to clauses are to the clauses of these Conditions.

1.6 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.

1.7 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

## 2. BASIS OF CONTRACT

2.1 A Request constitutes an offer by the Client to purchase Services from Allergen Checker in accordance with these Conditions.

2.2 A Request shall be deemed to be accepted on the earlier of:

2.2.1 Allergen Checker issues written acceptance of the Request; or

2.2.2 Allergen Checker commencing the provision of any of the Services;

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The '*Commencement Date*' stipulated in any Request shall be the Client's preferred Commencement Date but shall not be binding on Allergen Checker until such time as Allergen Checker has accepted the Request in accordance with clause 2.2.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 These Conditions shall apply to any future Contracts unless varied in accordance with clause 17.

## 3. SUPPLY OF SERVICES

3.1 Allergen Checker shall supply the Services to the Client in accordance with the Summary of Instructions.

3.2 Allergen Checker warrants to the Client that the Services will be provided using reasonable care and skill.

## 4. INTERRUPTION OF SERVICES

4.1 Allergen Checker uses reasonable efforts to ensure that the Services will be available and accessible at all reasonable times and as required by the Client but Allergen Checker makes no warranty that the Services will be available without interruption or downtime.

4.2 Allergen Checker will use reasonable endeavours to ensure that maintenance of any software systems utilised to provide the Services is conducted outside of normal business hours whenever reasonably possible.

4.3 Allergen Checker will not be liable for any interruption to the Services due wholly or in part to any loss of connectivity or interruption of services by any third party.

## 5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

5.1.1 ensure that the Summary of Instructions are complete and accurate and reflect the Request;

- 5.1.2 co-operate with Allergen Checker in all matters relating to the Services;
- 5.1.3 provide Allergen Checker with access to the Client's premises, office accommodation and other facilities as reasonably required by Allergen Checker;
- 5.1.4 provide Allergen Checker with such information and materials as Allergen Checker may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 5.1.6 comply with all applicable laws, including health and safety laws;
- 5.1.7 not provide any third party with any access to or use of the Services or any Deliverables;
- 5.1.8 use all reasonable endeavours to protect the security of any access details to utilise the system including usernames and passwords and shall notify Allergen Checker promptly if it reasonably considers there to be a breach or a significant risk of a breach of such security occurring.
- 5.1.9 use all reasonable endeavours to protect Allergen Checker's commercial interests and reputation;
- 5.2 If Allergen Checker's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
  - 5.2.1 without limiting or affecting any other right or remedy available to it, Allergen Checker shall have the right to suspend performance of the Services until the Client remedies the Client Default and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Allergen Checker's performance of any of its obligations;
  - 5.2.2 Allergen Checker shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Allergen Checker's failure or delay to perform any of its obligations as set out in this clause 5.2; and
  - 5.2.3 the Client shall reimburse Allergen Checker on written demand for any costs or losses

sustained or incurred by Allergen Checker arising directly or indirectly from the Client Default including any Charges that would have been due under the Contract had Allergen Checker been able to provide the Services but for the Client Default.

## 6. CHARGES AND PAYMENT

- 6.1 The Charges shall be calculated in accordance with Allergen Checker's fee rates as set out in the Summary of Instructions or otherwise as notified to the Client from time to time.
- 6.2 Allergen Checker shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Allergen Checker engages in connection with the Services including travelling expenses; hotel costs; subsistence and any associated expenses; for the cost of services provided by third parties and used by Allergen Checker for the performance of the Services; and for the cost of any materials.
- 6.3 Allergen Checker shall invoice the Client in accordance with the Summary of Instructions or, if not otherwise stated in the Summary of Instructions, monthly in advance.
- 6.4 In the event that, during the Term, the Client changes any of its suppliers resulting in the requirement for Allergen Checker to amend or update the Client's information or to, in anyway, adjust the Services; the provision of the Services; how the Services are delivered; or the Deliverables, Allergen Checker shall be entitled to charge the Client in respect of any administration costs at Allergen Checkers' normal administrative rates from time to time.
- 6.5 The Client shall pay each invoice submitted by Allergen Checker:
  - 6.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Allergen Checker and confirmed in writing to the Client;
  - 6.5.2 in full and in cleared funds to a bank account nominated in writing by Allergen Checker, and
  - 6.5.3 time for payment shall be of the essence of the Contract.
- 6.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Allergen Checker to the Client, the Client shall, on receipt of a valid VAT invoice from Allergen

Checker, pay to Allergen Checker such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.7 If the Client fails to make a payment due to Allergen Checker under a Contract by the due date, then the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment and interest under this clause will accrue and compounded each day at the higher rate of either:

6.7.1 8% a year above the Bank of England's base rate from time to time; or

6.7.2 4% a year above the base rate from time to time of Lloyds Bank plc.

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

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Allergen Checker.

7.2 The Client grants Allergen Checker a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Allergen Checker for the term of the Contract for the purpose of providing the Services to the Client.

7.3 Unless otherwise expressly agreed in writing the provision of any materials to the Client by Allergen Checker, including any Deliverables, shall not grant any licence to the Client for the reproduction, distributions or sharing of such materials and the Client shall indemnify Allergen Checker for any losses or expenses incurred as a result of the Client's failure to protect Allergen Checker's intellectual property rights in such materials.

## **8. DATA PROTECTION AND DATA PROCESSING**

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.2 The terms Personal Data and Data Subject have the meanings as defined in the Data Protection Legislation.

8.3 Without prejudice to the generality of clause 8.1, the Client will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to Allergen Checker for the duration and purposes of the Contract.

8.4 Without prejudice to the generality of clause 8.1, both parties shall, in relation to any Personal Data processed in connection with the performance of its obligations under a Contract:

8.4.1 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected; and

8.4.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

## **9. CONFIDENTIALITY**

9.1 Both parties undertake to the other that they shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other party, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 9.2.

9.2 A receiving party may disclose the other party's confidential information:

9.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out obligations under this agreement.; and

9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 Allergen Checker shall be under no obligation to provide any confidential information to the Client, its agents or representatives at any time whatsoever including any such information

pertaining to another customer and from whom such other customer purchases supplies.

## 10. LIMITATION OF LIABILITY

10.1 The limits and exclusions in this clause reflect the insurance cover Allergen Checker has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

10.2.1 death or personal injury caused by negligence;

10.2.2 fraud or fraudulent misrepresentation; and

10.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.3 Subject to clause 10.2, Allergen Checker's total liability to the Client shall not exceed the amount paid by the Client to Allergen Checker in respect of the Services in the six months preceding Allergen Checker receiving written notice of any such claim. Allergen Checker's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

10.4 The following types of loss are wholly excluded:

10.4.1 Loss of profits

10.4.2 Loss of sales or business.

10.4.3 Loss of agreements or contracts.

10.4.4 Loss of anticipated savings.

10.4.5 Loss of use or corruption of software, data or information.

10.4.6 Loss of or damage to goodwill.

10.4.7 Indirect or consequential loss.

10.5 Unless the Client notifies Allergen Checker that it intends to make a claim in respect of an event within three months of the Client becoming aware of the event or the date when the client should reasonably have been aware of the event, Allergen Checker shall have no liability for that event.

10.6 The notice of a claim must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.7 Allergen Checker provides the Services to the Client on the basis of and in reliance upon the information provided to it by the Client. Allergen Checker does not, unless expressly agreed in writing as part of the Services, take any steps to verify any of the allergen or ingredient information provided to it by the Client and shall not be liable to the Client for any loss or damage that arises exclusively or in part due to any inaccuracy or omission of information provided to Allergen Checker by the Client or on the Client's behalf.

10.8 This clause 10 shall survive termination of the Contract.

## 11. CONTRACT TERM

11.1 The Contract term shall be for the minimum term as stated in the Summary of Instructions or, if not so stated, shall be for a minimum term of 12 months (**Term**).

11.2 Unless otherwise terminated in accordance with clause 11 or otherwise agreed in writing, the Contract shall automatically renew at the end of each Term for another Term with the same Charges.

## 12. TERMINATION

12.1 The Client may terminate the Contract by providing Allergen Checker with not less than three months' written notice, such notice to expire no earlier than 1700 hours on the last day of the current Term.

12.2 In the event that the Client gives notice less than three months before the expiry of the current Term then the Term shall automatically renew in accordance with clause 11.2.

12.3 Without affecting any other right or remedy available to it, Allergen Checker may terminate the Contract by giving the Client one month's written notice.

12.4 Without affecting any other right or remedy available to it, Allergen Checker may terminate the Contract with immediate effect by giving written notice to the Client if:

12.4.1 the Client commits a breach of any term of the Contract;

12.4.2 the Client takes any step or action in connection with its entering administration, provisional

liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 12.4.3 the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 12.4.4 the Client's financial position deteriorates to such an extent that, in Allergen Checker's opinion, the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 12.4.5 the Client fails to pay any amount due under the Contract on the due date for payment;
  - 12.4.6 there is a change of control of the Client; or
  - 12.4.7 any licence, permission or consent upon which Allergen Checker relies in order to provide the Services, including any licence to utilise any third party software or intellectual property rights, is revoked, terminated or suspended.
- 12.5 Without affecting any other right or remedy available to it, Allergen Checker may suspend the supply of Services under the Contract or any other contract between the Client and Allergen Checker if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 12.4.2 to clause 12.4.4, or Allergen Checker reasonably believes that the Client is about to become subject to any of them.

### **13. EARLY TERMINATION**

- 13.1 In the event that the Client terminates, seeks to terminate or purports to have terminated the Contract prior to end of the Term the Client shall, on receipt of a valid VAT invoice from Allergen Checker, pay all such sums that would have been due to Allergen Checker for the Term, irrespective of whether Allergen Checker continues to provide the Services or whether the Client accepts or makes use of the Services.
- 13.2 The Client acknowledges that Allergen Checker is committing to making the Services available throughout the Term and that the payment due pursuant to clause 13.1 is a primary obligation of the Client in consideration of Allergen Checker's

investment and commitment to providing the Services for the Term.

- 13.3 In the event that the Client has paid in advance in respect of the Term and terminates, seeks to terminate or purports to have terminated the Contract prior to the end of the Term the Client shall not be entitled to any refund of any sums paid.

### **14. CONSEQUENCES OF TERMINATION**

- 14.1 On termination of the Contract:
  - 14.1.1 the Client shall immediately pay to Allergen Checker all of Allergen Checker's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Allergen Checker shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 14.1.2 the Client shall return all of Allergen Checker Equipment. If the Client fails to do so, then Allergen Checker or its employees, subcontractors or agents may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose;
  - 14.1.3 Allergen Checker shall remove the Client's access to the Services or otherwise cease to provide the Services; and
  - 14.1.4 the Client shall not access the Services or attempt to access the Services.
  - 14.1.5 Allergen Checker shall be entitled to retain and use any information provided by the Client for its own purposes, including the provision of Services to other clients, provided that, at all times, Allergen Checker complies with clauses 7, 8 and 9.
  - 14.1.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

**15. ASSIGNMENT AND OTHER DEALINGS**

The Client shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of Allergen Checker.

**16. NO PARTNERSHIP OR AGENCY**

16.1 Nothing in Contract 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.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**17. VARIATION**

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

**18. ENTIRE AGREEMENT**

These Conditions (including the Summary of Instructions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**19. THIRD PARTY RIGHTS**

These Conditions are not intended to give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 for any other party to enforce any terms of these Conditions.

**20. NOTICES**

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

20.1.1 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

20.1.2 sent by email to the address specified in writing for such use.

20.2 Any notice shall be deemed to have been received:

20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

20.2.3 if sent by email, not until receipt is acknowledged in writing.

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

**21. GOVERNING LAW**

21.1 Each Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with a Contract or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any Contract or its subject matter or formation

**22. FORCE MAJEURE**

Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under a Contract, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**23. SEVERANCE**

If any provision or part-provision of these Conditions or a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.