# TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

## 1. GENERAL

1.1. These terms and conditions ("Conditions") govern the use of any products or services rendered by Niab to a client unless otherwise agreed by the Parties in writing. By using any of Niab services and entering a contract with Niab, you accept and agree to the provisions of these terms and conditions.

1.2. The Niab Privacy Policy is incorporated in these Conditions and is applicable in respect of all personally identifying data arising in provision of Services by Niab. Please review the Niab Group Privacy Policy document on Niab's website to understand Niab's privacy policy.

1.3. These Conditions shall take effect to the exclusion of any other terms and conditions of the Client or otherwise. No prior correspondence, addition to, variation or waiver of these Conditions shall be binding unless agreed in writing by the Parties.

## 2. DEFINITIONS

The definitions and rules of interpretation in this Clause 2 apply in all parts of these Conditions.

2.1. "Agreement" means these Conditions and any other Contract Documents.

2.2. "Background IP" means all Intellectual Property Rights owned by or licensed to a Party prior to the date of the Agreement, which rights are Confidential Information of that Party.

2.3. "Client" means any person, partnership or company whose request for the provision of Services is accepted by Niab.

2.4. "Client Data" means all data supplied by the Client or which is generated by Niab in the performance of the Services and which relates exclusively to the Client.

2.5. "Confidential Information" means any information (written or oral) not in the public domain concerning the business and affairs of either Party which is obtained in connection with this Agreement.

2.6. "Contract" or "Contract Documents" means the Client's purchase order and Niab's acceptance of it, the Client's acceptance of a quotation for Services by Niab under clause 3.1 or any other part of these Conditions, or a signed Specification Document between Niab and the Client detailing the agreement between the Parties.

2.7. "Deliverables" means all documents, products and materials (excluding drafts) produced by Niab for the Client as part of the Services and specified as Deliverables in the Contract.

2.8. "Foreground IP" means any and all Intellectual Property Rights in or related to outcomes generated or acquired through the performance of the Contract by Niab to deliver the Deliverables, including but not limited to any documents, processes, algorithms, formulae, data, drawings, designs, models, trade secrets, know-how, software, inventions, prototypes and/or tools, whether or not protected by intellectual and/or industrial property right.

2.9. "In-put Items" means all documents, information and materials provided by the Client relating to the Services including (without limitation) the in-put items specified in the Contract.

2.10. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

2.11. "Niab" means any of the following entities registered in England at Park Farm Campus, Villa Road, Histon, Cambridge, CB24 9AT, named as a party to the Contract between the Parties: Niab (Company number

03395389), Niab Trading Ltd (Company number 07390289), East Malling Services Ltd (Company number 02335037), The Arable Group Limited (Company number 00192460) and TAG Consulting Limited (Company number 05110993).

2.12. "Party" refers to either Niab or the Client. "Parties" refers to Niab and the Client.

2.13. "Services" means the services set out in the Contract which the Client agrees to engage Niab to deliver.

2.14. "Specification Document" means a specification and pricing document issued by Niab and completed by the Parties.

2.15. The headings in these Conditions shall not affect their construction or interpretation.

## 3. PROVISION OF SERVICES

3.1. The Client's purchase order, or the Client's acceptance of a quotation for Services by Niab, constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by Niab other than: (i) by a written acknowledgement issued and executed by Niab; or (ii) (if earlier) by Niab starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established.

3.2. Quotations are given by Niab on the basis that no Contract shall come into existence except in accordance with clause 3.1 of these Conditions.

3.3. Niab shall provide the Services in accordance with the written instructions specified in the Contract or otherwise agreed in writing between the parties.

3.4. Where a member of Niab staff is named as the person to provide the Services, Niab shall be entitled, on giving reasonable notice, to use other staff of comparable skill and experience to supply the Services.

3.5. Unless otherwise agreed in writing, Niab may correspond by the Internet or other electronic media. In such cases, Niab will take reasonable steps to safeguard the security of the information transmitted but will not accept liability for its security and confidentiality beyond these steps.

## 4. THE CLIENT'S OBLIGATIONS

4.1. The Client warrants that all information provided by or for it to Niab will be full and accurate.

4.2. The Client will be responsible for assessing the recommendations and advice given by Niab and for any commercial decisions that it makes.

4.3. The Client shall: (i) co-operate with Niab in all matters relating to the Services; (ii) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment.

4.4. The Client will ensure that all legislative health and safety requirements are complied with in relation to employees, agents and contractors of Niab working on the Client's premises.

4.5. The Client will ensure that its employees attending Niab premises will comply with statutory and Niab health, safety, welfare, information technology and security arrangements.

4.6. The Client shall provide to Niab, in a timely manner, such In-put Items and other information as required to carry out the services and ensure that it is accurate in all material respects. Delivery, maintenance and insurance of In-put Items shall be the responsibility of the Client. The Client shall ensure that all In-put Items provided by the Client are in good working order and suitable for the purposes for which they are used in relation to the Services and conform to all relevant United Kingdom standards or requirements. The Client shall provide, in a timely manner, such other information and equipment as Niab may reasonably require to deliver the services.

4.7. The Client shall indemnify Niab against claims brought or threatened and shall be liable to pay Niab, on demand all reasonable costs, charges or losses sustained or incurred by Niab (including, without limitation, 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) arising directly or indirectly from the Client's fraud or negligence.

## 5. PAYMENT TERMS

5.1. The fees payable in consideration of the provision of the Services and the Deliverables shall be as specified in the Contract. All sums payable under these Conditions shall be invoiced as set out in the Contract. Unless otherwise agreed in writing all sums due to Niab are due within 30 days of invoice date.

5.2. If any payment is not made to Niab by the due date: (i) Niab reserves the right to cease to provide the Services and, if it thinks fit, terminate the contract; (ii) the Client agrees that payment for all Services carried out by Niab up to that date shall become due and payable forthwith whether or not an invoice has been issued in respect of that work and notwithstanding that 30 days may not have expired since the invoice date; and (iii) Niab reserves the right to charge interest on any overdue payment at the rate of 3% above the base rate of Niab's bankers in force from time to time.

5.3. The Client shall reimburse Niab for all expenses properly incurred by Niab in the discharge of the Services.

5.4. Niab will add VAT to its charges and expenses at the applicable rate then in force.

5.5. Niab reserves the right to take up credit, bank and other references.

## 6. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

6.1. Subject to this Clause 6, all Background IP belonging to the Client or to Niab before entering into the Contract or the provision of the Services shall remain in the ownership of the relevant Party.

6.2. Any Background IP belonging to the Client that is contained within the In-Put Items is licensed to Niab free of charge solely for the purpose of carrying out the Services.

6.3. All Foreground IP contained within the Deliverables belong to the Client.

6.4. All Foreground IP created through the performance of the Services that is not contained within the Deliverables belong to Niab.

6.5. Niab licenses to the Client, to the extent that it is able, all Background IP in the Deliverables, free of charge and on a non-exclusive, worldwide basis to such an extent as is necessary to enable the client to use the Intellectual Property for its own immediate purposes relating to the Contract.

6.6. Providing they do not constitute Client Data or Input-Items, the Client irrevocably licenses all Foreground IP in the Deliverables to Niab free of charge and on a non-exclusive, worldwide basis to enable Niab to make reasonable use of any generic knowledge, skills expertise, programming tools, problem solving methodologies and associated checklists, templates or forms developed in the performance of the Services which may have general applications for other clients and for the limited purposes of compilation of anonymised statistics.

6.7. The Parties shall keep in strict confidence all Confidential Information exchanged in relation to the Services including but not limited to technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the other Party, its employees, agents, consultants or subcontractors and any other confidential information concerning the other Party's business.

6.8. Neither party shall be prevented from disclosing information which: (i) is or becomes public knowledge; (ii) is or becomes known from other sources without restriction on disclosure; (iii) is required to be disclosed by law; or (iv) the recipient party can prove is or has been independently developed by the recipient.

6.9. Neither Party will display or use either the name or logo of the other Party or disclose to any third party the nature of the Services without the prior written consent of the other Party, unless legally required to do so.

6.10. Subject to Clause 6.11, each party ("the Indemnifying Party") shall, at its own expense, defend or at its option settle any action brought against the other ("Indemnified Party") which consists of a claim that the use of any materials supplied by the Indemnifying Party for any activity contemplated under this agreement infringes any Intellectual Property Right belonging to a third party, and the Indemnifying Party agrees to be responsible for all

and indemnify the Indemnified Party against all losses, costs (including reasonable legal costs), damages, liabilities, claims and expenses suffered or incurred by the Indemnified Party in connection with any such claim.

6.11. The Indemnifying Party's obligations under Clause 6.10 shall be conditional on the Indemnified Party: (a) promptly notifying the Indemnifying Party of such claim; (b) giving the Indemnifying Party express authority to proceed as contemplated by Clause 6.10; and (c) providing the Indemnifying Party with all such available information and assistance as it may reasonably require.

## 7. TERMINATION

7.1. Without prejudice to their other rights and subject to as otherwise agreed in the Contract, a Party may terminate this Contract if (i) the other Party commits a material irremediable breach or fails to remedy a material and remediable breach within 21 days of receipt of written notice to do so; (ii) the other party has an administrator or administrative receiver appointed over all or any of its assets or goes into insolvent liquidation; or (iii) an event within the scope of Clause 10.1 prevents or delays Niab from carrying out the Services for 60 consecutive days or more.

7.2. Payment for all Services carried out up to and including the date of termination shall be due on termination by the Client pursuant to Clause 7.1.

7.3. Payment due on termination by Niab pursuant to Clause 7.2 shall include: (i) payment for all Services carried out up to and including the date of termination; and (ii) reimbursement to Niab of the cost of any commitments entered into by Niab on the assumption that it would supply all the Services.

7.4. On termination of the Contract for any reason, the Parties shall, within a reasonable time, return all of the other Party's equipment, materials and confidential information and/or dispose of them in the manner requested by the other Party.

## 8. NIAB'S WARRANTIES AND LIABILITY

8.1. Niab shall use reasonable endeavours to provide the Services and the Deliverables in accordance in all material respects with the Contract specification and to meet any performance dates agreed in the Contract; but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

8.2. Niab will not be liable for (i) any failure or delay in carrying out the Services attributable to any act or omission, or delay by the Client, its agents, consultants, employees or contractors; or (ii) any products supplied by a third party.

8.3. The total liability of Niab in contract, tort (including negligence, breach of statutory duty), misrepresentation, restitution or otherwise relating to the Services shall be limited to the reasonable cost of remedying any defect in the Services or other matter constituting a breach and in no circumstances shall the liability of Niab exceed the lesser of £100,000 or the total paid by the Client to Niab for the Services.

8.4. Nothing in this Clause 8 shall limit the liability of Niab for death or personal injury caused by its negligence or for any other liability which may not be excluded by law.

8.5. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.6. The Client shall bring any claim related to the Services within two years of (i) the relevant incident; or (ii) the date when the Client ought reasonably to have been aware of the existence of the claim. Niab excludes liability for claims brought outside this time limit.

## 9. NIAB STAFF

9.1. The Client shall not during the provision of the Services or within 6 months after the completion of the Services or Contract, without Niab's prior written consent, solicit or entice away from Niab or offer employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of Niab (of the level of consultant or higher) who has carried out work in connection with the Services or engage any such person either directly or indirectly to provide services to the Client.

9.2. Any consent given by Niab pursuant to Clause 9.1 is subject to Niab requesting, or if the Client is in breach of Clause 9.1 the Client agrees to pay to Niab, on demand, a sum equal to 30% of the total annual remuneration package paid by Niab to the member of its staff concerned prior to his/her departure. The Client acknowledges that this sum represents a genuine and fair assessment of the likely loss to Niab.

## 10. MISCELLANEOUS

10.1. Niab will not be liable for any failure or delay in carrying out the Services due to any circumstances beyond its reasonable control.

10.2. Any notice by either party shall be deemed to have been properly given if delivered by hand or sent by first class recorded delivery post to the other party at its registered address notified in writing and shall be deemed to have been delivered two working days after the date of posting. For the avoidance of doubt, notices may not be served by email.

10.3. Any clause of these Conditions found to be invalid or unenforceable shall be severed, and the remaining clauses in these Conditions shall continue to be valid and enforceable as if the contract had been agreed without the invalid or unenforceable clause.

10.4. The Contract to which these Conditions apply shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

10.5. Clauses 6, 7 and 8 of these Conditions shall remain enforceable irrespective of termination of the contract or completion of the Services for whatever reason. Termination or completion shall not prejudice the accrued rights or liabilities of either party.

10.6. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

10.7. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as provided in the Contract. Nothing in these Conditions shall limit or exclude any liability for fraud.

10.8. The Client shall not, without the prior written consent of Niab, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract. Niab may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

10.9. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute the appointment of any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.