

## Terms and Conditions

NPL Management Limited (**NPL**) is a company registered in England and Wales, with company number 02937881, whose registered office is at the National Physical Laboratory, Hampton Road, Teddington, Middlesex, TW11 0LW.

### 1. DEFINITIONS AND INTERPRETATION

1.1. The following definitions apply in these Conditions:

“**Application**” the Applicant’s online application for the Services to be provided by NPL.

“**Applicant**” the person or company who receives the Services from NPL.

“**Contract**” means the agreement entered into by the Applicant and NPL for the supply of Services in accordance with these Conditions, comprising of the signed Scope of Works (expressly referencing these Conditions) and these Conditions;

“**Conditions**” these terms and conditions as amended from time to time;

“**Deliverables**” means the deliverable results of the Services as set out in the Scope of Works;

“**Intellectual Property Rights**” means patents, copyright and related rights, moral rights, trade marks, trade names, goodwill and the right to sue for passing off, rights in designs and inventions, database rights, rights to use and protect confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, whether registered or unregistered which subsist now or in the future in any part of the world.

“**Scope of Works**” means the detailed scope of works put forward by NPL to the Applicant following its review of the Application for Services.

“**Services**” means the services, including the Deliverables, to be provided by NPL to the Applicant as described in clause 3.3.

“**Subsidy Rules**” means the rules to be complied with by the Applicant, as described in clause 5.

### 2. APPLICATION PROCESS

2.1. The Scope of Works constitutes an offer by NPL to provide the Services in accordance with these Conditions.

2.2. The Scope of Works shall only be deemed to be accepted when the Applicant confirms its acceptance to NPL, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Applicant seeks to impose or incorporate.

### 3. PROVISION OF THE SERVICES

3.1. With effect from the Commencement Date, and subject to clause 5.3 and 5.4, NPL shall provide the Services to the Applicant using reasonable skill and care.

3.2. NPL shall use all reasonable endeavours to meet any performance dates specified in the Scope of Works, but any such dates shall be estimates only and time shall not be of the essence.

3.3. NPL shall supply up to 20 days of support to the Applicant in the form of experimental work, desk based research and advice.

3.4. NPL shall be entitled to charge for any additional services provided above the 20 day cap, the rates for which will be agreed in advance with the Applicant.

### 4. APPLICANT’S OBLIGATIONS

4.1. The Applicant shall:

- (a) ensure that the contents of the Application and any information it provides to NPL is complete and accurate;
- (b) co-operate with NPL in all matters relating to the Services;
- (c) comply with all applicable laws including the Subsidy Rules;
- (d) participate in a post project evaluation interview.

4.2. NPL shall not be responsible for any failure or delay in the performance of any of its obligations under the Contract to the extent that such failure or delay arises due to any act or omission by the Applicant. In such circumstances, NPL shall be entitled to suspend performance of the Services until such default has been remedied.

### 5. SUBSIDIES

5.1. NPL makes its support available through its Measurement for Business scheme, the resources for which are made available through government funding. The Applicant must ensure at all times that it is compliant with the obligations set out in the Subsidy Rules pursuant to the Subsidy Control Act 1922 under which the Services are provided.

5.2. It is a condition of this grant that the Applicant complies with the Subsidy Rules and ensures that any indirect aid it provides is compliant with the Subsidy Rules. In particular, the Applicant confirms that any such indirect aid will be provided pursuant to the minimal financial assistance/de minimis aid regulation, as applicable, and that the Applicant will undertake all actions required to comply with such regulation.

5.3. The Applicant must ensure that its Programme Manager or equivalent provides all necessary documentation to NPL upon request within 14 working days to demonstrate compliance with the minimal financial assistance/de minimis aid regulation and any additional information as required, and must respond promptly to requests regarding such information, including, without limitation, providing in response to a minimal financial assistance notification from NPL, a written confirmation that the total amount specified in the Subsidy Rules (being £315,000 under the Subsidy Control Act 1922) will not be exceeded by the Applicant in its receipt of the assistance, or where applicable, will not be exceeded by any recipient of indirect aid from the Applicant.

5.4. The Applicant accepts that unless and until it has provided to NPL the confirmation referred to in clause 5.3, NPL shall be under no obligation to provide the Services.

5.5. The Applicant must inform NPL of any other public funding applied for or awarded against the eligible costs covered by the Services. It is the Applicant’s responsibility to ensure that the cumulative total of public funding and aid intensity that it and any minimal financial assistance/de minimis beneficiaries are receiving for the Contract does not exceed those limits stated in the Subsidy Rules. The Applicant must ensure that it and any minimal financial assistance/de minimis beneficiaries comply with the Subsidy Rules, which are those rules contained in Part 2, Title XI, Chapter 3 of the EU-UK Trade and Cooperation Agreement and Article 10 of the Northern Ireland Protocol if applicable.

5.6. NPL will immediately cease providing the Services to the Applicant if it becomes subject to a recovery order that follows on from a previous decision by the UK Government, which declares any aid the Applicant has received as illegal and incompatible with the internal market.

5.7. Where the Applicant is required by an order of the UK Government to make any recompense to NPL in respect of the Services that are found to be an unlawful Subsidy, interest will be charged on the amount being reclaimed from the date of payment at the applicable legislated rate.

5.8. No subcontracting of the benefit of the Services can be made which would constitute a breach of the Subsidy Rules.

5.9. The Applicant acknowledges that in compliance with the obligations set out in the Subsidy Rules, NPL may be required to provide the UK Government with information about the value of assistance given to it by NPL and shall provide such assistance as NPL shall reasonably request.

### 6. INTELLECTUAL PROPERTY

6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials products, or services provided and owned by the Applicant) shall be owned by NPL.

6.2. NPL grants the Applicant a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Applicant) for the purpose of using the Services and Deliverables in its business.

- 6.3. The Applicant grants NPL a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Applicant for the purpose of providing the Services.

## **7. NPL'S LIABILITY**

- 7.1. Subject to clause 7.3, NPL shall under no circumstances whatsoever be liable to the Applicant, whether in contract, tort (including negligence), breach of statutory duty, other otherwise, for:
- (a) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
  - (b) any: (i) loss of profit; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption or software, data or information; or (vi) loss of or damage to goodwill.
- 7.2. Subject to clause 7.3, NPL's total liability to the Applicant in respect of any loss or damage shall in no circumstances exceed £250,000.
- 7.3. Nothing in this Contract shall limit or exclude any liability which cannot legally be limited by law.

## **8. CONFIDENTIALITY**

- 8.1. Each party undertakes that it shall not at any time during this Contract, and for a period of 5 years after termination or expiry, disclose to any person any confidential information of the other party, except as permitted by clause 8.2 or as authorised in writing by the other party.
- 8.2. Either party may disclose the other party's confidential information to:
- (a) its employees, officers, representatives, sub-contractors, suppliers, or advisors who need to know such information for the purposes of carrying out that party's obligations under the Contract; and
  - (b) As may be required by law, a court or competent jurisdiction or any governmental or other regulatory authority.
- 8.3. Clause 8.2 notwithstanding:
- 8.3.1 NPL may publicly disclose the fact that the Applicant has received services through the Measurement for Business scheme; and
  - 8.3.2 the Applicant accepts that NPL may contact them regarding their participation in the Measurement for Business scheme.
- 8.4. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract. This clause notwithstanding, NPL may disclose (i) an applicant's company name, their project title and the general topic area of the application and (ii) anonymised aggregated metrics collated as part of the post project evaluation. The data will be used to inform UK Government measurement priorities and report on the programme. For the avoidance of doubt NPL will not share details of the project beyond what is outlined in clause 8.
- 8.5. Each party shall ensure that its employees, sub-contractors, or advisors to whom it makes a disclosure comply with this clause 8.

## **9. TERMINATION**

- 9.1. Without affecting any other right or remedy available to it, NPL may immediately terminate the Contract by giving written notice if:
- (a) the Applicant commits a material breach of any term of the Contract;
  - (b) the Applicant takes any step or action (other than in relation to a solvent restructuring) in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or cease to carry on all or a substantial part of its business.
- 9.2. For the purposes of clause 9.1(a) **material breach** shall include the provision of any false statement in the Application or the breach of Subsidy Rules.
- 9.3. Any provision which, either expressly or by implication, is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **10. DATA PROTECTION**

- 10.1. NPL shall process the Applicant's data in accordance with the privacy policy which is available on its website at <https://www.npl.co.uk/privacy-policy/>.

## **11. GENERAL**

- 11.1. **Notices.** Any notice to be given under the Contract shall be given in writing by email and sent to the contact details set out in the Application or Scope of Works. Such notice shall be deemed to have been received by the party on the same day as transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.2. **Force Majeure.** NPL shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 11.3. **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 11.4. **Assignment.** The Applicant may not assign or deal in any other manner with any or all of its rights or obligations under the Contract without NPL's prior written consent. NPL may at any time assign, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract
- 11.5. **Interpretation:**
- (a) A reference to "writing" or "written" includes fax and email;
  - (b) Any reference to a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - (c) The headings used in these Conditions are for convenience only and shall have no effect upon interpretation.
- 11.6. **Governing Law and Jurisdiction.** This Contract shall in all respects be construed and take effect according to the laws of England and Wales whose courts shall have exclusive jurisdiction.

## **12. TERMINATION**

- 12.1. NPL may, at its absolute discretion, terminate this Contract on reasonable notice, without cause.