

## 1 Recitals

These General Terms and Conditions of Services [for clinical trial phases] (the "Terms") shall govern the relationship between CARBOGEN AMCIS AG (commercial register number CHE-108.025.033; with its registered office at Hauptstrasse 171, CH-4416 Bubendorf, Switzerland) or - as the case may be - any of its Affiliates, as defined hereinafter ("CGAM") on the one hand and its customer (the "Customer") on the other hand (Customer and CGAM each also a "Party" or collectively the "Parties"), especially for the provision of any development, research, analysis, synthesis, analytical purification, (pre-)formulation, lyophilisation, fill and finish, writing of Reports (as defined below), packaging, storage, stability or release testing, quality control or other related services (the "Services") as well as any product(s), chemical(s), intermediate(s), substance(s) or compound(s) derived from the performance of the Services (the "Developed Work") by CGAM to the Customer. For the purpose of the Terms an "Affiliate" shall mean any company that directly or indirectly controls, is controlled by or under common control with either Party (as the case may be), where "control" shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such entity, whether by contract, through the ownership of a significant percentage of the shares of the respective company, or through the by-laws or otherwise. No terms and conditions contained in any document issued by the Customer shall be binding on CGAM, even if they have not been expressly rejected by CGAM. CGAM accepts Customer's service orders solely on these Terms which take precedence over Customer's different or additional terms and conditions. Neither CGAM's commencement of performance nor delivery shall constitute acceptance of Customer's different or additional terms and conditions. CGAM's failure to object to provisions contained in any document from Customer shall not be construed as waiver of the Terms or an acceptance of any such provision.

## 2 Principles of Performance of the Services;

- 2.1 Upon receipt of Customer's request to perform certain services, CGAM will as soon as practicable and in its sole discretion prepare a proposal - describing the understanding of the Services Customer asks CGAM to provide, including the estimated Service Fee (as defined below) and estimated timelines or cycle times - for such Services (the "Proposal"; of which these Terms form an integral part of). If Customer intends to entrust CGAM with the Services described in such Proposal it shall issue an order to CGAM. The order shall become a binding service order (the "Service Order") upon the acceptance thereof by CGAM in writing. The Service Order and the Terms as integral part thereof constitute the binding agreement between the Parties regarding the Services (the "Agreement"). For the avoidance of any doubt, CGAM shall not be obliged to perform any Services if it has - in its sole discretion - not accepted the service order in writing.
- 2.2 Both Parties shall always cooperate, communicate and act diligently and in good faith to ensure the proper performance of the Agreement. CGAM undertakes to use commercially reasonable efforts to implement requested amendments to the Agreement but reserves the right to adjust

the Service Fee, associated fees and estimated term accordingly. CGAM shall promptly notify Customer of any unanticipated adverse effect or any adverse event that becomes known to it occurring during the performance of the Agreement.

- 2.3** Customer has the obligation to always render all necessary support reasonably requested by CGAM to enable a proper performance of the Agreement, such as, but not limited to, taking and notifying decisions, accepting or declining requests, giving or refusing consents, submitting necessary technical information known to it, etc.
- 2.4** The day-to-day management of the Agreement shall be the responsibility of the responsible person of either Party for planning, managing, directing and overseeing specific activities regarding the Agreement (the "Project Manager"). The Customer's Project Manager shall be the ultimate authority with respect to all Agreement related issues and decisions on behalf of the Customer and hence shall be assumed to have all necessary authority and power to take any and all actions on behalf of Customer with respect to such issues and decisions.
- 2.5** Any goods, materials, substances, information, processes, instructions, technology, etc. that Customer provides to CGAM for the performance of the Agreement (the "Customer Materials") shall be free of any third party rights, of appropriate quality and, as required by normal practice, shall be certified or approved in accordance with the applicable standards as well as in full compliance with the registered specifications and with all necessary documentation. Further Customer is responsible for ensuring that Customer Materials are provided in time for the Services to commence or be continued as planned.
- 2.6** Customer also has a responsibility to provide CGAM with any and all documentation or knowledge in his possession pertaining to risks associated with the Customer Materials and the performance of the Agreement. This includes material safety data sheets for raw materials, intermediates and final product, chemical and operational hazard assessments and materials compatibilities. Failure to comply with this obligation may result in Customer's liability for any damage or personal injury caused by such Customer Materials, for which event Customer shall be sufficiently insured.
- 2.7** Subject to the second sentence of this section, in case of any discrepancies between the provisions of these Terms with any other documents, the Terms shall take precedence over all and any such documents; provided, however, that such documents do not expressly modify, amend or supersede a specific section of the Terms with the express reference to such section being modified, amended or superseded. The "Quality Agreement" being the written agreement(s) concluded by the Parties, governing the responsibilities related to quality systems, quality requirements, quality control, testing, Reports (as defined below), audits, complaints, inspections and Release (as defined below) for the Developed Work shall take precedence in all matters regarding the GMP responsibilities of the Parties and the standard of quality of the Services and technical requirements of such (cf. section 6.2 of the Terms). In these Terms "GMP" shall mean those regulations applicable in the United States, the United Kingdom and the European Union including Switzerland, Liechtenstein, Iceland and Norway, relating to the manufacture of medicinal products for human use, including, without limitation, current good manufacturing practices as specified in the ICH guidelines and the Guide to Good Manufacturing Practices for Medicinal Products as promulgated under European Directive 2001/83/EC; and as defined in the Quality Agreement (if any); whereas "ICH" shall mean the international council for harmonisation of technical requirements for pharmaceuticals for human use.

### **3 CGAM's Specific Obligations**

- 3.1** As the Parties consider the Services as of an experimental and development nature, CGAM cannot and does not guarantee the achievement of any specific or particular result or outcome nor guarantee completing thereof to or within a defined time- or deadline.

- 3.2** CGAM's main obligation under this Agreement shall be to use its best commercial efforts and to work diligently and in good faith in providing the Services within the agreed time slots, always using the agreed quality standards (cf. section 6 of the Terms) and all standards reasonably to be expected from a first-class provider of similar services in similar circumstances and in compliance with the Agreement, the Quality Agreement and all applicable laws, statutes, rules, regulations, orders, judgements or ordinances of any governmental or regulatory authority or agency at the place the Services were provided (the "Applicable Laws").
- 3.3** CGAM shall reserve time slots, infrastructure and qualified personnel to perform the Services as agreed in the Agreement.
- 3.4** The personnel that CGAM causes to be applied in the performance of the Agreement shall be appropriately qualified and experienced for the tasks that they are to perform.
- 3.5** Any machinery and equipment that CGAM provides or utilises in the performance of the Agreement shall be of an appropriate quality and, as required by normal practice, be certified and approved by the relevant body or organisation.
- 3.6** CGAM shall not be liable for any raw material supply issues beyond its direct control. The impact of any raw material related quality or delivery issues shall be discussed in good faith between the Parties and, if necessary, the Agreement revised accordingly.

## **4 Subcontracting**

- 4.1** CGAM reserves the right to perform any Services or parts thereof at any of its Affiliates.
- 4.2** As specified in the Proposal, CGAM routinely uses certain external suppliers for specialist work, which it is not able to provide by itself, and Customer hereby agrees their use under this Agreement.
- 4.3** Subcontracting in all the other cases shall require prior written consent of Customer, which consent shall not be withheld, conditioned or delayed unreasonably.

## **5 Service Fee; payment**

- 5.1** For the payment of the agreed upon consideration payable to CGAM by Customer for the provision of the Services (the "Service Fee") the following payment schedule shall apply:
- (a)** initial payment of forty (40) percent of the total Service Fee upon acceptance of the Service Order by CGAM and prior to commencement of the performance of the Services;
  - (b)** an additional fifty (50) percent of the total Service Fee upon completion of the Services (except for the issuance of the Report); and
  - (c)** the remaining ten (10) percent of the total Service Fee on delivery of the written description of the performed Services (the "Report").
- 5.2** All Developed Work is supplied CIP (Carriage and Insurance Paid To; as defined in Incoterms 2020) to the place of destination as specified in the Service Order whereas transfer of risk shall be pursuant to section 10.1 of the Terms; except for Developed Work performed at the CGAM site in Saint-Beauzire, France, which is supplied EXW (Ex Works) as defined in Incoterms 2020.
- 5.3** Any amount, weight, quantity, etc. of Developed Work will be measured or weighed at CGAM's approval of the batch for release following successful completion of the release procedures (the "Release").

- 5.4** The Service Fee does not include any state or local taxes, duties, governmental or similar charges, VAT, customs duties or any additional costs (such as but not limited to insurance costs, etc.). Any such costs will additionally be charged to Customer. For the avoidance of doubt, Customer shall not be liable for any taxes incurred by CGAM including income taxes, employment taxes, use taxes, and the like incurred by CGAM, or for any penalties or interest related to the failure of CGAM to collect sales, use, VAT or similar taxes.
- 5.5** Costs for disposal of any (a) Developed Work, (b) Customer Materials or (c) unused raw materials are not included in the Service Fee. Such costs will therefore additionally be charged to Customer.
- 5.6** Third party costs for specialist work by external suppliers are not included in the Service Fee and will therefore additionally be charged to Customer. Any such costs listed in the Agreement are non-binding best estimates only.
- 5.7** For any storage and insurance of Developed Work, Customer Materials and/or raw materials after Release a separate storage agreement shall be concluded. The same shall be applicable for the storage and insurance of Developed Work, Customer Materials and/or raw materials in case of postponement of delivery or the project at Customer's request. CGAM shall not dispose of any Developed Work, Customer Materials and/or raw materials without the Customer's written approval, which shall not unreasonably be withheld, conditioned or delayed.
- 5.8** Prices for raw materials and primary packaging materials are not included in the Service Fee and will therefore be charged to Customer at cost plus a reasonable handling and insurance fee; based on the specifications, quality standard and origin defined in the Agreement. Any such costs listed in the Agreement are non-binding estimates only.
- 5.9** Unless agreed otherwise in the Service Order, all payments shall be made in Swiss Francs (CHF) by SWIFT bank transfer directly to CGAM's account specified in the respective Service Order.
- 5.10** Customer shall pay any invoice within thirty (30) calendar days after the date of the invoice. If Customer disputes, for any reason, the invoice it shall notify CGAM of such dispute within these thirty (30) calendar days, and the Parties shall promptly attempt to resolve such dispute in good faith. Even in case of a dispute the original invoice date shall remain and Customer shall not be entitled to withhold payments.
- 5.11** All late payments will, without further notice, be charged with a CHF 100 (hundred Swiss Francs) late fee and an annual interest of fifteen (15) percent calculated on a daily basis from the due date until full payment.

## **6 Quality**

- 6.1** The appropriate level of quality for the specific Services (GMP, non GMP, etc.) will be defined in the Agreement.
- 6.2** If not defined in the Agreement, the responsibilities related to quality systems, quality requirements, quality control, testing and manufacturing records, audits, complaints, inspections and release of Developed Work as well as engagement of qualified subcontractors shall be governed by the Quality Agreement.

## **7 Audit**

- 7.1** Unless agreed otherwise in the Quality Agreement, Customer shall have the right, once (1) every second calendar year, during normal business hours and upon a reasonable prior written notice of at least ninety (90) calendar days, to have two (2) employees or representatives conduct an audit of CGAM, to ensure proper performance by CGAM of CGAM's obligations; provided, however, that such audits shall not unreasonably interfere with the operations of CGAM. In addition to the above, Customer shall have the right to conduct such audits at any time during normal business hours if - upon Customer's reasonable belief - CGAM has breached or is presently going to breach any of its obligations under this Agreement. For the avoidance of any doubt, Customer shall have no right to audit CGAM's financial books or records.
- 7.2** In the event the audit under Section 7.1 exceeds two (2) Business Days ("Business Day" shall mean any day(s) that is/are not a Saturday, a Sunday or a public bank holiday at the place where either Party has its registered address, as the case may be), CGAM shall have the right to charge Customer a per diem rate of up to CHF 10'000 (ten thousand Swiss Francs), which shall include reasonable access to CGAM's qualified and experienced employees. Such per diem rate is being waived if such audit was caused by CGAM's material breach of the Agreement.
- 7.3** CGAM shall, without delay and if allowed by Applicable Law, inform Customer of any inspection conducted by any governmental body, if such inspection includes the Services, Developed Work or Customer Materials.

## **8 CGAM's Warranties**

- 8.1** CGAM warrants that the Developed Work delivered to the Customer shall at the time of Release conform to the specifications agreed between the Parties in the Service Order.
- 8.2** CGAM warrants that the Services are provided in compliance with the Agreement and, the Applicable Laws. CGAM assumes no responsibility or liability for compliance with any other laws.
- 8.3** For all Services that have been performed under this Agreement, CGAM warrants to have been in possession of at the time of performance necessary licenses, permits and authorisations.
- 8.4** In providing Services pursuant to this Agreement, CGAM shall not knowingly utilise technology or incorporate into any Developed Work or Services any technology which it knows to infringe any valid and enforceable Intellectual Property Right (as defined hereinafter) of a third party. Except as provided in the preceding sentence, CGAM makes no warranty or representation that the use of the Results (as defined below) will not infringe the rights of third parties. The term "Intellectual Property Right" shall mean any and all intellectual property rights if registered or not (including patents, trade secrets, trademarks, general know-how, processes, confidential information, etc.).
- 8.5** The express warranties provided above in this section 7 are the only warranties applicable to the Results whether used alone or in combination with any other material or services. CGAM expressly excludes all other express oral or written warranties and all warranties implied by law with respect to the Results, including any warranties of merchantability or fitness for a particular purpose.

## **9 Customer's Representations and Use of Results**

- 9.1** Customer acknowledges that the Results have not been tested by CGAM for safety and efficacy in food, drug, device, cosmetic, commercial or any other use. Customer expressly represents and warrants to CGAM that it will properly test, use, manufacture and market any Results delivered by CGAM and any final articles made from them in accordance with the practices of a reasonable person who is an expert in the field and in strict compliance with all Applicable Laws now and hereinafter enacted.
- 9.2** Customer has the responsibility to verify the hazards and to conduct any further research necessary to assess the hazards involved in using Results delivered by CGAM. Customer also has the duty to warn Customer's customers and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the Results. Customer shall comply with instructions, if any, furnished by CGAM relating to the use of the Results and not misuse the Results in any manner.
- 9.3** Customer hereby represents and warrants that the use of the Customer Materials by CGAM will not infringe or violate any Intellectual Property Right or any other proprietary rights of any third party. Customer agrees to be fully liable towards CGAM for any damages resulting from any such infringement and to fully indemnify and hold harmless CGAM in this regard.

## **10 Transfer of Ownership (Title) and Risk; Delivery; Acceptance**

- 10.1** Ownership (title) of all Results as well as associated risks thereto shall transfer from CGAM to Customer upon delivery, except for Developed Work which shall transfer upon Release.
- 10.2** Delivery times of CGAM shall not be regarded as binding and deviations thereto shall not entitle Customer to claim damages.
- 10.3** Immediately upon Customer's receipt of any Results, Customer shall diligently examine any such Results. In case of any discovered non-compliance with the agreed specifications or any defects of delivered Results (any of the before a "Non-Compliance" or "Non-Compliant") the following shall apply:
- 10.3.1** Notice of all claims arising out of Non-Compliance, apparent from a reasonable visual inspection on delivery, shall be given in writing to CGAM within five (5) Business Days after delivery.
- 10.3.2** With respect to any Non-Compliance, which would not be apparent from a reasonable visual inspection on delivery, and, in case of any hidden or latent Non-Compliance, notice of such claim shall be made not later than five (5) Business Days from the time Customer discovers or should have discovered the relevant Non-Compliance, however in no event later than (i) within sixty (60) Business Days after delivery, or (ii) the expiry of the initial re-test date of the Developed Work; whatever is shorter. Any claim not being made in the above timelines shall be deemed waived and CGAM shall have no liability whatsoever.
- 10.4** If CGAM disputes the claim of Non-Compliance from Customer, the Parties shall investigate all reports of NonCompliance with the intent of overcoming such dispute. The Parties shall act promptly and shall cooperate fully in such investigations. If the Parties do not reach an agreement, then CGAM and Customer shall (each acting reasonably and in good faith) mutually elect an independent third party laboratory (acting as an expert and not an arbitrator) to determine if the Results are Non-Compliant and make a determination regarding the cause of the Non-Compliance. Such results shall be binding upon both Parties (except for manifest errors). The cost of the testing and evaluation by the expert shall be borne by the Party being wrong.



## 11 Remedies and Liability; Limitation of Liability

- 11.1** In case of any Non-Compliance, which is attributable to CGAM, Customer shall return all of the Non-Compliant Results and CGAM shall have the right to rectify any such Non-Compliance within a reasonable period of time taking into account CGAM's available manufacturing capacities. Should CGAM not be able or fail to rectify such Non-Compliance in a reasonable time, then Customer shall be entitled to the remedies set forth in section 11.2 of the Terms.
- 11.2** CGAM's sole and exclusive liability and Customer's exclusive remedy with respect to Non-Compliant Results, not rectified by CGAM, shall either be replacement of such Non-Compliant Results without charge or a reduction or refund of the Service Fee determined by having due regard to the nature of the Non-Compliance (for the avoidance of any doubt without third party costs, costs for any raw materials or Customer Materials), at CGAM's sole discretion. For the avoidance of any doubt: any further claims of whatever nature (e.g. damages, compensations, etc.) are herewith expressly excluded.
- 11.3** UNLESS IN CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CGAM'S OVERALL LIABILITY (INCLUDING INDEMNIFICATION OBLIGATION PURSUANT TO SECTION 12 OF THE TERMS) UNDER THIS AGREEMENT SHALL NOT EXCEED (i) THE AGGREGATE SERVICE FEE PAID BY THE CUSTOMER TO CGAM (EXCLUDING ANY THIRD PARTY COSTS, COSTS FOR RAW MATERIALS OR CUSTOMER MATERIALS) UNDER THE RELEVANT SERVICE ORDER IN THE YEAR THE CLAIM WAS BROUGHT AGAINST CGAM HOWEVER, IF ANY AMOUNT IS CONFIRMED TO BE PAID BY THE LIABLE PARTY'S INSURANCE COMPANY, SUCH PARTY'S OVER-ALL LIABILITY IS LIMITED TO THAT AMOUNT.
- 11.4** NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL LOSSES AND DAMAGES, PUNITIVE DAMAGES, ANTICIPATED OR LOST PROFITS, BUSINESS INTERRUPTION, INCIDENTAL DAMAGES, LOSS OF TIME, OR OTHER SIMILAR LOSSES IN CONNECTION WITH THIS AGREEMENT.

## 12 Indemnification

- 12.1** Subject to the limitation in 11.4, each Party shall indemnify (the "Indemnitor") the other Party (the "Indemnitee") from and against all losses and claims (including reasonable legal fees and other costs of defending any action) arising or resulting from any claim, action, suit, proceeding or charge brought by a third party (each a "Third Party Claim") made against the Indemnitee with respect to death or personal injury in direct connection with this Agreement; provided, however such Third Party Claim arises as a result of the gross negligence or intentional misconduct of the Indemnitor.
- 12.2** Subject to the limitation in 11.4, Customer shall indemnify CGAM from and against all losses and claims (including reasonable legal fees and other costs of defending any action) that CGAM incurs as a result of any Third Party Claim against CGAM or its Affiliates relating to or in connection with Customer's (its officers', agents', employees', successors', subcontractors', assigns' or Affiliates'), use, commercialisation, sale or transfer of the Results delivered by CGAM, or by reason of Customer's breach of the Agreement. The indemnification obligations under this section 12.2 of the Terms shall not apply to the extent that any such Third Party Claim is the result of the gross negligence or intentional misconduct by CGAM.

- 12.3** Subject to the limitation in 11.4, CGAM shall indemnify Customer from and against all losses and claims (including reasonable legal fees and other costs of defending any action) that Customer incurs as a result of any Third Party Claim against Customer or its Affiliates relating to or in connection with CARBOGEN AMCIS' (its officers', agents', employees', successors', subcontractors', assigns' or Affiliates') breach of the Agreement. The indemnification obligations under this section 12.3 shall not apply to the extent that any such Third Party Claim is the result of the gross negligence or intentional misconduct by Customer.
- 12.4** The Indemnitee hereunder agrees to give prompt written notice to the Indemnitor after the receipt of any written notice of any Third Party Claim, investigation or threat thereof, for which Indemnitee will claim indemnification pursuant to this Agreement and cooperate fully with the Indemnitor in conducting such defence. Unless, in the reasonable judgment of the Indemnitee, a conflict of interest may exist between the Indemnitee and the Indemnitor with respect to a Third Party Claim, the Indemnitor may assume the defence of such claim. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, to the extent prejudicial to its ability to defend such action, shall relieve the Indemnitor of any obligation to the Indemnitee under this section 12.
- 12.5** No compromise or settlement of any Third Party Claim may be effected by the Indemnitee without the Indemnitor's written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

## **13 Insurance**

Each Party shall have and maintain the insurance coverage that is required by Applicable Law. Each Party may self-insure its liabilities under the Agreement and shall otherwise maintain such insurance as it, in its sole discretion, deems appropriate and necessary.

## **14 Intellectual Property**

- 14.1** All information and all right or access to Customer's Intellectual Property Rights, which Customer provides to CGAM in connection with the Agreement and all information related to Customer, its business or its products or developmental products shall be and remain the property of, or under the control of, Customer and shall be treated as confidential pursuant to section 15. CGAM shall have a non-exclusive, non-transferable, non-assignable, royalty-free license to use any and all Customer's Confidential Information and Customer's Intellectual Property Rights provided hereunder, solely for the purpose of performing its obligations under the Agreement.
- 14.2** Any and all Intellectual Property Rights (a) owned or controlled by CGAM at the commencement of the Agreement or (b) acquired or developed thereafter by CGAM separately and apart from the performance of the Agreement, provided, however, they are not Results (as defined in 14.3) (the "Background-IP") (including any improvements thereof) shall be and remain CGAM's property.
- 14.3** Pursuant to section 10.1 of the Terms, CGAM assigns all rights, title and interests in any and all results of the Services such as, but not limited to Reports, data, laboratory records, samples, Developed Work, formulas, processes, techniques, compositions, improvements to Customer's Intellectual Property Rights, inventions of Intellectual Property Rights and the like generated in the performance of the Agreement (the "Results") to Customer, who shall, at its expense, have sole control of patent application filing and prosecution and CGAM shall assist Customer in every reasonable way (including filing of patent applications and execution of assignments and other documents) to obtain, maintain and enforce patents for Results. Customer will compensate CGAM at reasonable rates for the assistance CGAM provides.
- 14.4** Generally, CGAM shall not without a special/separate license agreement being in place with the Customer incorporate Background-IP into the Results. In case any Background-IP is nevertheless incorporated into the Results without such license agreement being in place, then CGAM hereby automatically grants to Customer a non-exclusive, worldwide, irrevocable, transferable, royalty-free and perpetual license (with the right to grant sublicenses) to use such Background-IP to the extent that Customer requires to make use of the Results and to use and exploit the Results (including any Intellectual Property Rights therein or relating thereto).



## 15 Confidentiality and Data Protection

- 15.1** Subject to section 15.2 of the Terms, neither Party shall disclose to any third party (a) any information and/or materials (of whatever kind and in whatever form or medium) disclosed by or on behalf of the owner (the "Disclosing Party") to the other Party or its designee (the "Receiving Party"), in connection with the Agreement, before its effective date or thereafter, identified as confidential or reasonably understood to be so, whether prior to or during the term of the Agreement and whether provided orally or visually, electronically or in writing; (b) all copies of the information and materials described in (a) above; (c) any Results; (d) the Background-IP; and (e) the existence and each provision of the Agreement (together the "Confidential Information") for a period of ten (10) years from the date of disclosure, provided, however, Confidential Information is not protected for a longer period of time under the Applicable Law. Each Party agrees to use and utilise Confidential Information solely for the performance of the Agreement and to treat the Disclosing Party's Confidential Information with the same degree of care as it uses for its own confidential information at least using reasonable care. Each Party agrees to limit its internal dissemination of Confidential Information to only those employees, officers, consultants, authorised agents, Affiliates and sub-contractors who have a need to know the Confidential Information for the performance of the Agreement and who are contractually bound by restrictions of disclosure and use at least as onerous as those in this section 15. The Parties furthermore undertake to comply with the relevant provisions of data protection law when exchanging and processing personal data. They shall maintain suitable technical and organisational measures appropriate to the imminent risk to ensure data security, in particular to protect personal data from unintentional or unlawful disclosure by third parties.
- 15.2** Confidential Information falling within one of the following exceptions shall not be subject to the restrictions of section 15.1 of the Terms: (a) to the extent permitted by the Disclosing Party's written consent; (b) to the extent Receiving Party can prove that Confidential Information is public knowledge or, after disclosure hereunder, becomes public knowledge through no fault of the Receiving Party; (c) to the extent Confidential Information can be shown by Receiving Party to have been in Receiving Party's possession or control prior to the date of disclosure hereunder; (d) to the extent Receiving Party can establish that Confidential Information was received from any third party, which, by Receiving Party's reasonable judgment, did not breach any restrictions of disclosure; (e) to the extent Receiving Party can establish that the Confidential Information was independently developed or discovered by itself without reference to Disclosing Party's Confidential Information; or (f) to the extent Receiving Party can establish that it is required by law, regulation, subpoena, judgment, order or other similar form of process to disclose Confidential Information to a government, other public authority or third party, provided however that Receiving Party immediately upon learning of such obligation, and prior to disclosure, if lawfully possible, notifies Disclosing Party of such disclosure obligation and reasonably cooperates with Disclosing Party in limiting the scope of disclosure, if lawfully possible.
- 15.3** If Receiving Party becomes aware of any unauthorised use, disclosure, access, possession or knowledge of Disclosing Party's Confidential Information, it shall immediately notify Disclosing Party and take all reasonable steps requested by Disclosing Party to protect the confidentiality of such Confidential Information.
- 15.4** At Disclosing Party's written request, Receiving Party shall return or destroy all Confidential Information of Disclosing Party. However, Receiving Party may retain one (1) copy of all such Confidential Information in its legal records for the purposes of ensuring compliance with the Agreement and Receiving Party may keep such copies that may have been generated by automatic back-up systems.
- 15.5** In case of any discrepancies between the provisions of confidentiality in this section 15 and those contained in a separate confidential disclosure agreement concluded between the Parties, the provisions herein shall prevail.

## 16 Force Majeure

- 16.1** Except for payment obligations, neither Party shall be held liable for any failure in performance of any part of the Agreement or any breach of contract resulting from force majeure events, including fire, flood, explosion, war, strike, embargo, pandemics, epidemics, shortages, acts of God, terrorism, riots, epidemics, pandemics or similar causes. If a Party is affected by an event of force majeure, it will forthwith notify the other Party of the nature and extent of such force majeure event and the Parties will enter into bona fide discussions with a view to alleviating its effects and to agreeing such alternative arrangements as may be fair, reasonable and practicable. The Party affected by a force majeure event is under obligation to give full particulars thereof and to use its best efforts to minimize the effect of occurrence and to take the necessary remedial measure.
- 16.2** If as a result of force majeure events, performance of the Agreement, in whole or material parts thereof, is suspended for more than hundred twenty (120) consecutive calendar days or hundred eighty (180) calendar days in any single twelve (12) month period, either Party shall have the right to terminate the Agreement and/or any affected Agreement by giving written notice to that effect to the other Party.

## 17 General Provisions

- 17.1** No course of dealing or failure of either Party to strictly enforce any term, right or condition shall be construed as a waiver of that term, right or condition.
- 17.2** Should one of the provisions of the Agreement or of any additional stipulations agreed upon be or become invalid, the validity of the remaining conditions and stipulations shall not be affected thereby. Parties shall use their best efforts to replace the invalid provisions with a valid provision with respect to the same subject matter.
- 17.3** This Agreement constitutes the entire agreement and understandings (oral and written) between the Parties relating to the subject matter hereof and supersede all previous oral and written communications between the Parties with respect hereof.
- 17.4** Except as otherwise required by mandatory law, whenever the Agreement demands a notice, communication or exercise of any right to be in the written form or in writing, then such may be made either (a) by a written instrument legally signed by the respective Party (either by handwritten signature(s) or by official, qualified electronic signatures), or (b) in electronic form (an electronic file that is signed by the duly authorised representatives of the respective Party by unqualified electronic signature, such as e.g. DocuSign or AdobeSign, or which contains a scan of the signature of such Party).
- 17.5** Any modification, alteration or amendment to the Agreement shall be in writing with the express reference to the sections of this Agreement being modified, altered or amended and signed by the duly authorised representative(s) of each Party.
- 17.6** Neither Party may assign this Agreement, in whole or in part, to any third party without the prior written consent of the non-assigning Party, such approval shall not to be unreasonably delayed, conditioned or withheld.
- 17.7** The Parties hereto are independent contractors and nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, employment, franchise, agency or fiduciary relationship between the Parties.
- 17.8** The table of contents and headings are for convenience only, and are to be of no force or effect in construing or interpreting any of the provisions of this Agreement. Unless the context otherwise clearly requires or otherwise specified, whenever used in this Agreement: (a) the word "including" and words of similar import shall mean "including, without limitation"; (b) the words "hereof," "herein," "hereby" and derivative or similar words refer to this Agreement; (c) whenever the word "or" is used in this Agreement, it shall not be deemed to be exclusive; (d) all references to the word "will" are interchangeable with the word "shall" and shall be understood to be imperative or mandatory in nature; and (e) all words used in this Agreement shall be construed to be of such gender or number, as the circumstances require.

- 17.9** This Agreement is to be interpreted exclusively in accordance with Swiss usage of terminology. This includes the legal concepts and terms contained in this Agreement, the English translations of which may not be identical with the original Swiss terms in their respective legal understanding; terms to which either in the same provision or elsewhere in this Agreement a German translation has been added shall be interpreted as having the meaning assigned to them by the German translation.

## **18 Notices**

- 18.1** Any notice required shall be in writing and shall specifically refer to the Agreement. Notices shall be sent via one of the following means and will be effective: (a) on the date of delivery, if delivered and handed over in person; (b) if sent by email (with delivery confirmed) (i) on the date of receipt, provided, however, the email was received on a Business Day at recipient's domicile between 00.00 and 17.00 of its time zone; (ii) the next Business Day following receipt, if the email was received by recipient outside a Business Day at recipient's domicile or between 17.00 and 24.00 of its time zone; or (c) 72 (seventy two) hours after postage, if sent by private express courier or by first class certified mail, return receipt requested. Any notice sent via email shall be followed as soon as reasonably possible by a copy of such notice by private express courier or by first class mail.
- 18.2** The provisions of this section 18 shall not be applicable for the day-to-day communication between the Parties.

## **19 Term and Termination**

- 19.1** The Agreement may be immediately terminated by either Party upon providing written notice if (i) the other Party is in material breach of the Agreement and such material breach is not capable of remedy or not remedied within thirty (30) Business Days after it has occurred; (ii) insolvency or liquidation proceedings are commenced by or against the other Party; or (iii) the other Party becomes bankrupt or otherwise incapable of paying its bills as they fall due or if a receiver or administrator in bankruptcy has been appointed to run such Party's affairs.
- 19.2** Customer shall be entitled to terminate the Agreement for no cause by giving written notice to CGAM.
- 19.3** In case of termination of a Service Order, Customer shall pay to CGAM: (a) 100% of any and all non-cancellable and accumulated or accrued third party costs (e.g. for raw materials, sub-contracted services, etc.); (b) 100% of any work performed up to termination; (c) 100% of all costs necessary to wind down the Agreement; and (d) for drug substance projects a termination fee of (as the case may be and CGAM using its best commercial efforts to reduce such termination fee by re-allocating freed up resources to other projects): (i) 15% of the difference between the aggregate agreed upon Service Fee minus the claims pursuant to this section 19.3(b) and (c) (the "Unused Service Fee") in case of giving notice more than ninety (90) calendar days before the commencement of the provision of the Services pursuant to the terminated Agreement; (ii) 25% of the Unused Service Fee in case of giving notice between ninety (90) and sixty (60) calendar days before the commencement of the provision of the Services pursuant to the terminated Agreement; (iii) 35% of the Unused Service Fee in case of giving notice between sixty (60) and thirty (30) calendar days before the commencement of the provision of the Services pursuant to the terminated Agreement; (iv) 50% of the Unused Service Fee in case of giving notice less than thirty (30) calendar days before the commencement of the provision of the Services pursuant to the terminated Agreement; or (v) 100% of the Unused Service Fee in case of giving notice after the commencement of the provision of the Services pursuant to the terminated Agreement; or (e) for drug product projects a termination fee of (as the case may be and CGAM using its best commercial efforts to reduce such termination fee by re-allocating freed up resources to other projects): (i) 40% of the Service Fee [corresponding to the non-refundable initial payment for allocation of the mutually agreed manufacturing slot] in case of giving notice more than ninety (90) calendar days before the commencement of the provision of the Services pursuant to the terminated Agreement, or (ii) 100% of the Unused Service Fee in case of giving notice less than ninety (90) calendar days before or after the commencement of the provision of the Services pursuant to the terminated Agreement.

- 19.4 Customer shall not be obliged to pay any termination fee more than 100% of the Service Fee.
- 19.5 Customer shall not be obliged to pay any termination fee pursuant to Sections 18.3(d) and/or (e) of the Terms in case of termination due to CGAM's material breach of the Agreement (section 18.1(i) of the Terms).
- 19.6 In case Customer requests a postponement of booked resources, this is deemed as termination pursuant to sections 19.3(d) and 19.3 of the Terms.
- 19.7 CGAM shall be entitled to terminate the Agreement for no cause by giving prior written notice of six (6) months to Customer; provided, however, that any outstanding Services shall be completed under the respective Service Order.
- 19.8 The following sections of the Terms shall survive termination of this Agreement: 2.6 (Customer Materials); 5 (Service Fee; Payment); 6 (Quality); 10 (Transfer of Ownership (Title) and Risk; Delivery; Acceptance); 11 (Remedies and Liability; Limitation of Liability); 12 (Indemnification); 13 (Insurance); 14 (Intellectual Property); 15 (Confidentiality); 16 (Force Majeure); 17 (General Provisions); 18 (Notices); 19 (Term and Termination) and 20 (Applicable Law and Jurisdiction); or of any other provision which is expressly or by implication intended to continue in force after such termination.

## 20 Applicable law and Jurisdiction

- 20.1 This Agreement shall be construed, interpreted, governed and enforced exclusively in accordance with the substantive **Swiss law** except as for its conflict of law rules, which would refer to another applicable law. The application of the Convention of the United Nations of April 11, 1980 on Contract for the International Sale of Goods is hereby expressly excluded.
- 20.2 The Parties shall try to resolve any disputes arising out of or in connection with this Agreement amicably through good faith negotiations. In the event that such attempts should fail within thirty (30) Business Days from the first negotiation, the dispute shall be exclusively and finally resolved by the **Civil-Court of Basel-Stadt, Switzerland** ("Zivilgericht Basel-Stadt"). This shall not limit the right to appeal in Switzerland.

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