

Genome

Software as a Service Agreement

DATE OF EXECUTION

[Date]

PARTIES

1. Genome Ltd, a company incorporated in England and Wales (registration number 11591997) having its registered office at Wharf House Victoria Quays, Wharf Street, Sheffield, South Yorkshire, S2 5SY ("**the Provider**"); and
2. [COMPANY NAME], a company incorporated in [jurisdiction], with a registration number [registration number] having its registered office at [address] ("**the Customer**").

BACKGROUND

1. The Provider is in the business of developing, implementing and supporting software for the health and social care sector.
2. The Customer is an organisation wishing to acquire the software from the Provider.
3. The Provider and the Customer therefore wish to enter into a contract in accordance with the provisions of this Agreement.

AGREEMENT

1. Definitions

- 1.1 In this Agreement:

"Acceptance Criteria" means:

- (a) the Platform and Hosted Services conforming in all material respects with the Hosted Services Specification; and
- (b) the Hosted Services being free from Hosted Services Defects;

"Acceptance Period" means a period of 20 Business Days following the making available of the Hosted Services to the Customer for the purposes of testing in accordance with Clause 4 or any repeated making available of the Hosted Services

to the Customer for the purposes of testing in accordance with Clause 4, or such other period or periods as the parties may agree in writing;

"Acceptance Tests" means a set of tests designed to establish whether the Hosted Services meet the Acceptance Criteria, providing that the exact form of the tests shall be determined by the Provider acting reasonably, and communicated to the Customer in advance of the first Acceptance Period. The tests shall be documented by the Customer.;

"Access Credentials" means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"AI Systems" means machine learning and other artificial intelligence systems, tools, applications, algorithms and/or models;

"Anti-Corruption Laws" means all applicable anti-bribery and anti-corruption laws (including the Bribery Act 2010);

"Anti-Slavery Laws" means all applicable anti-slavery and anti-human trafficking laws (including the Modern Slavery Act 2015);

"Anti-Tax Evasion Laws" means all applicable anti-tax evasion laws (including the Criminal Finances Act 2017);

"API" means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 08:00 to 18:00 GMT/BST on a Business Day;

"CCN" means a change control notice issued in accordance with Clause 16;

"CCN Consideration Period" means the period of 10 Business Days following the receipt by a party of the relevant CCN from the other party;

"Change" means any change to this Agreement;

"Charges" means:

- (a) the charges and other payable amounts specified in Section 4 of Schedule 1 (Hosted Services particulars) and elsewhere in this Agreement;
- (b) such charges and payable amounts as may be agreed in writing by the parties from time to time; and
- (c) charges calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by the Customer to the Provider at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Customer using the Hosted Services (but excluding usage data relating to the Platform and Hosted Services, and excluding server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 24.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Customer Representatives" means the person or persons identified as such in Section 5 of Schedule 1 (Hosted Services particulars), and any additional or replacement persons that may be appointed by the Customer giving to the Provider written notice of the appointment;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Customisation" means a customisation of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"Data Protection Laws" means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date of execution of this Agreement;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (which may include failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means Genome software, as specified in the Hosted Services Specification and as updated by the Provider from time to time subject to the restrictions set out in this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;

- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Section 2 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Mobile App" means the mobile application known as Genome QA that is made available by the Provider through the *Google Play Store* and the *Apple App Store*;

"Personal Data" means personal data under any of the Data Protection Laws;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and

(b) the terms of this Agreement;

"Provider Indemnity Event" has the meaning given to it in Clause 24.1;

"Provider Representatives" means the person or persons identified as such in Section 5 of Schedule 1 (Hosted Services particulars), and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;

"Remedy Period" means a period of 20 Business Days following the Customer giving to the Provider a notice that the Hosted Services have failed the Acceptance Tests, or such other period as the parties may agree in writing;

"Schedule" means any schedule attached to the main body of this Agreement;

"Service Data" means all data, works and materials provided or made available to the Customer by means of or in connection with the Hosted Services under this Agreement, excluding the Customer Data;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Set Up Services" means the configuration and implementation of the Hosted Services in accordance with Section 1 of Schedule 1 (Hosted Services particulars);

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, or Google Chrome;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Third Party Services" means any hosted, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by the Provider from time to time in circumstances where the Customer must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider;

"UK GDPR" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK

laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Update" means a hotfix, patch or minor version update to any Platform software;

"Upgrade" means a major version upgrade of any Platform software; and

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2. Term

2.1 This Agreement shall come into force upon the Effective Date - **DATE**.

2.2 This Agreement shall continue in force until **DATE** at the beginning of which this Agreement shall terminate automatically, subject to termination in accordance with Clause 27 or any other provision of this Agreement.

3. Set Up Services

3.1 The Provider shall provide the Set Up Services to the Customer.

3.2 The Provider shall use reasonable endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.

3.3 The Customer acknowledges that a delay in the Customer performing its obligations in this Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 25.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.

3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4. Acceptance procedure

4.1 During each Acceptance Period, the Customer shall carry out the Acceptance Tests.

4.2 The Provider shall provide to the Customer at the Provider's own cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as the Customer may reasonably request.

- 4.3 Before the end of each Acceptance Period, the Customer shall give to the Provider a written notice specifying whether the Hosted Services have passed or failed the Acceptance Tests.
- 4.4 If the Customer fails to give to the Provider a written notice in accordance with Clause 4.3, then the Hosted Services shall be deemed to have passed the Acceptance Tests.
- 4.5 If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests, then the Customer must provide to the Provider, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.
- 4.6 If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests:
- (a) if the Provider acting reasonably agrees with the Customer that the Hosted Services have not passed the Acceptance Tests, then the Provider must correct the issue and make available the corrected Hosted Services to the Customer before the end of the Remedy Period for a further round of Acceptance Tests; or
 - (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Hosted Services have not passed the Acceptance Tests, and if appropriate a plan of action reasonably satisfactory to both parties, and they must record any agreement reached in writing.
- 4.7 Notwithstanding the other provisions of this Clause 4, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 4 shall be 10, and if the Acceptance Criteria have not been met by the end of the final round of Acceptance Tests, the Provider shall be deemed to be in material breach of this Agreement.
- 4.8 If the Customer notifies the Provider that the Hosted Services have passed, or are deemed to have passed, the Acceptance Tests under this Clause 4, then subject to Clause 25.1 the Customer will have no right to make any claim under or otherwise rely upon any warranty given by the Provider to the Customer in this Agreement in relation to the specification and performance of the Hosted Services, unless the Customer could not reasonably have been expected to have identified the breach of that warranty during the testing process.

5. Hosted Services

- 5.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Customer upon the completion of the Set Up Services the Access Credentials necessary to enable the Customer to access and use the Hosted Services.
- 5.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 5.3 The licence granted by the Provider to the Customer under Clause 5.2 is subject to the following limitations:
- (a) the User Interface may only be used through a Supported Web Browser or the Mobile App;
 - (b) the User Interface may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer; and
 - (c) the API may only be used by an application or applications approved by the Provider in writing and controlled by the Customer.
- 5.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorised person or application to access or use the Hosted Services;
 - (c) the Customer must not use the Hosted Services to provide services to third parties;
 - (d) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
 - (e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

- 5.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.
- 5.6 The parties acknowledge and agree that Schedule 3 (Availability SLA) shall govern the availability of the Hosted Services.
- 5.7 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Schedule 2 (Acceptable Use Policy).
- 5.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 5.9 The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 5.10 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 5.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Hosted Services or the Platform, either during or after the Term.

6. Service Data

- 6.1 The Provider grants to the Customer a non-exclusive, worldwide licence to access, copy, transmit, store, edit, create derivative works of and otherwise use the Service Data during the Term and for the internal business purposes of the Customer, subject to the other provisions of this Clause 6.
- 6.2 Except to the extent required by law on a non-excludable basis, the Customer must not:

- (a) publish, republish, sell, license, sub-license, rent, transfer, broadcast, distribute or redistribute the Service Data;
 - (b) edit, modify, adapt, alter or create derivative works of the Service Data;
 - (c) use the Service Data or any part of the Service Data in any way that is unlawful or in breach of any person's legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable;
 - (d) use the Service Data to compete with the Provider, whether directly or indirectly, or use the Service Data to create any products or services that compete with or are intended to compete with the products or services of the Provider;
 - (e) use the Service Data for a commercial purpose; or
 - (f) use the Service Data to create, generate, train, verify or test any AI Systems that compete with or are intended to compete, or provide or will provide identical or similar functionality to, the Hosted Services or any other products or services of the Provider.
- 6.3 The Customer shall implement and maintain reasonable security measures relating to the Service Data to ensure that no unauthorised application or person may gain access to the Service Data.

7. Customisations

- 7.1 The Provider and the Customer may agree that the Provider shall design, develop and implement a Customisation or Customisations in accordance with a specification and project plan agreed using the Change control procedure in Clause 16.
- 7.2 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider (unless the parties agree otherwise in writing).
- 7.3 From the time and date when a Customisation is first delivered or made available by the Provider to the Customer, the Customisation shall form part of the Platform, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by Clause 5.
- 7.4 The Customer acknowledges that the Provider may make any Customisation available to any of its other customers or any other third party.

8. Maintenance Services

- 8.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 8.2 The Provider shall provide the Maintenance Services with reasonable skill and care.
- 8.3 The Provider shall provide the Maintenance Services in accordance with Schedule 4 (Maintenance SLA).
- 8.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

9. Support Services

- 9.1 The Provider shall provide the Support Services to the Customer during the Term.
- 9.2 The Provider shall provide the Support Services with reasonable skill and care.
- 9.3 The Provider shall provide the Support Services in accordance with Schedule 5 (Support SLA).
- 9.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

10. Customer obligations

- 10.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
 - (a) co-operation, support and advice; and
 - (b) information and documentation,as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.
- 10.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be

reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

11. Customer Systems

- 11.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of Section 3 of Schedule 1 (Hosted Services particulars), subject to any changes agreed in writing by the Provider.

12. Customer Data

- 12.1 The Customer hereby grants to the Provider a non-exclusive, worldwide licence to:

- (a) copy, store and transmit the Customer Data,

to the extent reasonably required for the performance of the obligations of the Provider under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers strictly for this purpose and subject to any express restrictions elsewhere in this Agreement.

- 12.2 The Customer hereby grants to the Provider a non-exclusive, sub-licensable and worldwide licence to use the Customer Data for the purposes of creating, generating, training, testing and verifying the AI Systems of the Provider. The Provider must ensure that the Customer Data is not incorporated into such AI Systems.

- 12.3 The Customer hereby grants to the Provider a non-exclusive, worldwide licence:

- (a) to use the Customer Data to create aggregated datasets, providing that those aggregated datasets must not incorporate any Customer Personal Data, any other Personal Data supplied or made available by the Customer to the Provider, or any information contained in or derived from the Customer Data that identifies the Customer or that identifies any other organisation, business or person (legal or natural); and
- (b) insofar as the use of those aggregated datasets requires the permission of the Customer, to make unrestricted use of those aggregated datasets, including sub-licensing all or any of the rights therein to any third party or third parties.

- 12.4 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

- 12.5 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 7 days.
- 12.6 Within the period of 2 Business Days following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 12.5. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

13. Integrations with Third Party Services

- 13.1 The Provider may integrate the Hosted Services with any Third Party Services at any time.
- 13.2 Notwithstanding the presence of any Third Party Services integration, particular Third Party Services shall only be activated with respect to the Hosted Services account of the Customer by:
- (a) the Customer; or
 - (b) the Provider with the prior written agreement of the Customer.
- 13.3 The Provider shall use reasonable endeavours to maintain any integration with Third Party Services that has been activated with respect to the Hosted Services account of the Customer. Subject to this, the Provider may remove, suspend, deactivate or limit any Third Party Services integration at any time in its sole discretion.
- 13.4 The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract to supply the Third Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.
- 13.5 The Customer acknowledges and agrees that:
- (a) the activation of Third Party Services with respect to the Hosted Services account of the Customer may result in the transfer of Customer Data and/or Customer Personal Data from the Hosted Services to the relevant Third Party Services and vice versa;

- (b) the Provider has no control over, or responsibility for, any disclosure, modification, deletion or other use of Customer Data and/or Customer Personal Data by any provider of Third Party Services;
- (c) the Customer must ensure that it has in place the necessary contractual safeguards to ensure that the transfer of Customer Personal Data to, and use of Customer Personal Data by, a provider of Third Party Services is lawful; and
- (d) the Customer shall ensure that the transfer of Customer Data to a provider of Third Party Services does not infringe any person's Intellectual Property Rights or other legal rights and will not put the Provider in breach of any applicable laws.

13.6 Additional Charges may be payable by the Customer to the Provider in respect of the activation and/or use of a Third Party Services integration.

13.7 Subject to Clause 25.1:

- (a) the Provider gives no guarantees, warranties or representations in respect of any Third Party Services; and
- (b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by Third Party Services or any provider of Third Party Services.

14. No assignment of Intellectual Property Rights

14.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

15. Representatives

15.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in this Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:

- (a) may treat all such instructions as the fully authorised instructions of the Provider; and
- (b) must not comply with any other instructions in relation to that subject matter unless given by persons authorized by the Provider Representative.

15.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in this Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

16. Change control

16.1 The provisions of this Clause 16 apply to each Change requested by a party.

16.2 Either party may request a Change at any time.

16.3 A party requesting a Change shall provide to the other party a completed CCN in the form specified in Schedule 6 (Form of CCN).

16.4 A party in receipt of a CCN may:

- (a) accept the CCN, in which case that party must countersign the CCN and return it to the other party before the end of the CCN Consideration Period;
- (b) reject the CCN, in which case that party must inform the other party of this rejection before the end of the CCN Consideration Period; or
- (c) issue an amended CCN to the other party before the end of the CCN Consideration Period, in which case this Clause 16 will reapply with respect to the amended CCN.

16.5 A proposed Change will not take effect until such time as a CCN recording the Change has been signed by or on behalf of each party.

17. Charges

17.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

17.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing,

the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 17.2.

- 17.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

18. Payments

- 18.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.
- 18.2 The Customer must pay the Charges to the Provider within the period of 30 days following the receipt of an invoice issued in accordance with this Clause 18.
- 18.3 The Customer must pay the Charges by debit card, credit card, direct debit or bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 18.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

19. Confidentiality obligations

- 19.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential;
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care; and

- (d) act in good faith at all times in relation to the Customer Confidential Information.

19.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to the Provider Confidential Information.

19.3 Notwithstanding Clauses 19.1 and 19.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

19.4 No obligations are imposed by this Clause 19 with respect to:

- (a) the Confidential Information of a party that is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality; or
- (b) the Confidential Information of a party that is or becomes publicly known through no act or default of the other party.

19.5 The restrictions in this Clause 19 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, or by any judicial or governmental order or request. If a party makes a disclosure to which this Clause 19.5 applies then, to the extent permitted by applicable law, that party shall promptly notify the other party of the fact of the disclosure, the identity of the discloser, and the Confidential Information disclosed.

19.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

19.7 Within 10 Business Days following the date of effective termination of this Agreement, the relevant party must:

- (a) irreversibly delete from its media and computer systems all copies of the other party's Confidential Information;
- (b) ensure that no other copies of the other party's Confidential Information remain in the relevant party's possession or control,

subject in each case to any obligations that the relevant party has under this Agreement to supply or make available to the other party any data or information, and providing that the relevant party shall have no obligation under this Clause 19.7 to delete or to cease to possess or control any of the other party's Confidential Information to the extent that the relevant party is required by applicable law to retain that Confidential Information.

19.8 The provisions of this Clause 19 shall continue in force indefinitely following the termination of this Agreement.

20. Publicity

20.1 Neither party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party.

20.2 Nothing in this Clause 20 shall be construed as limiting the obligations of the parties under Clause 19.

21. Data protection

21.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

21.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

21.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement:

- (a) the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 7 (Data processing information) (or such other categories as may be agreed by the parties in writing); and

- (b) Personal Data of the types specified in Section 2 of Schedule 7 (Data processing information) (or such other types as may be agreed by the parties in writing).
- 21.4 The Provider shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 7 (Data processing information).
- 21.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 21.
- 21.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in this Agreement or any other document agreed by the parties in writing.
- 21.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
- (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities in the UK and the EU, providing that such transfers must be protected by appropriate safeguards, namely encryption, access control, authentication and authorisation;
 - (b) the Provider may transfer the Customer Personal Data to its third party processors in the jurisdictions identified in Section 5 of Schedule 7 (Data processing information) and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and
 - (c) the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 21.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 21.9 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.

- 21.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 21.11 The Provider shall implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Section 4 of Schedule 7 (Data processing information).
- 21.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate this Agreement on 30 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 21.
- 21.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Section 5 of Schedule 7 (Data processing information).
- 21.14 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 21.15 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 21.15.
- 21.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 36 hours after the Provider becomes aware of the breach.

21.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 21.

21.18 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

21.19 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 21.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of this Agreement or any security breach affecting the systems of the Provider.

21.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

22. Warranties

22.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

22.2 The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

- (c) the Platform will incorporate security features reflecting the requirements of good industry practice.
- 22.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 22.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 22.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 22.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 22.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

23. Acknowledgements and warranty limitations

- 23.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 23.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 23.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the

Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

- 23.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

24. Indemnities

- 24.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of any third party's Intellectual Property Rights, any applicable law, or any provision of this Agreement (a "**Provider Indemnity Event**").

- 24.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 24.1 shall not apply unless the Customer complies with the requirements of this Clause 24.2.

- 24.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach or alleged breach by the

Customer of any third party's Intellectual Property Rights, any applicable law, or any provision of this Agreement (a "**Customer Indemnity Event**").

24.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 24.3 shall not apply unless the Provider complies with the requirements of this Clause 24.4.

24.5 The indemnity protection set out in this Clause 24 shall be subject to the limitations and exclusions of liability set out in this Agreement.

25. Limitations and exclusions of liability

25.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

25.2 The limitations and exclusions of liability set out in this Clause 25 and elsewhere in this Agreement:

- (a) are subject to Clause 25.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort

(including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

- 25.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 25.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 25.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 25.6 Neither party shall be liable to the other party in respect of any loss of use or production.
- 25.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 25.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 25.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 12.5 and Clause 12.6.
- 25.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 25.10 The aggregate liability of each party to the other party under this Agreement shall not exceed the greater of:
 - (a) £1,000,000; and
 - (b) the total amount paid and payable by the Customer to the Provider under this Agreement.

26. Force Majeure Event

- 26.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.
- 26.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
 - (a) promptly notify the other; and

- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

26.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

27. Termination

27.1 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 60 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

27.2 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent

company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

27.3 The Provider may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 27.3.

27.4 The rights of termination set out in this Agreement shall not exclude any rights of termination available at law.

28. Effects of termination

28.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.8, 5.11, 6, 12.2, 12.3, 13.7, 18.2, 18.4, 19, 20, 21, 24, 25, 28, 29, 30.1, 30.2, 30.4, 30.7, 30.8, 31.1, 31.4, 32.1, 32.4, 35, 36, 37, 38, 39, 40, 41 and 42.

28.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

28.3 Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

29. Non-solicitation of personnel

29.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term,

engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of this Agreement.

29.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of this Agreement.

29.3 The restrictions in this Clause 29 shall not apply with respect to any person who is engaged or employed as a result of that person responding to a general advertisement that is not specifically targeted at that person or at the relevant group of employees and/or subcontractors.

30. Anti-corruption

30.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Corruption Laws.

30.2 Save to the extent that applicable law requires otherwise, each party must promptly notify the other if it becomes aware of any events or circumstances relating to this Agreement that will or may constitute a breach of the Anti-Corruption Laws (irrespective of the identity of the person in breach).

30.3 The Provider shall use all reasonable endeavours to ensure that all persons that:

- (a) provide services to the Provider (including employees, agents and subsidiaries of the Provider); and
- (b) are involved in the performance of the obligations of the Provider under this Agreement,

will comply with the Anti-Corruption Laws.

30.4 Each party shall create and maintain proper books and records of all payments and other material benefits given by one party to the other, and each party shall promptly following receipt of a written request from the other party supply copies of the relevant parts of those books and records to the other party.

30.5 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Corruption Laws; and the Provider undertakes to:

- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
- (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.

30.6 Each party shall provide reasonable co-operation to the other party, at its own expense, in relation to any due diligence exercises, risk assessments, monitoring programmes and reviews conducted by the other party for the purpose of ensuring or promoting compliance with the Anti-Corruption Laws.

30.7 Nothing in this Agreement shall prevent either party from reporting a breach of the Anti-Corruption Laws to the relevant governmental authorities.

30.8 Any breach of this Clause 30 shall be deemed to constitute a material breach of this Agreement.

31. Anti-slavery

31.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Slavery Laws.

31.2 The Provider shall ensure that all persons that provide services or supply products to the Provider, where such services or products are used in the performance of the obligations of the Provider under this Agreement, will comply with the Anti-Slavery Laws.

31.3 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Slavery Laws; and the Provider undertakes to:

- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
- (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.

31.4 Any breach of this Clause 31 shall be deemed to constitute a material breach of this Agreement.

32. Anti-tax evasion

- 32.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Tax Evasion Laws.
- 32.2 The Provider shall ensure that all employees, agents and persons that provide services to the Provider, when acting in such capacity in connection with this Agreement, will comply with the Anti-Tax Evasion Laws.
- 32.3 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Tax Evasion Laws; and the Provider undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
 - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 32.4 Any breach of this Clause 32 shall be deemed to constitute a material breach of this Agreement.

33. Notices

- 33.1 This Clause 33 applies to all notices given or to be given under this Agreement, except where expressly provided otherwise in this Agreement.
- 33.2 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 33.3 Any notice given by one party to the other party under this Agreement must be:
- (a) sent by email,
- using the relevant contact details set out in Section 6 of Schedule 1 (Hosted Services particulars).
- 33.4 The addressee and contact details set out in Section 6 of Schedule 1 (Hosted Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 33.
- 33.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 10 Business Days following receipt of the notice.

33.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

- (a) in the case of notices sent by email, at the time of the sending of an acknowledgement of receipt by the receiving party.

34. Subcontracting

34.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

34.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

34.3 Notwithstanding the provisions of this Clause 34 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

35. Assignment

35.1 Save to the extent expressly permitted by applicable law, the Provider must not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under this Agreement without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed, providing that the Provider may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Provider or to any successor to all or a substantial part of the business of the Provider from time to time.

35.2 Save to the extent expressly permitted by applicable law, the Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under this Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, providing that the Customer may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Customer or to any successor to all or a substantial part of the business of the Customer from time to time.

36. No waivers

36.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

36.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

37. Severability

37.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

37.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

38. Third party rights

38.1 This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.

38.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

39. Variation

39.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

40. Entire agreement

40.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

40.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

40.3 The provisions of this Clause 40 are subject to Clause 25.1.

41. Law and jurisdiction

41.1 This Agreement shall be governed by and construed in accordance with English law.

41.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

42. Interpretation

42.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

42.2 The Clause headings do not affect the interpretation of this Agreement.

42.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

42.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

Signed	Customer	Provider
Name		
Title		
Signature		
Date		

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1. Set Up Services

The Set Up services are described in the 'Quote' document.

2. Specification of Hosted Services

The Hosted Services are described in the 'Core Features', 'Quote', 'Technical_Requirements' and 'GDPR Technical Measures' documents.

3. Customer Systems

The Customer systems requirements are described in the 'Technical Requirements' document.

4. Financial provisions

4.1 Charging method - An annual invoice is issued at the start of each contract period and must be paid in advance within 30 days from the invoice date.

4.2 Payment method - BACS

4.3 Invoice frequency- annually

4.3 Charges

Software - as per quote

Setup Services - free of charge

Maintenance Services - free of charge

Support Services - free of charge

5. Representatives

The Provider Representatives are:

- Name: Stacey Hatton
- Email address: stacey.hatton@xgenome.co.uk
- Telephone number: 07972 237803

The Customer Representatives are:

- Name:
- Email address:
- Telephone number:

6. Contractual notices

Provider:

- Address: Genome Ltd, Wharf House, Wharf Street, Sheffield, S2 5SY
- Email: stacey.hatton@xgenome.co.uk

Customer:

- Address:
- Email:

SCHEDULE 2 (ACCEPTABLE USE POLICY)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of the Hosted Services (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Genome Ltd. (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

- (a) be libellous or maliciously false;
 - (b) be obscene or indecent;
 - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
 - (d) infringe any right of confidence, right of privacy or right under data protection legislation;
 - (e) constitute negligent advice or contain any negligent statement;
 - (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
 - (g) be in contempt of any court, or in breach of any court order;
 - (h) constitute a breach of racial or religious hatred or discrimination legislation;
 - (i) constitute a breach of official secrets legislation; or
 - (j) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.
- 4.2 Content must not depict violence (including violence against humans and animals), self-harm or suicide in an explicit, graphic or gratuitous manner.
- 4.3 Content must not encourage, promote, glamourise or glorify violence (including violence against humans and animals), self-harm or suicide.
- 4.4 Content must not be pornographic or sexually explicit.

5. Factual accuracy

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy or other professional advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorised.
- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

- 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
- 8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9. Regulated businesses

- 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.
- 9.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.
- 9.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

10. Monitoring

- 10.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

11. Data mining

- 11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

- 12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13. Harmful software

- 13.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 13.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 3 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 3 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 3, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least 98% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.

3. Service credits

- 3.1 In respect of each calendar month during which the Hosted Services uptime is less than the commitment specified in Section 2.1, the Customer shall earn service credits in accordance with the provisions of this Section 3.
- 3.2 The service credits earned by the Customer shall be as follows:

Availability in the monthly measurement period	Refund (% of Subscription Fees for the relevant Monthly Measurement Period)
>99	0%
96.0% - 98.9%	3%
<96%	7%

- 3.3 The Provider shall deduct an amount equal to the service credits due to the Customer under this Section 3 from amounts invoiced in respect of the Charges for the Hosted Services. All remaining service credits shall be deducted from each invoice issued following the reporting of the relevant failure to meet the uptime commitment, until such time as the service credits are exhausted.
- 3.4 Service credits shall be the sole remedy of the Customer in relation to any failure by the Provider to meet the uptime guarantee in Section 2.1.

- 3.5 Upon the termination of this Agreement, the Customer's entitlement to service credits shall immediately cease, save that service credits earned by the Customer shall be offset against any amounts invoiced by the Provider in respect of Hosted Services following such termination.

4. Exceptions

- 4.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Section 2.1:
- (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Provider's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between the Provider and that company;
 - (d) a fault or failure of the Customer's computer systems or networks;
 - (e) any breach by the Customer of this Agreement; or
 - (f) scheduled maintenance carried out in accordance with this Agreement.

SCHEDULE 4 (MAINTENANCE SLA)

1. Introduction

1.1 This Schedule 4 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

2.1 The Provider shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 4.

3. Updates

3.1 The Provider shall apply Updates to the Platform as follows:

- (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
- (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
- (c) performance and usability enhancing Updates shall be applied to the Platform in accordance with the Provider's timetable from time to time.

4. Upgrades

4.1 The Provider shall produce Upgrades at least once in each calendar year during the Term.

SCHEDULE 5 (SUPPORT SLA)

1. Introduction

1.1 This Schedule 5 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1 The Provider shall make available to the Customer a helpdesk.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by telephone and email.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

3.1 Issues raised through the Support Services shall be categorised as follows:

- (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
- (b) serious: a core function of the Hosted Services is significantly impaired;
- (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
- (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use all reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 Business Hour;
- (b) serious: 4 Business Hours;

(c) moderate: 1 Business Day; and

(d) minor: 5 Business Days.

- 3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

4. Provision of Support Services

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

- 5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed 20 then:
- (a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
 - (b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 5.2 The Provider shall have no obligation to provide Support Services:
- (a) to the extent that the requested Support Services amount to general training in the use of the Hosted Services;
 - (b) in respect of any issue that could have been resolved by a competent person who had received general training in the use of the Hosted Services;
 - (c) in respect of any duplicate issues raised by or on behalf of the Customer;
 - (d) in respect of any issue caused by the improper use of the Hosted Services by or on behalf of the Customer; or
 - (e) in respect of any issue caused by any alteration to the Hosted Services, or to the configuration of the Hosted Services, made without the prior written consent of the Provider.

SCHEDULE 6 (FORM OF CCN)

1. Introduction

Title of Change: *[insert title]*

CCN number: *[insert number]*

Change proposed by: *[insert individual name(s)]*

Date of issue of CCN: *[insert date]*

Summary details of proposed Change: *[insert details]*

2. Change details

[Insert full details of proposed Change]

3. Impact of Change

Impact upon resources: *[insert details]*

Impact upon timetable: *[insert details]*

Impact upon Charges: *[insert details]*

Other effects of Change: *[insert details]*

4. Agreement to Change

The parties have indicated their acceptance of the Change described in this CCN by signing below.

SIGNED BY *[[individual name]* on *[.....]*, the Provider / *[individual name]* on *[.....]*, duly authorised for and on behalf of the Provider]:.....

SIGNED BY *[[individual name]* on *[.....]*, the Customer / *[individual name]* on *[.....]*, duly authorised for and on behalf of the Customer]:.....

SCHEDULE 7 (DATA PROCESSING INFORMATION)

1. Categories of data subject

The categories of data subject are described in the 'DPIA' document.

2. Types of Personal Data

- The types of personal data are described in the 'DPIA' document.

3. Purposes of processing

The purposes of processing are described in the 'DPIA' document.

4. Security measures for Personal Data

The security measures are described in the 'GDPR Technical Measures' and 'GDPR Organisational Measures' documents.

5. Sub-processors of Personal Data

The subprocessors are described in the 'DPIA' document.



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