



SAAS TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions.

Additional Processing Fees: the additional processing fees as set out in the Customer Confirmation, or as agreed by the parties in writing from time to time.

Additional Processing Limits: the additional processing limits as set out in the Customer Confirmation, or as agreed by the parties in writing from time to time.

Additional Subscription Fees: the additional subscription fees as set out in the Customer Confirmation, or as agreed by the parties in writing from time to time.

Additional Subscription Term: the additional subscription term as set out in the Customer Confirmation, or as agreed by the parties in writing from time to time.

Agreement: the agreement between OGT and the Customer which comprises these Terms and Conditions and Customer Confirmation.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

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

Confidential Information: information that is proprietary or confidential (however recorded or preserved) disclosed by a party to the other party or to which the other party has access to pursuant to this Agreement including:

- (a) any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans of the disclosing party, the operation, processes, product information, know-how, designs, trade secrets or software of the disclosing;
- (b) in relation to the Customer, the Customer Data and any analysis, conclusions or other information or data generated by the use of the Services; and
- (c) any information identified by the parties as confidential.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the customer as set out in the Customer Confirmation.

Customer Confirmation: the email sent by OGT to the Customer following receipt of the Customer's sign up request which accepts such request, and which forms part of



this Agreement. The Customer Confirmation will typically contain the following information: Customer name, registered number, registered address, email address and phone number; Customer contact name, email address and phone number; information about the Services such as NGS Panel Products, Processing Limits, the Initial Subscription Term, Additional Processing Limits, Additional Processing Fees, Additional Subscription Term and Additional Subscription Fees and Tender Term (as applicable).

Customer Data: the data generated by OGT's NGS Panel Product and inputted by the Customer or Authorised Users for the purpose of using the Services.

Customer Sign Up Form: the sign up form to be used by the Customer made available by OGT on <https://www.ogt.com/contact/contact-general/>.

Data Protection Legislation:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or OGT is subject, which relates to the protection of Personal Data.

Documentation: the document made available to the Customer by OGT online via http://www.ogt.com/interpret_cloud_details or such other web address notified by OGT to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: as defined in clause 2.2.

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

Initial Subscription Term: the term calculated in accordance with clause 2.3.

Limited Purpose: evaluation of the Services by the Customer.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

OGT: Oxford Gene Technology (Operations) Limited, company registered in England and Wales with company number 03845432 whose registered address is at Unit 5 Oxford Technology Park, 4a Technology Drive, Kidlington, Oxfordshire, United Kingdom, OX5 1GN.

Permitted Purpose: has the meaning given to it in clause 12.2(a).

Representatives: in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

Services: the NGS Interpret™ cloud services provided by OGT to the Customer under this Agreement for use with OGT's NGS Panel Products, as more particularly described in the Documentation.



Software: OGT's NGS analysis software provided by OGT as part of the Services.

Subscription Term: either (a) the Initial Subscription Term and any Additional Subscription Term or (b) the Tender Term, as applicable.

Tender Term: the term set out in the Customer Confirmation.

Terms and Conditions: these terms and conditions.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2

Interpretation.

- (a) Clause and paragraph headings shall not affect the interpretation of this Agreement.
- (b) A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular and to one gender includes a reference to the other genders.
- (e) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and includes all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- (f) A reference to writing or written excludes fax but not email.
- (g) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (h) If there is any conflict or ambiguity between these Terms and Conditions and the Customer Confirmation, the Customer Confirmation shall prevail.

2. BASIS OF AGREEMENT

- 2.1 Upon placing the order for the NGS Panel Products from OGT, the Customer is presented with the option to access and use the Services subject to and in accordance with the terms of this Agreement, including the Subscription Term and Processing Limits.
- 2.2 In order to exercise such option, the Customer shall submit the Customer Sign Up Form, which constitutes a request for access and use of the Services. Such request shall only be deemed accepted by OGT when OGT issues a written Customer Confirmation at which point this Agreement comes into existence (**Effective Date**).
- 2.3 The Initial Subscription Term commences on the Effective Date, but the end date of such Initial Subscription Term is calculated from the date on which OGT grants the Customer's first Authorised User access to the Services pursuant to clause 3.3:
- (a) **1 month** where a **24 reaction kit** was purchased by the Customer;
 - (b) **2 months** where a **48 reaction kit** was purchased by the Customer; or
 - (c) **3 months** where a **96 reaction kit** was purchased by the Customer.
- 2.4 For the avoidance of doubt, if the Customer places another order for further NGS Panel Products from OGT, this Agreement will not be varied, but instead a new agreement for access and use of the Services subject to these Terms and Conditions using the process set out in this clause 2 would need to be entered into by the Customer and OGT.
- 2.5 These Terms and Conditions and this Agreement are in English language only. OGT does not store a copy of this Agreement, so instead the Customer should print a copy of these Terms and Conditions and Customer Confirmation for future reference.

3. ACCESS AND USE OF SERVICES

- 3.1 In consideration of the Customer abiding by the terms of this Agreement and purchasing the NGS Panel Products from OGT and provided that all orders placed by the Customer are within the agreed scope of Services (including the designated NGS Panel Products and provided that the Processing Limits selected by the Customer are within the range of NGS Panel Products purchased by the Customer), OGT grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term and subject to the Processing Limits solely for the Customer's internal business operations. For the avoidance of doubt, the Services may only be used for Customer Data generated by OGT's NGS Panel Products and no other product.
- 3.2 Notwithstanding clause 3.1, OGT may, upon the Customer's request and in consideration of the Customer complying with the terms of this Agreement, grant limited access to and use of the Services and Documentation (without the requirement to place an order for the NGS Panel Products from OGT) for the Limited Purposes where this is set out in the Customer Confirmation, in which case OGT grants to the Customer a non-

exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to access and use the Services and the Documentation during the Tender Term solely for the Limited Purposes only (and the licence granted in clause 3.1 shall not apply).

- 3.3 Upon receipt by OGT of the Authorised Users' details (namely name and email address) from the Customer, OGT shall within 5 Business Days of receipt of such details provide access details to such Authorised Users for the purposes of allowing such Authorised Users use the Services and Documentation in accordance with the terms of this Agreement.
- 3.4 The Customer undertakes, acknowledges and agrees that the results from use of the Services do not provide recommendations for medical diagnosis, that the results from use of the Services may only be used by professionals with expertise in human genetics and always with a critical approach and that the Customer will only use the Services in such a manner.
- 3.5 In relation to the Authorised Users, the Customer undertakes that:
- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation, that each Authorised User shall keep their password confidential and that no password or user details may be used by anyone other than the Authorised User; and
 - (b) if OGT becomes aware that any password has been provided to any individual who is not an Authorised User, then without prejudice to OGT's other rights, OGT may disable such passwords and shall be required to issue any new passwords to any such individual.
- 3.6 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;

and OGT reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.7 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services;
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
- (c) use the Services and/or Documentation to provide services to third parties;
- (d) subject to clause 16.7(a), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users,
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus into the Services or OGT's network and information systems.

3.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify OGT.

3.9 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. ADDITIONAL AUTHORISED USERS, ADDITIONAL SUBSCRIPTION TERM AND ADDITIONAL PROCESSING LIMITS

4.1 The Customer may, from time to time during any Subscription Term, request access to the Services and Documentation for additional Authorised Users. Within 5 Business Days of receiving such request, OGT shall notify the Customer whether it approves the request for access to the Services and Documentation for additional Authorised Users (acting reasonably).

4.2 If OGT approves the Customer's request for additional Authorised Users, OGT shall, within 5 Business Days of receiving the relevant details (e.g. name and email address)

for such additional Authorised Users, provide access to the Services and Documentation to those additional Authorised Users.

4.3 The Customer may:

- (a) request an Additional Subscription Term and/or Additional Processing Limits when submitting the Customer Sign Up Form which shall only be deemed accepted by OGT when OGT issues a written Customer Confirmation confirming the Additional Subscription Term and/or Additional Processing Limits; and/or
- (b) from time to time, during the Subscription Term and any Additional Subscription Term, as applicable, request an Additional Subscription Term and/or Additional Processing Limits. Within 5 Business Days of receiving such request, OGT shall notify the Customer whether it approves the request for an Additional Subscription Term and/or Additional Processing Limits (acting reasonably). Upon confirmation by OGT that it approves the request for an Additional Subscription Term and/or Additional Processing Limits (which may be issued by email), this Agreement is varied to include the Additional Subscription Term and/or Additional Processing Limits, as applicable.

5. AVAILABILITY OF SERVICES

- 5.1 OGT shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 5.2 OGT shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 5.00 pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that OGT has used reasonable endeavours to give the Customer at least 3 Normal Business Hours' notice in advance.

6. DATA PROTECTION

- 6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and OGT is the Processor. The scope, nature and purpose of processing by OGT, the duration of the processing, the types of Personal Data and categories of Data Subject as well as the sub-Processors at the time of this Agreement are set out below:

Nature, Scope and Purpose of Processing	Provision of the Services.
Duration of Processing	During the term of this Agreement (and any post termination processing that is permitted / required).
Categories of Data Subjects	Individuals whose sample data are being analysed using OGT's NGS Panel Products.
Types of Personal Data	Sample ID number and genetics data.
Sub-Processors	AWS

6.3 Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to OGT for the duration and purposes of this Agreement.

6.4 Without prejudice to the generality of clause 6.1, OGT shall, in relation to any Personal Data processed in connection with the performance by OGT of its obligations under this Agreement:

- (a) process that Personal Data only on the documented written instructions of the Customer unless OGT is required by applicable laws to otherwise process that Personal Data. Where OGT is relying on applicable laws as the basis for processing Personal Data, OGT shall promptly notify the Customer of this before performing the processing required by those applicable laws unless such applicable laws prohibit OGT from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and

evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or OGT has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) OGT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) OGT complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by applicable laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of OGT, an instruction infringes the Data Protection Legislation.

6.5 The Customer consents by way of general authorisation to OGT's use of sub-Processors engaged in the processing of Personal Data in respect of all sub-Processors used by OGT as at the date of this Agreement, which are listed in clause 6.2. OGT shall give the Customer not less than 10 Business Days' written notice of a change in the list of sub-Processors to give the Customer an opportunity to object to such change. The Customer must notify OGT in the event that it does not agree to a proposed change within 10 Business Days of receiving a notification from OGT, specifying its grounds for such objection (acting reasonably). If OGT receives such an objection, then OGT may (at its option):

- (a) cancel its plans to change the affected sub-Processor;
- (b) offer an alternative which is acceptable to the Customer; or
- (c) take corrective steps to remove the objection identified by the Customer to the Customer's reasonable satisfaction, after which OGT may proceed with appointing the relevant sub-Processor; and

as between the Customer and OGT, OGT shall remain fully liable for all acts or omissions of any sub-Processor appointed by it pursuant to clause 6.5 and with respect to each sub-Processor, OGT will ensure that the sub-Processor is appointed in accordance with all applicable laws (and in particular, OGT shall ensure that the arrangement between OGT and the sub-Processor is governed by a written agreement incorporating terms substantially similar to those set out in clause 6).

7. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. OGT makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not OGT. OGT recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. OGT does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. OGT'S OBLIGATIONS

- 8.1 OGT shall perform the Services substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 OGT's obligations at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to OGT's instructions, or modification or alteration of the Services by any party other than OGT or OGT's duly authorised contractors or agents. If the Services do not conform with the terms of clause 8.1, OGT will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3 OGT:
 - (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free;



- (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - (iii) the Software or the Services will be free from Viruses.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 This Agreement shall not prevent OGT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 8.5 OGT warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 8.6 Any Customer Data generated as part of the Services will be available within the Services during the Subscription Term. Notwithstanding the aforementioned, OGT does not back-up any Customer Data held within the Services and the Customer acknowledges that it is the Customer's sole responsibility to ensure that all Customer Data is appropriately backed up.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- (a) provide OGT with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the OGT;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, OGT may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for OGT, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by OGT from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to OGT's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to OGT's network connections or telecommunications links or caused by the internet.

9.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

10. CHARGES AND PAYMENT

10.1 In consideration of any Additional Subscription Term or Additional Processing Limits (as applicable) that OGT approves, the Customer shall pay the Additional Subscription Fees and Additional Processing Limits Fees (as applicable) to OGT as set out in the Customer Confirmation, or OGT's written approval of the request for the Additional Subscription Term and/or Additional Processing Limits pursuant to clause 4.3.

10.2 OGT may invoice the Customer prior to the commencement of the Additional Subscription Term for the Additional Subscription Fees or increase to the Additional Processing Limits for the Additional Processing Limits Fees and the Customer shall pay each invoice within 30 days after the date of such invoice.

10.3 If OGT has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of OGT:

- (a) OGT may, on no less than 14 days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and OGT shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.4 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;



- (c) are exclusive of value added tax, which shall be added to OGT's invoice(s) at the appropriate rate.

10.5 OGT shall be entitled to increase the Additional Subscription Fees and Additional Processing Limits Fees at any time by giving notice to the Customer not less than 30 days prior written notice.

11. PROPRIETARY RIGHTS

11.1 The Customer acknowledges and agrees that OGT and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11.2 OGT confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. CONFIDENTIALITY

12.1 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

12.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 12.

- 12.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 12.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 12.6 On termination or expiry of this Agreement, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
 - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 15 (Term and Termination).
- 12.7 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 12.8 The above provisions of this clause 12 shall continue to apply after termination or expiry of this Agreement.
- 13. INDEMNITY**
- 13.1 The Customer shall defend, indemnify and hold harmless OGT against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court

costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) OGT provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

13.2 OGT shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) OGT is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to OGT in the defence and settlement of such claim, at OGT's expense; and
- (c) OGT is given sole authority to defend or settle the claim.

13.3 In the defence or settlement of any claim, OGT may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.4 In no event shall OGT, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than OGT;
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by OGT;
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from OGT or any appropriate authority; or
- (d) the Customer's breach of this Agreement.

13.5 The foregoing and clause 14.3(b) state the Customer's sole and exclusive rights and remedies, and OGT (including OGT's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

14.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, the reliance it places on such Services and Documentation and for conclusions drawn from such use. OGT shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to OGT by the Customer in connection with the Services, or any actions taken by OGT at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in this Agreement excludes the liability of OGT:

- (a) for death or personal injury caused by OGT's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for which liability cannot be legally excluded or limited.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) OGT shall have no liability for any:
 - (i) loss of profits;
 - (ii) loss of revenue;
 - (iii) loss of business;
 - (iv) wasted expenditure;
 - (v) loss of contract;
 - (vi) depletion of goodwill and/or similar losses;
 - (vii) loss or corruption of data or information;
 - (viii) loss of anticipated savings;
 - (ix) any special, indirect or consequential loss, costs, damages, charges or expenses; and

- (b) OGT's total aggregate liability to the Customer (including in respect of the indemnity at clause 13.2), in respect of all breaches of duty occurring within any contract year shall not exceed an amount equivalent to the purchase price of the NGS Panel Products for the Initial Subscription Term in respect of which this Agreement was entered into provided that the limitation of liability in this clause 14.3(b) shall not apply where the Services and Documentation are accessed and used by the Customer for the Limited Purposes. In respect of any liability of whatsoever nature that may arise in favour of the Customer or third party out of the Customer's access and use of the Services and Documentation for the Limited Purpose, OGT's liability shall be limited to £1,000.
- 14.4 References to liability in this clause 14 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of OGT's Intellectual Property Rights.
- 15. TERM AND TERMINATION**
- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Subscription Term, and, thereafter, this Agreement shall automatically terminate without notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (b) the other party takes or has taken against it any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 15.3 Without affecting OGT's other right or remedy, OGT may terminate this Agreement with immediate effect by giving notice in writing to the Customer:

- (a) if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment.
- (b) if the Customer has not used the Services for a period of 6 months and continues to not use the Services after being notified by OGT that this Agreement will terminate within 30 days as a result of such non use.
- (c) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

15.4 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any Documentation and other items (and all copies of them) belonging to the other party;
- (c) OGT may destroy or otherwise dispose of any of the Customer Data in its possession 30 days after the effective date of the termination of this Agreement and the Customer acknowledges that it is the Customer's sole responsibility to download any Customer Data prior to the destruction or otherwise disposal of the Customer Data by OGT; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. GENERAL

16.1 **Force majeure.** Neither party shall be in breach of this Agreement or otherwise liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control.

16.2 **Variation.** Except for any variations to this Agreement pursuant to clause 4, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.3 **Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

16.4 **Rights and remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.5 **Severance.**

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- (b) If any provision or part-provision of this Agreement is deemed deleted under clause 16.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result the original provision.

16.6 **Entire agreement.**

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- (d) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 **Assignment.**

- (a) The Customer shall not, without the prior written consent of OGT, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- (b) OGT may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

16.8 **No partnership or agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or

otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.9 **Third party rights.** Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16.10 **Counterparts.**

- (a) This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- (b) No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

16.11 **Notices.**

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service, or sent by email to the addresses set out in clause 16.11(b), or such other address as may be notified by one party to the other for such purposes.

- (b) OGT:

Address: Unit 5, Oxford Technology Park, 4A Technology Dr, Kidlington OX5 1GN

Email: CompBioAWS@ogt.com

The Customer:

Address: as set out in the Customer Confirmation.

Email address: as set out in the Customer Confirmation.

- (c) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.12 **Governing law and Jurisdiction.**

- (a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- (b) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), except that nothing in this Agreement will restrict a party from seeking injunctive relief in any jurisdiction.

- END OF SAAS TERMS AND CONDITIONS -