
Dated:

2020

- (1) UK BIOBANK LIMITED
- (2) [*THE SERVICE PROVIDER*]
-

Agreement

relating to the provision of a managed informatics platform

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SCHEDULES

1. **Definitions**
2. **Specification and Service Provider Solution**
3. **Performance Levels**
4. **UK Biobank Responsibilities**
5. **Implementation Plan**
6. **Testing Procedures**
7. **Charges and Invoicing**
8. **Exit Management**
9. **Data Processing Clauses**
10. **Cloud Infrastructure Terms**

THIS AGREEMENT is made on

2020

BETWEEN

- (1) **UK BIOBANK LIMITED** a company registered in England and Wales under company number 04978912 whose registered office is at Units 1 & 2 Spectrum Way, Adswood, Stockport, Cheshire, SK3 0SA ("**UK Biobank**"); and
- (2) [**NAME OF THE SUPPLIER**] a company registered in [England and Wales] under company number [] whose registered office is at [] ("**Service Provider**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) UK Biobank wishes to procure a managed informatics platform to allow access and analysis of UK Biobank data, accessible to approved UK Biobank researchers from academia and industry.
- (B) On [INSERT DATA] UK Biobank advertised in the Official Journal of the European Union (reference [INSERT OJEU NUMBER]), inviting prospective suppliers to submit proposals for the provision of a managed informatics platform.
- (C) The Service Provider is a leading provider of informatics platforms and related services and has experience in the supply, implementation and ongoing management thereof.
- (D) On the basis of the Service Provider's response to the advertisement and a subsequent tender process, UK Biobank selected the Service Provider as its preferred supplier.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.5.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the

European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- 1.2.5.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - 1.2.6 the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
 - 1.2.8 references to clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear.
- 1.3 If there is any conflict between the clauses, the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.3.1 the clauses and Schedule 1 (Definitions);
 - 1.3.2 Part A of Schedule 2 (Specification and Service Provider Solution), Schedule 3 (Performance Levels) and their respective Annexes;
 - 1.3.3 any other Schedules and their Annexes (other than Part B of Schedule 2 (Specification and Service Provider Solution) and its Annexes (if any)); and
 - 1.3.4 Part B of Schedule 2 (Specification and Service Provider Solution) and its Annexes (if any).
- 1.4 The Schedules and their Annexes form part of this Agreement.
- 2. **DUE DILIGENCE**
 - 2.1 The Service Provider acknowledges that:
 - 2.1.1 it has made its own enquiries to satisfy itself as far as is reasonably practicable as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.2 it has raised all relevant due diligence questions with UK Biobank prior to the Effective Date; and
 - 2.1.3 it has entered into this Agreement in reliance on its own due diligence alone.
 - 2.2 The Service Provider shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, shall the Service Provider be entitled to recover any additional costs or charges, arising as a result of:
 - 2.2.1 any unsuitable aspects of the Operating Environment, save in respect of any aspect that the Service Provider had no reasonable opportunity to verify the suitability of prior to the Effective Date;
 - 2.2.2 any misinterpretation of UK Biobank Requirements; and/or

- 2.2.3 any failure by the Service Provider to satisfy itself as far as is reasonably practicable as to the accuracy and/or adequacy of the Due Diligence Information.

3. **WARRANTIES**

3.1 UK Biobank represents and warrants that:

- 3.1.1 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- 3.1.2 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Service Provider represents, warrants and undertakes that:

- 3.2.1 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 3.2.2 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.3 all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, including its response to UK Biobank's selection questionnaire and invitation to tender, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement; and
- 3.2.4 it has and will continue to have for the duration of the Term all necessary rights in and to the Software, the Third Party IPRs, the Service Provider Background IPRs and any other materials made available by the Service Provider (and/or any Sub-contractor) to UK Biobank which are necessary for the performance of the Service Provider's obligations under this Agreement and/or the receipt of the Services by UK Biobank and the use of the same by UK Biobank as provided for by this Agreement shall not infringe any Intellectual Property Rights.

3.3 Without prejudice to clauses 5.4 to 5.6 (Service Provider acknowledgements and covenants) and any other rights and remedies of UK Biobank howsoever arising, the Service Provider represents, warrants and undertakes to UK Biobank that:

- 3.3.1 it has exercised professional skill and judgement, in accordance with Good Industry Practice, in selecting the Platform as suitable for meeting the UK Biobank Requirements; and
- 3.3.2 the Platform shall:

- 3.3.2.1 provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in;
 - (a) the Specification;
 - (b) the Service Provider Solution; and
 - (c) the Documentation;
 - 3.3.2.2 interface with the UK Biobank System as set out in the Specification and the Service Provider Solution;
 - 3.3.2.3 be free from material design and programming errors; and
 - 3.3.2.4 not infringe any Intellectual Property Rights.
 - 3.4 The Service Provider acknowledges that UK Biobank has entered into this Agreement in reliance upon the demonstration of the Platform provided by the Service Provider as part of the procurement process undertaken by UK Biobank ("Platform Demonstration") which led to the award of this Agreement to the Service Provider and the Service Provider represents, warrants and undertakes to UK Biobank that the Platform shall operate in a manner consistent, at least, with the Platform Demonstration. The foregoing shall be without prejudice to clauses 3.3 and 5.4 to 5.6 (Service Provider acknowledgements and covenants) and any other rights and remedies of UK Biobank howsoever arising.

SECTION B – THE SERVICES

4. TERM

- 4.1 This Agreement shall come into force on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 26 (Termination Rights), terminate:
 - 4.1.1 at the end of the Initial Term; or
 - 4.1.2 if UK Biobank elects to extend the Initial Term by giving the Service Provider at least three (3) months' notice in writing before the end of the Initial Term, at the end of the Extension Period; or
 - 4.1.3 if UK Biobank elects to extend any Extension Period by giving the Service Provider at least three (3) months' notice in writing before the end of the then current Extension Period, at the end of the final such Extension Period

provided that the Term may not exceed a period of six (6) years from and including the Effective Date.

5. SERVICES

Standard of Services

- 5.1 The Service Provider shall provide:
 - 5.1.1 the Platform in accordance with the time scales set out in the Implementation Plan;
 - 5.1.2 the Implementation Services from (and including) the Implementation Services Commencement Date; and
 - 5.1.3 the Operational Services from (and including) the relevant Operational Service Commencement Date.

- 5.2 The Service Provider shall ensure that the Platform and the Services:
- 5.2.1 comply in all respects with the Specification; and
 - 5.2.2 are supplied in accordance with the Service Provider Solution and the provisions of this Agreement.
- 5.3 The Service Provider shall perform its obligations under this Agreement in accordance with:
- 5.3.1 all applicable Law;
 - 5.3.2 Good Industry Practice; and
 - 5.3.3 the Standards.

Service Provider acknowledgements and covenants

- 5.4 The Service Provider acknowledges that:
- 5.4.1 UK Biobank has entered into this Agreement in reliance upon the Service Provider's expertise in selecting and supplying the Platform, the Deliverables and the Services to meet UK Biobank Requirements;
 - 5.4.2 the Platform and Services are provided for the benefit of UK Biobank and Users; and
 - 5.4.3 this Agreement does not confer upon the Service Provider any exclusivity of supply of the Platform or Services nor constitute any type of minimum purchase commitment by UK Biobank. The Service Provider agrees that UK Biobank may, at any time, procure some or all of the Platform or Services, or systems or services similar to the Platform and Services, from any third party or develop or perform them itself.
- 5.5 The Service Provider shall:
- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Platform and Deliverables, and to provide the Services, in accordance with this Agreement;
 - 5.5.2 save to the extent that obtaining and maintaining the same are UK Biobank Responsibilities, obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - 5.5.3 minimise any disruption to the Platform, the Services, the IT Environment and/or UK Biobank's operations when carrying out its obligations under this Agreement; and
 - 5.5.4 co-operate with the Other Service Providers and provide reasonable information (including any Documentation), advice and assistance in connection with the Platform and the Services to any Other Service Provider to enable such Other Service Provider to create and maintain technical or organisational interfaces with therewith and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Platform and Services (or any of them) to UK Biobank and/or to any Replacement Service Provider;
 - 5.5.5 ensure that:

- 5.5.5.1 it provides such advisory, error correction, bug fix and other support services (including the provision of New Releases and Updates) in respect of the Software as are necessary to ensure that the Platform continues to comply with the warranty set out in clause 3.3.2 (Warranties) and to meet and comply with the UK Biobank Requirements and provides such other support services as are referred to in Schedule 2 (Specification and Service Provider Solution) and Schedule 3 (Performance Levels);
 - 5.5.5.2 it applies all New Releases and Updates that it makes available to its customers generally to the Platform in a timely manner and at no additional charge;
 - 5.5.5.3 the release of any new Software or upgrade to any Software (including any New Release or Update) complies with the interface requirements in the Specification and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the security requirements of the Specification) shall notify UK Biobank promptly in advance of any such release and in any event not less than three (3) months before any such release; and
 - 5.5.5.4 all Software including Updates and New Releases used by or on behalf of the Service Provider are currently supported versions of that Software and comply with the warranty set out in clause 3.3.2 (Warranties);
- 5.6 Without prejudice to any other rights and remedies of UK Biobank howsoever arising, the Service Provider shall remedy any breach of its obligations in clause 5.5 as soon as reasonably practicable after having become aware of the breach or being notified of the breach by UK Biobank.

Users

- 5.7 The Service Provider shall manage the process of access to the Platform and the UK Biobank Data accessed through it by Users and shall ensure that only Users are permitted to use the Platform to access and process UK Biobank Data, as set out in Schedule 2 (Specification and Service Provider Solution).
- 5.8 The Service Provider shall ensure that, subject to clause 5.9, Users are permitted to access and use the Platform on a fair, equivalent and non-discriminatory basis in accordance with the time scales set out in Schedule 2 (Specification and Service Provider Solution) and that the Platform is made available to all Users who:
 - 5.8.1 enter into an End User Agreement on the End User Terms;
 - 5.8.2 comply with the End User Terms; and
 - 5.8.3 pay the End User Charges from time to time due under the End User Agreement.
- 5.9 The Service Provider may use as End User Terms such of its standard terms as it shall determine provided that:
 - 5.9.1 the End User Terms are reasonable and proportionate;
 - 5.9.2 prior to first use of the End User Terms and prior to implementing any material changes to the then current End User Terms, it shall submit a copy of its draft End User Terms (or revised End User Terms) to UK Biobank and permit UK Biobank a reasonable period of time to comment on the same. The Service Provider shall consider any UK Biobank comments and act reasonably in determining any changes to be made in the final End User Terms;

- 5.9.3 it shall take account of any reasonable comments from Users in respect of the End User Terms; and
- 5.9.4 it applies and enforces the End User Terms in a fair and non-discriminatory manner.
- 5.10 The Service Provider agrees to terminate an End User Agreement on reasonable request from UK Biobank if UK Biobank determines that the applicable User is in breach of its Material Transfer Agreement.
- 5.11 The Service Provider agrees that UK Biobank shall have no liability for any breach by a User of its End User Agreement or for any other misuse of the Platform by or on behalf of a User.
- 5.12 The Service Provider shall during Phase 1 restrict access to and use of the Platform to the Research Partners.

6. IMPLEMENTATION

Implementation Plan and Delays

- 6.1 The Parties shall comply with the provisions of Schedule 5 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.2 The Parties shall comply with the Implementation Plan and the Service Provider shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Service Provider becomes aware that there is, or there is reasonably likely to be, a Delay:
 - 6.3.1 it shall in any event:
 - 6.3.1.1 notify UK Biobank in accordance with clause 23.1 (Rectification Plan Process); and
 - 6.3.1.2 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay;
 - 6.3.2 it shall, where applicable, comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay;
 - 6.3.3 to the extent that the Delay would not have occurred but for a UK Biobank Cause, the provisions of clause 24 (UK Biobank Cause) shall apply; and
 - 6.3.4 to the extent that the Delay is directly caused by a Force Majeure Event, the provisions of clause 25 (Force Majeure) shall apply.

Testing and Achievement of Milestones

- 6.4 The Parties shall comply with the provisions of Schedule 6 (Testing Procedures) in relation to the testing and other procedures to determine whether a Milestone or Test has been Achieved.

7. PERFORMANCE INDICATORS

- 7.1 The Service Provider shall:
 - 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator from the Milestone Date for the CPP Milestone; and

- 7.1.2 comply with the provisions of Schedule 3 (Performance Levels) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:

- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Schedule 7 (Charges and Invoicing); and / or
- 7.2.2 a Material KPI Failure occurs, the Service Provider shall comply with the Rectification Plan Process.

- 7.3 Service Credits shall be UK Biobank's exclusive financial remedy for a KPI Failure except where:

- 7.3.1 the KPI Failure:
 - 7.3.1.1 breaches the relevant KPI Service Threshold;
 - 7.3.1.2 has arisen due to the wilful default by the Service Provider or any Service Provider Personnel; or
 - 7.3.1.3 results in UK Biobank being required to make a compensation payment to one or more third parties;
- 7.3.2 the Service Provider has negligently or fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.3 UK Biobank is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to clause 26.1 (Termination by UK Biobank).

8. EQUIPMENT AND MAINTENANCE

Service Provider Equipment

- 8.1 All the Service Provider's property, including Service Provider Equipment, shall remain at all times at the sole risk and responsibility of the Service Provider.

Maintenance

- 8.2 The Service Provider maintain a rolling schedule of planned maintenance to the Platform in accordance with the schedule set out in Part B of Schedule 2 (Specification and Service Provider Solution) ("**Maintenance Schedule**"). Any updates or changes to the same shall be agreed with UK Biobank Representative prior to the same being implemented. The Service Provider shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

SECTION C – FINANCIAL AND CONTRACT GOVERNANCE

9. FINANCIAL

Charges and Invoicing

- 9.1 In consideration of the Service Provider carrying out its obligations under this Agreement:
 - 9.1.1 UK Biobank shall pay the Charges to the Service Provider in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7 (Charges and Invoicing); and

9.1.2 the Service Provider shall be entitled to charge the Users the End User Charges for use of the Platform pursuant to an End User Agreement and in accordance with the relevant provisions of Schedule 7 (Charges and Invoicing).

9.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.

9.3 For the avoidance of doubt, payment of the End User Charges shall be due from the Users to the Service Provider and the Service Provider shall be wholly responsible for collecting the same from Users. UK Biobank shall have no liability for payment of any End User Charges.

VAT

9.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by UK Biobank following delivery of a valid VAT invoice.

10. RECORDS AND AUDITS

10.1 The Service Provider shall maintain complete and accurate reports, documents and records in relation to the Platform and the provision of the Services and make available to UK Biobank upon request a summary of the same.

10.2 UK Biobank may conduct an audit to verify compliance by the Service Provider with its obligations under this Agreement and/or in order to comply with a requirement of a Regulatory Authority. Except where:

10.2.1 an audit is imposed on UK Biobank by a Regulatory Authority; or

10.2.2 UK Biobank has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Agreement,

UK Biobank may not conduct an audit of the Service Provider more than once in any Contract Year.

10.3 The Service Provider shall (and shall procure that its Sub-contractors shall) on demand provide UK Biobank (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

10.3.1 all information requested by UK Biobank within the permitted scope of the audit;

10.3.2 reasonable access to any Sites controlled by the Service Provider (and any Sub-contractor) and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

10.3.3 access to Service Provider Personnel.

10.4 UK Biobank shall during each audit comply with the standard security, sites, systems and facilities operating procedures of the Service Provider and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

10.5 UK Biobank shall provide at least 15 Working Days' notice of its intention to conduct an audit, unless the audit is a matter of urgency in which case it shall provide as much notice as is reasonably practicable.

11. CHANGE

Change Control Procedure

- 11.1 Unless otherwise stated in this Agreement, any Change shall be made only in accordance with this clause 11.
- 11.2 The Parties shall deal with Change as follows:
- 11.2.1 either Party may at any time request a Change by giving notice in writing to the other Party identifying the proposed Change ("**Change Request**");
 - 11.2.2 the UK Biobank Representative shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in clause 11.4;
 - 11.2.3 the Service Provider shall have the right to reject a Change Request solely in the manner set out in clause 11.5; and
 - 11.2.4 in any preparation of a Change Request or Change Request Information, unless otherwise agreed in writing, each Party will be liable for their own costs.
- 11.3 The Service Provider shall (in good faith) submit to UK Biobank in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change Request from UK Biobank Representative (or at the same time as any written Change Request that the Service Provider may submit):
- 11.3.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as UK Biobank shall reasonably require for such Change;
 - 11.3.2 particulars of any changes which would be required to UK Biobank Requirements and the Service Provider Solution in order to implement the proposed Change;
 - 11.3.3 particulars of the other changes (if any) which would be required to this Agreement in order to implement the proposed Change; and
 - 11.3.4 the full cost and risk implications for UK Biobank that would result from the Change, including any proposed amendment to the Charges, provided that any such amendment to the Charges must be reasonable and proportionate in the circumstances and comply with the principles set out in Schedule 7 (Charging and Invoicing),
- (together, "**Change Request Information**").
- 11.4 Upon receipt of the Change Request Information:
- 11.4.1 UK Biobank may elect, subject to clause 11.6, to approve the proposed Contract Change, in which case this Agreement will be amended accordingly and the Parties shall forthwith complete and sign a change control notice in such form as UK Biobank Representative shall reasonably require recording the Change that shall include the Change Request Information; or
 - 11.4.2 UK Biobank Representative may, in his reasonable discretion, reject the Change, in which case he shall notify the Service Provider of the rejection; or
 - 11.4.3 where UK Biobank Representative reasonably considers that the Service Provider has not complied with clause 11.3, he or she may require the Service Provider to resubmit the Change Request Information, in which event the Service Provider shall make such modifications as are necessary to comply with clause 11.3 and resubmit the same to UK Biobank Representative within five (5) Working Days of UK Biobank Representative's request and the provisions of this clause 11.4 shall apply thereto.
- 11.5 If following receipt of a Change Request from UK Biobank the Service Provider reasonably believes that:

- 11.5.1 the proposed Change would:
 - 11.5.1.1 materially and adversely affect the risks to the health and safety of any person; and/or
 - 11.5.1.2 require the Services to be performed in a way that infringes any Law; and/or
- 11.5.2 the proposed Change is technically impossible to implement and neither the Service Provider Solution nor the Specification state that the Service Provider has the technical capacity and flexibility required to implement the proposed Change,

then the Service Provider shall be entitled to reject the proposed Change, provided that it notifies UK Biobank within five (5) Working Days of receipt of the applicable Change Request of its reasons for doing so and substantiates the same to the reasonable satisfaction of the UK Biobank Representative.

- 11.6 Until such time as any Change is formally accepted in accordance with clause 11.4.1 and the applicable change control notice has been signed by a representative of each Party having the necessary authority, the same shall not be binding on the Parties and the Service Provider will, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been required.

Change in Law

- 11.7 The Service Provider shall neither be relieved of its obligations to supply the Platform and the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of Change in Law.

SECTION D – SUPPLIER PERSONNEL AND SUPPLY CHAIN

12. SUPPLIER PERSONNEL

- 12.1 The Service Provider shall:
 - 12.1.1 ensure that all Service Provider Personnel:
 - 12.1.1.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - 12.1.1.2 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (Specification and Service Provider Solution); and
 - 12.1.1.3 comply with all reasonable security and other requirements of UK Biobank concerning conduct at UK Biobank Premises;
 - 12.1.2 be liable at all times for all acts or omissions of Service Provider Personnel, so that any act or omission of a member of any Service Provider Personnel which results in a Default under this Agreement shall be a Default by the Service Provider;
 - 12.1.3 use all reasonable endeavours to minimise the number of changes in Service Provider Personnel;
 - 12.1.4 replace (temporarily or permanently, as appropriate) any Service Provider Personnel as soon as practicable if any Service Provider Personnel have been removed or are unavailable for any reason whatsoever; and
 - 12.1.5 bear the programme familiarisation and other costs associated with any replacement of any Service Provider Personnel.

- 12.2 The Service Provider's key personnel listed in Part B of Schedule 2 (Specification and Service Provider Solution) shall carry out the Services (including the key roles so specified) unless otherwise agreed with UK Biobank Representative (whose agreement shall not be unreasonably withheld or delayed), which shall be the **"Key Personnel"** and **"Key Roles"** respectively for the purposes of this Agreement.
- 12.3 The Service Provider shall not remove or replace any Key Personnel unless:
- 12.3.1 requested to do so by UK Biobank;
 - 12.3.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 12.3.3 the person's employment or contractual arrangement with the Service Provider or a Sub-contractor is terminated; or
 - 12.3.4 the Service Provider obtains UK Biobank's prior written consent (such consent not to be unreasonably withheld or delayed).
- 12.4 The Service Provider shall ensure that any replacement for a Key Role:
- 12.4.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
 - 12.4.2 is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 12.5 UK Biobank Representative shall be entitled on written notice to request that the Service Provider terminate immediately any person's involvement with the provision of the Services when in the reasonable opinion of UK Biobank Representative it considers it undesirable for them to continue.

Representatives

- 12.6 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 12.7 Each Party shall notify the other of the identity of its initial Representative within five (5) Working Days of the Effective Date.
- 12.8 Either Party may, by written notice to the other Party, revoke or amend the authority of their Representative or appoint a new Representative.

Staff Transfer

- 12.9 The Parties agree that the expiry or termination of this Agreement will not constitute a relevant transfer for the purposes of the Employment Regulations. The Service Provider shall, as far as is reasonably possible, manage and deploy the Service Provider Personnel in such a manner as to avoid application of the Employment Regulations.

13. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Key Sub-contractors

- 13.1 Where the Service Provider wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of UK Biobank, such consent not to be unreasonably withheld or delayed.

- 13.2 UK Biobank consents to the appointment of the Key Sub-contractors listed in Part B of Schedule 2 (Specification and Service Provider Solution).

Key Sub-contractors

- 13.3 Except where UK Biobank has given its prior written consent, the Service Provider shall ensure that each Key Sub-contract shall include:
- 13.3.1 provisions which will enable the Service Provider to discharge its obligations under this Agreement;
 - 13.3.2 provisions to ensure that the Service Provider is able to assign, novate or otherwise transfer to UK Biobank or any Replacement Service Provider all of its rights and obligations under such Key Sub-contract without restriction (including any need to obtain and consent or approval) or payment by UK Biobank; and
 - 13.3.3 obligations no less onerous on the Key Sub-contractor than those imposed on the Service Provider under this Agreement in respect of data protection requirements set out in clauses 18 (UK Biobank Data and Security Requirements) and 20 (Data Protection) and Schedule 9 (Data Processing Clauses).

Cloud Infrastructure Provider

- 13.4 The Parties agree that the Cloud Infrastructure Provider is a Key Sub-contractor and that, except where UK Biobank has given its prior written consent and without prejudice to the provisions of clause 13.3, such Key Sub-contract shall be on the terms set out in Schedule 10 (Cloud Infrastructure Terms). The Service Provider shall not terminate or materially amend the terms of such Key Sub-contract without UK Biobank's prior written consent.

Retention of Legal Obligations

- 13.5 Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 13, the Service Provider shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

Data processing supply chain

- 13.6 The provisions of this clause 13 are subject to clause 20 (Protection of Personal Data) in respect of any sub-contracts relating to Personal Data Processing.

SECTION E – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 Except as expressly set out in this Agreement:
- 14.1.1 UK Biobank shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors, namely:
 - 14.1.1.1 the Specially Written Software;
 - 14.1.1.2 the Project Specific IPRs;
 - 14.1.1.3 the Service Provider Software;
 - 14.1.1.4 the Third Party Software;
 - 14.1.1.5 the Third Party IPRs; and

- 14.1.1.6 the Service Provider Background IPRs; and
- 14.1.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of UK Biobank or its licensors, including:
 - 14.1.2.1 UK Biobank Software;
 - 14.1.2.2 UK Biobank Data; and
 - 14.1.2.3 UK Biobank Background IPRs.
- 14.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 14.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 14.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent, provided that each Party shall be entitled to use the same without the need for such consent to the extent reasonably necessary in order to perform its obligations under, and exercise its rights as contemplated by, this Agreement.

15. RIGHTS GRANTED BY THE SUPPLIER

Software as a Service

- 15.1 The Parties agree that all Software is to be provided by way of Software as a Service and UK Biobank acknowledges that, as a consequence:
 - 15.1.1 it will not be provided with a physical copy of the Software; and
 - 15.1.2 use of the Software is restricted to use by way of Software as a Service,and the provisions of this clause 15 shall be construed accordingly.
- 15.2 The Service Provider agrees to provide UK Biobank and all Users with all software keys, access codes and / or other login requirements as necessary to access and use the Software.
- 15.3 All rights required to be granted under this clause 15 shall be granted with effect from, or procured to take effect from, the Implementation Services Commencement Date, or date of creation of the applicable software or Intellectual Property Right, if later.

Software, Project Specific IPRs and Background IPRs

- 15.4 The Service Provider hereby grants to UK Biobank, or shall procure the grant to UK Biobank of, a royalty-free non-exclusive right for the Term to access and use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Software, the Project Specific IPRs and the Background IPRs for any purpose relating to use or receipt of the Services (or substantially equivalent services) or the Platform (or a substantially equivalent system).
- 15.5 UK Biobank may permit a third party to exercise the rights granted under clause 15.4 (Software, Project Specific IPRs and Background IPRs) on terms no broader than those granted to UK Biobank, for purposes relating to the exercise of UK Biobank's business or function and provided that such third party shall be under a contractual obligation to UK Biobank to comply with confidentiality obligations that are broadly equivalent to those of UK Biobank pursuant to clause 19 (Confidentiality).

Third Party COTS Software

- 15.6 If the Service Provider cannot obtain for UK Biobank a licence in respect of any Third Party COTS Software in accordance with the licence terms set out in clauses 15.4 and 15.5 (Software, Project Specific IPRs and Background IPRs), the Service Provider shall prior to incorporating the same into the Platform:

15.6.1 notify UK Biobank; and

15.6.2 procure the grant direct by the owner or an authorised licensor thereof to UK Biobank of a right to access and use the Third Party COTS Software for the Term on terms no less favourable than those on which such software is usually made commercially available by the Service Provider or the relevant third party, provided that, except where UK Biobank has given its prior written consent, the Service Provider shall ensure that such terms permit access to and use of the Third Party COTS Software for any purpose relating to use or receipt of the Services or the Platform.

Users

- 15.7 The Service Provider shall grant to Users, or shall procure the grant to Users of, a right to access and use the Software, Project Specific IPRs and Background IPRs as reasonably necessary for Research Purposes in accordance with the process set out in clauses 5.7 to 5.9 (Users). Such grant shall be on terms that are no less favourable (including as to indemnification against IPRs Claims) than the terms on which such software is usually made commercially available by the Service Provider or the relevant third party.

16. LICENCES GRANTED BY UK BIOBANK

- 16.1 UK Biobank hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence during the Term to use UK Biobank Software, UK Biobank Background IPRs and UK Biobank Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

16.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Service Provider on the same terms as set out in clause 19 (Confidentiality); and

16.1.2 the Service Provider shall not, without UK Biobank's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than UK Biobank.

- 16.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 16.1 and any sub-licence granted by the Service Provider in accordance with clause 16.1 shall terminate automatically on the date of such termination or expiry and the Service Provider shall:

16.2.1 immediately cease all use of UK Biobank Software, UK Biobank Background IPRs and UK Biobank Data (as the case may be);

16.2.2 at the discretion of UK Biobank, return or destroy documents and other tangible materials that contain any of UK Biobank Software, UK Biobank Background IPRs and UK Biobank Data, or, at the direction of UK Biobank Representative, send the same to the Replacement Provider, provided that if UK Biobank has not made an election within six (6) months of the termination of the licence, the Service Provider may destroy the documents and other tangible materials that contain any of UK Biobank Software, UK Biobank Background IPRs and UK Biobank Data (as the case may be); and

16.2.3 ensure, so far as reasonably practicable, that any UK Biobank Software, UK Biobank Background IPRs and UK Biobank Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Service Provider computer, word processor, voicemail system or any other

Service Provider device containing such UK Biobank Software, UK Biobank Background IPRs and/or UK Biobank Data.

17. IPRs INDEMNITY

- 17.1 Subject to clause 22.2.2 (Financial and other limits), the Service Provider shall at all times, during and after the Term, on written demand indemnify UK Biobank, and keep UK Biobank indemnified, against all Losses incurred by, awarded against or agreed to be paid by UK Biobank arising from an IPRs Claim.
- 17.2 If UK Biobank receives notice of any IPRs claim, UK Biobank shall give notice in writing to the Service Provider as soon as reasonably practicable and provide to the Service Provider such reasonable information, cooperation and assistance in respect of the IPRs Claim as the Service Provider may reasonably request, provided that the Service Provider reimburses to UK Biobank its reasonable costs incurred in connection with the same.
- 17.3 If the Service Provider is unable to procure for UK Biobank the right to continue using the relevant item which is subject to the IPRs Claim (or to replace or modify the relevant item with non-infringing substitutes or equivalent functionality acceptable to UK Biobank, acting reasonably) within twenty (20) Working Days of UK Biobank's notice under clause 17.2, then:
- 17.3.1 UK Biobank may terminate this Agreement (if subsisting) with immediate effect by written notice to the Service Provider; and
- 17.3.2 without prejudice to the indemnity set out in clause 17.1, the Service Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18. UK BIOBANK DATA AND SECURITY REQUIREMENTS AND SERVICE CONTINUITY PLANS

- 18.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to UK Biobank Data.
- 18.2 The Service Provider shall not store, copy, disclose, or use UK Biobank Data except as necessary for the performance by the Service Provider of its obligations under this Agreement and pursuant to any End User Agreement or as otherwise expressly authorised in writing by UK Biobank.
- 18.3 To the extent that UK Biobank Data is held and/or processed (which includes any Processing) by the Service Provider, the Service Provider shall supply that UK Biobank Data to UK Biobank as requested by UK Biobank in the format specified in Schedule 2 (Specification and Service Provider Solution).
- 18.4 The Service Provider shall preserve the integrity of UK Biobank Data and prevent the corruption or loss of UK Biobank Data at all times that the relevant UK Biobank Data is under its control or the control of any Sub-contractor, but shall not be responsible for any corruption or loss of UK Biobank Data by Users.
- 18.5 If UK Biobank Data is corrupted, lost or sufficiently degraded so as to be unusable, UK Biobank may to the extent that the same is as a result of the Service Provider's Default:
- 18.5.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of UK Biobank Data as soon as practicable but not later than five (5) Working Days from the date of receipt of UK Biobank's notice; and/or
- 18.5.2 itself restore or procure the restoration of UK Biobank Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.

- 18.6 If at any time the Service Provider suspects or has reason to believe that UK Biobank Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify UK Biobank immediately and inform UK Biobank of the remedial action the Service Provider proposes to take.
- 18.7 The Service Provider shall comply with the information security requirements set out in Parts A and B of Schedule 2 (Specification and Service Provider Solution).

Malicious Software

- 18.8 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 18.9 Notwithstanding clause 18.8, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of UK Biobank Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 18.10 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 18.9 shall be borne by the Parties as follows:
- 18.10.1 by the Service Provider where the Malicious Software originates from the Software supplied by the Service Provider (except where UK Biobank has waived the obligation set out in clause 18.8), Users or UK Biobank Data (whilst UK Biobank Data was under the control of the Service Provider) unless, in the latter case, the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by UK Biobank when provided to the Service Provider; and
- 18.10.2 otherwise by UK Biobank.

Service Continuity Plan

- 18.11 The Service Provider shall ensure that at all times it has in place a Service Continuity Plan and that the Service Continuity Plan is adequate to minimise the effect of any Incident. In the event of an Incident, the Service Provider will immediately implement the Service Continuity Plan. The Service Provider will continue to perform those of its obligations which are not affected by the Incident in accordance with the provisions of this Agreement.

19. CONFIDENTIALITY

- 19.1 For the purposes of this clause 19, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 19.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 19.2.2 not disclose the Disclosing Party’s Confidential Information except as set out expressly in this Agreement or to any other person without obtaining the owner’s prior written consent;

- 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law; or
 - 19.3.2 the need for such disclosure arises out of or in connection with:
 - 19.3.2.1 any legal challenge or potential legal challenge against UK Biobank arising out of or in connection with this Agreement; or
 - 19.3.2.2 the conduct of a Regulatory Authority review in respect of this Agreement; or
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Service Provider may disclose the Confidential Information of UK Biobank on a confidential basis only to:
- 19.5.1 Service Provider Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Service Provider's obligations under this Agreement;
 - 19.5.2 its auditors; and
 - 19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- Where the Service Provider discloses Confidential Information of UK Biobank pursuant to this clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 19.6 UK Biobank may disclose the Confidential Information of the Service Provider:
- 19.6.1 on a confidential basis to any Regulatory Authority for any proper purpose of UK Biobank or of the relevant Regulatory Authority;
 - 19.6.2 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - 19.6.3 on a confidential basis for the purpose of the exercise of its rights under this Agreement; and
 - 19.6.4 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on UK Biobank under this clause 19.

- 19.7 Nothing in this clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 19.8 Any disclosure by the Service Provider in accordance with this clause 19 must be undertaken in compliance with clause 20.

20. DATA PROTECTION

Treatment of UK Biobank Data

- 20.1 The Parties acknowledge that:
- 20.1.1 in the provision of UK Biobank Data, UK Biobank is not making available the re-identification keys to the Service Provider, as the only Party who has access to these is UK Biobank itself;
 - 20.1.2 in UK Biobank's reasonable opinion, it is not possible to identify a UK Biobank participant from the UK Biobank Data being Processed by the Service Provider (taken in conjunction with reasonably available public data); and
 - 20.1.3 as such UK Biobank considers that the UK Biobank Data that will be Processed under this Agreement is not Personal Data and thus not subject to the provisions of the Data Protection Laws.

Notwithstanding this:

- 20.1.4 the Service Provider will at all times Process UK Biobank Data in accordance with the provisions of this clause 20 and with the provisions of Schedule 9 (Data Processing Clauses); and
 - 20.1.5 the Service Provider will treat all UK Biobank Data as if it is Personal Data and will comply with the provisions of Schedule 9 (Data Processing Clauses) as if all UK Biobank Data is Personal Data.
- 20.2 Notwithstanding the foregoing provision of this clause 20, the Service Provider agrees that it will have technical ability to be able to determine (at reasonably short notice) the location (and relevant domestic jurisdiction) of the UK Biobank Data being Processed and/or stored within or accessed through the Platform. Further, the Service Provider agrees to Process and/or store the UK Biobank Data in a jurisdiction and subject to a legal framework which confirms and ensures that English law applies to this Agreement, the Services and the Deliverables, and offers suitable protection from any access (which access is not expressly authorised by UK Biobank) by third parties, including from any access by domestic or international governmental or regulatory bodies.

Data Protection Obligations under this Agreement

- 20.3 **The Parties' general data protection obligations in this clause 20:** The Parties acknowledge that this clause 20 applies generally in relation to any and all UK Biobank Data Processed under this Agreement.
- 20.4 **Specific additional Processing obligations placed on the Service Provider in Schedule 9:** In addition to the obligations in this clause 20, the Parties will at all times comply with the specific further processing obligations set out in Schedule 9 (Data Processing Clauses) in relation to any and all UK Biobank Data Processed under this Agreement.

Note: UK Biobank considers that these provisions are necessary in the circumstances and they are compliant with the provisions of Article 28 of the GDPR. As set out in clause 20.1, UK Biobank expects that all UK Biobank Data is Processed by the Service Provider in accordance with these requirements, whether or not the data is in fact Personal Data, because of the sensitivity of the UK Biobank Data and the impact of any unauthorised access, use or other processing.

- 20.5 **Specific additional obligations in respect of Restricted Transfers using the EU Processor Clauses:** When any Restricted Transfer is required, the Parties will comply with the additional obligations set out in the EU Processor Clauses in accordance with clauses 20.6 and 20.7 below. These are the EU Commission's model data transfer clauses, approved for this purpose. These clauses will apply unless UK Biobank notifies the Service Provider in writing that they are not required.

Note: UK Biobank considers that although a Restricted Transfer is only relevant in the context of the (restricted) transfer of Personal Data, these clauses shall apply as between the Service Provider and UK Biobank as they are likely to provide the most effective means of establishing a lawful basis for such transfer.

EU Processor Clauses

- 20.6 Subject to clause 20.7 the Parties will comply with the EU Processor Clauses set out in Annex 2 to Schedule 9 (Data Processing Clauses) in relation to any Restricted Transfer between the Parties, save to the extent that the Parties have agreed in writing, in advance, that they are not required (because other appropriate safeguards compliant with the Data Protection Laws are in place).
- 20.7 If the appropriate safeguards demonstrated or implemented by the Service Provider in accordance with clause 20.6 are deemed at any time not to provide an adequate level of protection in relation to UK Biobank Data, the Service Provider will implement such alternative measures as may be reasonably required by UK Biobank to ensure that the relevant Restricted Transfer and all resulting Processing are compliant with Data Protection Laws.

Indemnity

- 20.8 Subject to clause 22.2.2 (Financial and other limits), the Service Provider will indemnify UK Biobank against the Recoverable Liabilities, in each case arising out of or in connection with any breach by the Service Provider or any Sub-Processor of any of its obligations under this clause 20 (Data Protection) and Schedule 9 (Data Processing Clauses) (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) save where any Recoverable Liabilities arise as a direct result of an instructions given to the Service Provider by UK Biobank in accordance with this Agreement.
- 20.9 UK Biobank shall provide to the Service Provider such reasonable information, cooperation and assistance in respect of any claim to which the indemnity in clause 20.8 applies as the Service Provider may reasonably request, provided that the Service Provider reimburses to UK Biobank its reasonable costs incurred in connection with the same.

UK Biobank Assurance

- 20.10 UK Biobank will use all reasonable endeavours to comply with its obligations under Data Protection Laws when sharing UK Biobank Data with the Service Provider pursuant to this Agreement.

21. PUBLICITY AND BRANDING

- 21.1 The Service Provider shall not:
- 21.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

- 21.1.2 use UK Biobank's name, brand or logo in any promotion or marketing or announcement of orders

without the prior written consent of UK Biobank, which shall not be unreasonably withheld or delayed.

- 21.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION F – LIABILITY, INDEMNITIES AND INSURANCE

22. LIMITATIONS ON LIABILITY

Unlimited liability

- 22.1 Neither Party limits its liability for:

- 22.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 22.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 22.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 22.1.4 any liability to the extent it cannot be limited or excluded by Law.

Financial and other limits

- 22.2 Subject to clause 22.1 (Unlimited Liability), clause 22.6 (Consequential losses):

- 22.2.1 the Service Provider's aggregate liability in respect of Service Credits incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap;

- 22.2.2 the Service Provider's liability:

- 22.2.2.1 in respect of any breach of clause 20 (Data Protection) or Schedule 9 (Data Processing Clauses) that is caused by Defaults of the Service Provider (including pursuant to the indemnity set out in clause 20.8); or

- 22.2.2.2 pursuant to the indemnity set out in clause 17.1 (IPRs Indemnity)

shall in no event exceed £10,000,000.00 (ten million pounds) for each and every claim; and

- 22.2.3 the Service Provider's aggregate liability in respect of all other Losses incurred by UK Biobank under or in connection with this Agreement as a result of Defaults by the Service Provider shall in no event exceed:

- 22.2.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;

- 22.2.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

- 22.2.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the twelve (12) month period immediately prior to the last day of the Term.
- 22.3 Subject to clauses 22.1 (Unlimited Liability) and clause 22.6 (Consequential Losses) and without prejudice to UK Biobank's obligation to pay the Charges (excluding the End User Charges) as and when they fall due for payment, UK Biobank's aggregate liability in respect of all Losses incurred by the Service Provider under or in connection with this Agreement as a result of Defaults of UK Biobank shall in no event exceed:
- 22.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- 22.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- 22.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the twelve (12) month period immediately prior to the last day of the Term.
- 22.4 Deductions from Charges shall not be taken into consideration when calculating the Service Provider's liability under clause 22.2.3 and UK Biobank's liability under clause 22.3.
- 22.5 For the avoidance of doubt:
- 22.5.1 any liability of a Party which falls within clause 22.1 will not be taken into account in assessing whether the financial limits in clauses 22.2 or 22.3 (as applicable) have been reached;
- 22.5.2 the financial limits in clauses 22.2.1, 22.2.2 and 22.2.3 (and its sub-clauses) are separate not cumulative and any liability of the Service Provider which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and
- 22.5.3 the financial limits in clauses 22.3.1, 22.3.2 and 22.3.3 are separate not cumulative and any liability of UK Biobank which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached.

Consequential Losses

- 22.6 Subject to clauses 22.1 (Unlimited Liability), neither Party shall be liable to the other Party for:
- 22.6.1 any indirect, special or consequential Loss; or
- 22.6.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

Mitigation

- 22.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

SECTION G – REMEDIES AND RELIEF

23. RECTIFICATION PLAN PROCESS

23.1 In the event that:

- 23.1.1 there is, or is reasonably likely to be, a Delay; and/or
- 23.1.2 in any Service Period there has been a Material KPI Failure; and/or
- 23.1.3 the Service Provider commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Service Provider shall notify UK Biobank of the Notifiable Default as soon as practicable but in any event within five (5) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Service Provider Termination Event, UK Biobank may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

23.2 If:

- 23.2.1 the Service Provider notifies UK Biobank pursuant to clause 23.1 that a Notifiable Default has occurred; or
- 23.2.2 UK Biobank notifies the Service Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Service Provider has to rectify),

then, unless the Notifiable Default also constitutes a Service Provider Termination Event and UK Biobank serves a Termination Notice or the provisions of clause 24 (UK Biobank Cause) apply, the Service Provider shall comply with the Rectification Plan Process.

23.3 The “**Rectification Plan Process**” shall be as set out in clauses 23.4 (Submission of the draft Rectification Plan) to 23.8 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

23.4 The Service Provider shall submit a draft Rectification Plan to UK Biobank for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 23.2 (Notification).

23.5 The draft Rectification Plan shall set out:

- 23.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
- 23.5.2 the actual or anticipated effect of the Notifiable Default; and
- 23.5.3 the steps which the Service Provider proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 23.6 The Service Provider shall promptly provide to UK Biobank any further documentation that UK Biobank reasonably requires to assess the Service Provider's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan the Dispute shall be determined in accordance with clause 35 (Disputes).

Agreement of the Rectification Plan

- 23.7 UK Biobank shall notify the Service Provider whether it consents to the draft Rectification Plan as soon as reasonably practicable. If UK Biobank rejects the draft Rectification Plan, UK Biobank shall give reasons for its decision and the Service Provider shall take the reasons into account in the preparation of a revised Rectification Plan. The Service Provider shall submit the revised draft of the Rectification Plan to UK Biobank for review within five (5) Working Days (or such other period as agreed between the Parties) of UK Biobank's notice rejecting the first draft.

- 23.8 If UK Biobank consents to the Rectification Plan:

23.8.1 the Service Provider shall immediately start work on the actions set out in the Rectification Plan; and

23.8.2 UK Biobank may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

24. UK BIOBANK CAUSE

- 24.1 Notwithstanding any other provision of this Agreement, if the Service Provider has failed to:

24.1.1 Achieve a Milestone by its Milestone Date;

24.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

24.1.3 comply with its obligations under this Agreement,

(each a "**Service Provider Non-Performance**") and can demonstrate that the Service Provider Non-Performance would not have occurred but for a UK Biobank Cause, then (subject to the Service Provider fulfilling its obligations in clause 24.2):

24.1.4 the Service Provider shall not be treated as being in breach of this Agreement to the extent the Service Provider can demonstrate that the Service Provider Non-Performance was caused by UK Biobank Cause;

24.1.5 the applicable Milestone Date (if any) shall be postponed by a period equal to the period of Delay that the Service Provider can demonstrate was caused by UK Biobank Cause;

24.1.6 the Service Provider shall not be liable to accrue Service Credits in relation to the applicable KPI Failure (if any); and

24.1.7 UK Biobank shall not be entitled to exercise any other rights that may arise as a result of that Service Provider Non-Performance.

- 24.2 In order to claim any of the rights and/or relief referred to in clause 24.1, the Service Provider shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an UK Biobank Cause has caused, or is reasonably likely to cause, a Service Provider Non-Performance, give UK Biobank notice setting out details of:

24.2.1 the Service Provider Non-Performance;

- 24.2.2 UK Biobank Cause and its effect, or likely effect, on the Service Provider's ability to meet its obligations under this Agreement;
 - 24.2.3 any steps which UK Biobank can take to eliminate or mitigate the consequences and impact of such UK Biobank Cause; and
 - 24.2.4 the relief claimed by the Service Provider.
- 24.3 The Service Provider shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an UK Biobank Cause, including the duration and consequences of any Delay or anticipated Delay.
25. **FORCE MAJEURE**
- 25.1 Subject to the remaining provisions of this clause 25 (and, in relation to the Service Provider, subject to its compliance with its Service Continuity Plan), a Party may claim relief under this clause 25 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
- 25.2 If the Service Provider is the Affected Party, it shall not be entitled to claim relief under this clause 25 to the extent that consequences of the relevant Force Majeure Event:
- 25.2.1 are capable of being mitigated by any of the Services and / or compliance with the Service Continuity Plan, but the Service Provider has failed to do so; and/or
 - 25.2.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 25.3 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

SECTION H – TERMINATION AND EXIT MANAGEMENT

26. TERMINATION RIGHTS

Termination by UK Biobank

- 26.1 UK Biobank may terminate this Agreement by issuing a Termination Notice to the Service Provider:
- 26.1.1 if a Service Provider Termination Event occurs;
 - 26.1.2 if a Force Majeure Event endures for a continuous period of more than ninety (90) days;
 - 26.1.3 where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 26.1.4 if the Agreement has been amended to the extent that the Public Contracts Regulations require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

Termination by the Service Provider

26.2 The Service Provider may terminate this Agreement by issuing a Termination Notice to UK Biobank:

26.2.1 if UK Biobank fails to pay an undisputed sum due to the Service Provider under this Agreement which in aggregate exceeds £[INSERT – NOT LESS THAN ONE MONTH'S AVERAGE INVOICED CHARGES] and such amount remains outstanding sixty (60) Working Days after the receipt by UK Biobank of a notice of non-payment from the Service Provider and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice);

26.2.2 if UK Biobank commits a material breach of the terms of clause 15 (Rights Granted by the Service Provider) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Service Provider gives UK Biobank written notice specifying the breach and requiring its remedy; or

26.2.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days.

27. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

27.1 The provisions of clauses 6.1 (Implementation Plan and Delays), 9.4 (Financial), 10 (Records and Audits), 12.9 (Staff Transfer), 14 (Intellectual Property Rights), 15 (Rights Granted by the Service Provider), 17.1 (IPRs Indemnity), 19 (Confidentiality), 20 (Data Protection), 22 (Limitations on Liability), 27 (Consequences of Expiry or Termination), 32 (Entire Agreement), 33 (Third Party Rights), 35 (Disputes) and 36 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7 (Charges and Invoicing), 8 (Exit Management) and 9 (Data Processing Clauses) shall survive the termination or expiry of this Agreement.

Exit Management

27.2 The Service Provider shall comply with the provisions of Schedule 8 (Exit Management) and any current Exit Plan in relation to the orderly transition of the Services to UK Biobank or a Replacement Service Provider.

Payments by UK Biobank

27.3 If this Agreement is terminated (in part or in whole) by UK Biobank or the Term expires, the only payments that UK Biobank shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

27.3.1 payments in respect of any Assets in accordance with Schedule 8 (Exit Management); and

27.3.2 payments in respect of unpaid Charges for Services received up until the Termination Date.

Payments by the Service Provider

27.4 In the event of termination or expiry of this Agreement, the Service Provider shall repay to UK Biobank all Charges it has been paid in advance in respect of Services not provided by the Service Provider as at the date of expiry or termination.

27.5 If this Agreement is terminated (in whole or in part) by UK Biobank pursuant to clause 26.1.1 (Termination by UK Biobank) prior to Achievement of one or more CPP Milestones, UK Biobank may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Service Provider of written notice require the Service Provider to repay to UK Biobank an amount equal to the aggregate Milestone

Payments already paid to the Service Provider in respect of each CPP Milestone to which the notice relates less a reasonable amount to reflect any Deliverables relating to the relevant CPP Milestone that UK Biobank wishes to retain (taking into account the Service Provider's costs of providing that Deliverable and the benefit derived by UK Biobank).

SECTION I – MISCELLANEOUS AND GOVERNING LAW

28. ASSIGNMENT AND NOVATION

28.1 UK Biobank shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Service Provider (such consent not to be unreasonably withheld or delayed), provided that the Service Provider's consent shall not be required where it is between UK Biobank and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006) ("**Successor Body**").

28.2 The Service Provider shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of UK Biobank (such consent not to be unreasonably withheld or delayed). Any assignment, charge or transfer of this Agreement or any of the Service Provider's rights under it by the Service Provider will comply with the provisions of clause 20.

29. WAIVER AND CUMULATIVE REMEDIES

29.1 The failure or delay by any Party to enforce at any time or for any period any of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

29.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

30. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

31. PREVENTION OF FRAUD AND BRIBERY

General

31.1 The Service Provider shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and Modern Slavery Act 2015.

Bribery Act Compliance

31.2 The Service Provider shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).

31.3 The Service Provider shall use reasonable endeavours to ensure that all persons associated with the Service Provider (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with this clause.

Modern Slavery Act Requirements

31.4 The Service Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

31.5 The Service Provider shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

32. ENTIRE AGREEMENT

32.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

32.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

32.3 Nothing in this clause 32 shall exclude any liability in respect of misrepresentations made fraudulently.

33. THIRD PARTY RIGHTS

33.1 A person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

34. NOTICES

34.1 Any notices sent under this Agreement must be in writing.

34.2 Subject to clause 34.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an email to the correct email address without any error message.

34.3 Subject to clause 34.7, notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Service Provider	UK Biobank
Contact		Jonathan Sellors
Address		UK Biobank, 1-4 Spectrum Way, Adswood, SK3 0SA
Email		Jonathan.sellors@ukbiobank.ac.uk

34.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table below:

- 34.4.1 notices issued by the Service Provider pursuant to clause 26.2 (Termination by the Service Provider);
- 34.4.2 Termination Notices; and
- 34.4.3 Dispute Notices.

Manner of Delivery	Deemed time of service	Proof of service
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed for 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 34.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 34.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 34.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 34.6 This clause 33.1 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 (other than the service of a Dispute Notice under clause 35.1.1 (Disputes)).
- 34.7 Where a notice is served to UK Biobank in accordance with Schedule 9 (Data Processing Clauses), that notice may only be served by email to the e-mail address set out at paragraph 1.11 of Schedule 9 (Data Processing Clauses).

35. **DISPUTES**

- 35.1 Subject to clause 35.3, neither Party may commence proceedings in relation to a Dispute that arises out of or in connection with this Agreement (including in relation to any non-contractual obligations) unless that Party has:
- 35.1.1 served a written notice (a "**Dispute Notice**") on the other Party notifying it of the relevant Dispute; or
- 35.1.2 already received a Dispute Notice from the other Party in relation to the same Dispute.
- 35.2 Following service of the Dispute Notice in relation to a Dispute, each Party will respectively procure that such Dispute will be referred for resolution to legal counsel for the time of each Party. Those representatives will meet at the earliest convenient time and in any event within seven (7) days of the date of service of the relevant Dispute Notice and will negotiate in good faith and in order to resolve the Dispute.

- 35.3 If a Dispute has not been resolved within seven (7) days of the date of service of the relevant Dispute Notice each party will respectively procure that such Dispute be referred for resolution to the Chief Executives for the time being of each Party. Those representatives will meet at the earliest convenient time and in any event within fourteen (14) days of the date of service of the relevant Dispute Notice and will negotiate in good faith and in order to resolve the Dispute.
- 35.4 If a Dispute is not resolved within fourteen (14) days of service of the relevant Dispute Notice either Party may commence proceedings in accordance with clause 36 or, if both Parties agree in writing to do so, the Parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure in each case irrespective of whether clauses 35.2 and 35.3 have been complied with. The provisions of this clause 35.4 are without prejudice to any right that either Party may have to damages in respect of any breach by the other Party of clauses 35.2 and 35.3. Either Party may withdraw from mediation at any time.
- 35.5 Nothing in this clause 35 will prevent or delay either Party from:
- 35.5.1 seeking orders for specific performance, interim or final injunctive relief;
 - 35.5.2 exercising any rights it has to terminate this Agreement; or
 - 35.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

36. **GOVERNING LAW AND JURISDICTION**

- 36.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 36.2 Subject to clause 35 (Disputes), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

"Achieve"	(a) in respect of a Test, to successfully pass a Test without any variance or non-conformity of the deliverables from the applicable requirements, as set out in Schedule 6 (Testing Procedure); and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6 (Testing Procedures), and "Achieved" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Assets"	all assets and rights used by the Service Provider to provide the Services in accordance with this Agreement but excluding UK Biobank Assets;
"ATP Milestone"	the Milestone linked to Authority to Proceed for the relevant Services set out in the Implementation Plan;
"Authority to Proceed" or "ATP"	the authorisation to the Service Provider to commence the provision of the relevant Services to UK Biobank, provided by UK Biobank in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"Background IPRs"	Service Provider Background IPRs and Third Party IPRs;
"Brexit"	any change, event or occurrence arising out of, related to or connected with the decision of the UK to withdraw from the EU, including any modification of law, irrespective of whether a transition period or similar agreement or arrangement is agreed between the UK and the EU;
"Change"	any change to this Agreement;
"Change Control Procedure"	the procedure set out in clause 11 (Change);

"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	has the meaning given in clause 11.2.1 (Change);
"Change Request Information"	has the meaning given in clause 11.3 (Change);
"Charges"	the charges for the provision of the Services and access to and use of the Platform set out in or otherwise calculated in accordance with Schedule 7 (Charges and Invoicing), including (unless otherwise specified) any End User Charges, Milestone Payments and Service Charges;
"Cloud Infrastructure Provider"	[INSERT DETAILS FROM SUCCESSFUL BID]
"Cloud Infrastructure Services"	the services identified as such in Schedule 2 (Specification and Service Provider Solution);
"Confidential Information"	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:</p> <ul style="list-style-type: none"> (i) (the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;</p> <p>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and</p> <p>(d) Information derived from any of the above,</p> <p>but not including any Information which:</p> <ul style="list-style-type: none"> (i) was in the possession of the

	Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
	(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
	(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the Service Provider's performance under this Agreement;
"Contract Year"	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date,</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"CPP Milestone"	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Service Provider has demonstrated that the Service Provider Solution, Platform and Services are working satisfactorily in their operating environment in accordance with Schedule 6 (Testing Procedures);
"Critical Performance Failure"	<p>(a) the Service Provider accruing in aggregate fifteen (15) or more Service Points (in terms of the number of points allocated) in any period of six (6) months; or</p> <p>(b) the Service Provider accruing Service Credits which meet or exceed the Service</p>

Credit Cap;

"CRTPA"

the Contracts (Rights of Third Parties) Act 1999;

"Data Protection Laws"

all laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any industry code of conduct or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from time to time; and references to **"Controller"**, **"Data Subjects"**, **"Personal Data"**, **"Process"**, **"Processed"**, **"Processing"** and **"Processor"** have the meanings set out in, and will be interpreted in accordance with, such laws, rules, policies, guidance, recommendations, codes of conduct and guidelines

"Data Security Incident"

- (a) a breach of security leading to the actual or "near miss" accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, UK Biobank Data transmitted, stored or otherwise Processed; or
- (b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any UK Biobank Data that has previously been subject to a breach within the scope of limb (a) above, which may result in exploitation or exposure of that UK Biobank Data; or
- (c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing UK Biobank Data

"Deductions"

any Service Credits or any other deduction which is paid or payable to UK Biobank under this Agreement;

"Default"

any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of UK Biobank, of its employees, servants, agents; or
- (b) in the case of the Service Provider, of its Sub-contractors or any Service Provider Personnel,

in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;

"Delay"

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing

or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

"Deliverable"	an item or feature (including all components of the Platform) delivered or to be delivered by the Service Provider at or before a Milestone Date or at any other stage during the performance of this Agreement;
"Detailed Implementation Plan"	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 5 (Implementation Plan);
"Disclosing Party"	has the meaning given in clause 19.1 (Confidentiality);
"Disclosing Party Group"	<p>(a) where the Disclosing Party is the Service Provider, the Service Provider and any Affiliates of the Service Provider; and</p> <p>(b) where the Disclosing Party is UK Biobank, UK Biobank and any with which UK Biobank or the Service Provider interacts in connection with this Agreement;</p>
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	has the meaning given in clause 35.1.1 (Disputes);
"Dispute Resolution Procedure"	the dispute resolution procedure set out in clause 35 (Disputes);
"Documentation"	<p>descriptions of the Services and the Platform, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Service Provider to UK Biobank under this Agreement;</p> <p>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by UK Biobank to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;</p> <p>(c) is required by the Service Provider in order</p>

	to provide the Services; and/or
	(d) has been or shall be generated for the purpose of providing the Services;
"Due Diligence Information"	any information supplied to the Service Provider by or on behalf of UK Biobank prior to the Effective Date;
"Effective Date"	the date of this Agreement;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"End User Agreement"	an agreement between the Service Provider and a User on the End User Terms;
"End User Charges"	the fees payable by Users under an applicable End User Agreement for use of the Platform, calculated in accordance with Schedule 7 (Charges and Invoicing);
"End User Terms"	the terms for use of the Platform by the Users as referred to in clause 5.9 (Users);
"Estimated Year 1 Charges"	the estimated Charges payable by UK Biobank and Users during the first Contract Year, as set out in Schedule 7 (Charging and Invoicing);
"Estimated Initial Service Charges"	the estimated Service Charges payable by UK Biobank during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in Schedule 7 (Charging and Invoicing);
"EU Processor Clauses"	the transfer agreement incorporating the EU Model Controller to Processor clauses as set out at Schedule 9 (Data Processing Clauses) Annex 2;
"European Union"	the European Union as it is made up from time to time;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Service Provider to UK Biobank and/or a Replacement Service Provider, as set out or referred to in Schedule 8 (Exit Management);
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Plan"	the plan produced and updated by the Service Provider during the Term in accordance with clause 27.2 (Exit Management) and Schedule 8 (Exit Management);
"Extension Period"	a period of twelve (12) months from the end of the Initial Term or any Extension Period, as applicable;

“Force Majeure Event”

any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, fire, flood, storm or earthquake, or disaster, but excluding:

- (a) any industrial dispute relating to the Service Provider or the Service Provider Personnel;
- (b) any other failure in the Service Provider's or a Sub-contractor's supply chain; and
- (c) Brexit;

“Good Industry Practice”

at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like UK Biobank, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“Help Desk”

has the meaning given in Schedule 3 (Performance Levels);

“Implementation Plan”

the Outline Implementation Plan or (if and when approved by UK Biobank pursuant to Paragraph 3 of Schedule 5 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 5 (Implementation Plan) from time to time;

“Implementation Services”

the implementation services described as such in the Specification;

“Implementation Services Commencement Date”

the date on which the Service Provider is to commence provision of the first of the Services, being [INSERT DATE];

“Incident”

any unplanned interruption which significantly impairs the ability of the Service Provider to supply the Platform and/or perform the Services (in whole or in part) in accordance with this Agreement;

“Indemnified Costs”

all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement;

“Information”

all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Initial Term”

the period of three (3) years from and including the Effective Date;

“Insolvency Event”

- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party; or
- (h) any event occurs, or proceeding is taken, with respect to the other Party in any

jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**"Intellectual Property Rights"
or "IPRs"**

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"IPRs Claim"

any claim against UK Biobank of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that UK Biobank of any Relevant IPRs, or the use of UK Biobank Software by or on behalf of the Service Provider, in either case in combination with any item not supplied or recommended by the Service Provider pursuant to this Agreement or for a purpose not reasonably to be inferred from the Specification or the provisions of this Agreement;

"IT Environment"

UK Biobank System and the Service Provider System;

"Key Performance Indicator"

the key performance indicators set out in Schedule 3 (Performance Levels);

"Key Personnel"

those persons appointed by the Service Provider to fulfil the Key Roles, being the persons listed in Part B of Schedule 2 (Specification and Service Provider Solution) against each Key Role as at the Effective Date or as amended from time to time in accordance with clause 12.3 (Service Provider Personnel);

"Key Roles"

a role described as a Key Role in Part B of Schedule 2 (Specification and Service Provider Solution);

"Key Sub-contract"

each Sub-contract with a Key Sub-contractor;

"Key Sub-contractor"

- (a) the Cloud Storage Provider; and
- (b) any other Sub-contractor:
 - (i) which, in the opinion of UK Biobank, performs (or would perform if appointed) a critical

	role in the provision of all or any part of the Services; and/or
	(ii) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 25% of the aggregate Charges forecast to be payable in connection with this Agreement;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
"KPI Failure"	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"KPI Service Threshold"	shall be as set out against the relevant Key Performance Indicator in Schedule 3 (Performance Levels);
"Law"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Service Provider is bound to comply;
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Material Transfer Agreement"	an agreement between UK Biobank and a User for access to and / provision of UK Biobank Data;
"Material KPI Failure"	(a) a failure by the Service Provider to meet a KPI Service Threshold; or (b) as otherwise set out against the relevant Key Performance Indicator in Schedule 3 (Performance Levels);
"Milestone"	an event or task described in the Implementation Plan which, if applicable, shall be completed by the

	relevant Milestone Date;
"Milestone Achievement Certificate"	the certificate to be granted by UK Biobank when the Service Provider has Achieved a Milestone, which shall be in substantially the same form as that set out in Schedule 6 (Testing Procedures);
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	a payment identified in Schedule 7 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate;
"New Releases"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item, including standard upgrades, new versions and new releases of the Software and/or a Deliverable and any other product enhancements;
"Non-trivial Customer Base"	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Notifiable Default"	shall have the meaning given in clause 23.1 (Rectification Plan Process);
"Operating Environment"	UK Biobank System and the Sites;
"Operational Service Commencement Date"	in relation to an Operational Service, the later of: <ul style="list-style-type: none"> (a) the date identified in the Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Service Provider must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Service Provider Achieves the relevant ATP Milestone;
"Operational Services"	the operational services described as such in the Specification;
"Other Service Provider"	any supplier to UK Biobank (other than the Service Provider) which is notified to the Service Provider from time to time and/or of which the Service Provider should have been aware;
"Outline Implementation Plan"	the outline plan set out at Annex 1 of Schedule 5 (Implementation Plan);
"Parties" and "Party"	UK Biobank and/or the Service Provider, as the

	context requires;
"Performance Failure"	a KPI Failure;
"Permitted Maintenance"	has the meaning given in clause 8.2 (Maintenance);
"Phase 1"	the period during which a beta version of the Platform is made available for use by the Research Partners only and the Platform is Tested in accordance with the Phase 1 Production Release Specification;
"Phase 1 Production Release Specification"	the specification referenced as such in Schedule 2 (Specification and Supplier Solution);
"Phase 2"	the period following completion of Phase 1 during which the pilot version is made available to a limited number of Users and subsequently the Platform is Tested in accordance with the Phase 2 Production Release Specification;
"Phase 2 Production Release Specification"	the specification referenced as such in Schedule 2 (Specification and Supplier Solution);
"Platform"	the informatics platform incorporating the Software that is to be provided, configured, implemented, integrated and supported by the Service Provider under this Agreement, as set out in UK Biobank Requirements and the Service Provider Solution;
"Project Specific IPRs"	<p>(a) Intellectual Property Rights in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Service Provider's obligations under this Agreement;</p> <p>but shall not include the Service Provider Background IPRs or the Specially Written Software;</p>
"Public Contracts Regulations"	the Public Contracts Regulations 2015 (as amended from time to time);
"Recipient"	has the meaning given in clause 19.1 (Confidentiality);
"Recoverable Liabilities"	all losses (including all direct, indirect and consequential losses, liabilities), Indemnified Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all losses (including all direct, indirect and consequential losses), liabilities, Indemnified Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any

such actual or threatened claim or proceeding;

“Rectification Plan”

a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

“Rectification Plan Failure”

- (a) the Service Provider failing to submit or resubmit a draft Rectification Plan to UK Biobank within the timescales specified in clauses 23.4 (Submission of the draft Rectification Plan) or 23.7 (Agreement of the Rectification Plan);
- (b) UK Biobank, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Service Provider pursuant to clause 23.7 (Agreement of the Rectification Plan);
- (c) the Service Provider failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to clause 23.2 (Notification); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Service Provider can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Service Provider must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Service Periods subsequent to the Service Period in which the initial Material KPI Failure occurred;
- (e) the Service Provider not Achieving the ATP Milestone by the expiry of one hundred (100) days following its applicable Milestone Date; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in clauses 23.4 (Submission of the Rectification Plan) to 23.8 (Agreement of the Rectification Plan);

"Regulatory Authorities"	all governmental, statutory or regulatory bodies and any other competent authorities or entities in any jurisdiction having responsibility for the regulation or governance of UK Biobank, the Service Provider, this Agreement, the Services or the activities which are comprised in all or some of the Services or the use or application of the output from any part of the Services; and "Regulatory Authority" means any of them;
"Relevant IPRs"	IPRs used to provide the Services or as otherwise provided and/or licensed by the Service Provider (or to which the Service Provider has provided access) to UK Biobank or a third party in the fulfilment of the Service Provider's obligations under this Agreement including IPRs in the Software, the Project Specific IPRs and the Background IPRs but excluding any IPRs UK Biobank Software and UK Biobank Background IPRs;
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which UK Biobank receives in substitution for any of the Services following the expiry or termination of this Agreement, whether those services are provided by UK Biobank internally and/or by any third party;
"Replacement Service Provider"	any third party service provider of Replacement Services appointed by UK Biobank from time to time, including any sub-contractor thereof (or where UK Biobank is providing replacement Services for its own account, UK Biobank);
"Representative"	the UK Biobank Representative and / or the Service Provider Representative, as applicable
"Research Partners"	GlaxoSmithKline, AstraZeneca, Amgen Inc and Janssen Biotech Inc.;
"Restricted Transfer"	a transfer of UK Biobank Data which is undergoing Processing or which is intended to be Processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the UK Biobank Data for the transfer to be lawful under the Data Protection Laws
"Service Charges"	the periodic payments made in accordance with Schedule 7 (Charges and Invoicing) in respect of the supply of the Services;
"Service Continuity Plan"	the Service Provider's plan for its emergency response, back-up procedures and business continuity in the event of the occurrence of an Incident;
"Service Credit Cap"	<p>(a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Effective Date, 20% of the Estimated Initial Service Charges; and</p> <p>(b) during the remainder of the Term, 20% of</p>

the Service Charges paid and/or due to be paid to the Service Provider under this Agreement in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued;

"Service Credits"

credits payable by the Service Provider due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Part C of Schedule 7.1 (Charges and Invoicing) and for the avoidance of doubt these are calculated by reference to the monthly service charges levied to UK Biobank, excluding any costs relating to Cloud Infrastructure Services;

"Service Period"

a calendar month, save that:

- (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and
- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

"Service Points"

in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the table in Annex 1 of Schedule 3 (Performance Levels);

"Services"

any and all of the services to be provided by the Service Provider under this Agreement, including provision of the Platform, the Implementation Services, the Operational Services and any other services set out in Schedule 2 (Specification and Service Provider Solution);

"Specification"

the specification and services description set out in Schedule 2 (Specification and Service Provider Solution);

"Sites"

any premises (including UK Biobank Premises, the Service Provider's premises or third party premises):

- (a) from, to or at which:
 - (i) the Services are (or are to be) provided; or
 - (ii) the Service Provider manages, organises or otherwise directs the provision or the use of the Services; or

	<p>(b) where:</p> <p>(i) any part of the Service Provider System is situated; or</p> <p>(ii) any physical interface with UK Biobank System takes place;</p>
"Software"	Specially Written Software, Service Provider Software and Third Party Software;
"Software as a Service"	Software which is provided to the market as a service rather than as a tangible good and usually made available over the internet;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Service Provider (or by a Sub-contractor or other third party on behalf of the Service Provider) specifically for the purposes of this Agreement, including any modifications or enhancements to UK Biobank Software, Service Provider Software or Third Party Software created specifically for the purposes of this Agreement;
"Standards"	the standards, policies and/or procedures identified in Schedule 2 (Specification and Service Provider Solution);
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Service Provider (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Service Provider (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	<p>any third party with whom:</p> <p>(a) the Service Provider enters into a Sub-contract; or</p> <p>(b) a third party under (a) above enters into a Sub-contract,</p> <p>or the servants or agents of that third party;</p>
"Sub-Processor"	any third party appointed by the Service Provider to Process UK Biobank Data
"Successor Body"	has the meaning given in clause 28.1 (Assignment and Novation);
"Service Provider Background IPRs"	(a) Intellectual Property Rights owned by the Service Provider before the Effective Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in

physical or electronic media containing the Service Provider's Know-How or generic business methodologies; and/or

- (b) Intellectual Property Rights created by the Service Provider independently of this Agreement,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Service Provider subsisting in the Service Provider Software;

"Service Provider Equipment" the hardware, computer and telecoms devices and equipment used by the Service Provider or its Sub-contractors (but not hired, leased or loaned from UK Biobank) for the provision of the Services;

"Service Provider Non-Performance" has the meaning given in clause 24 (UK Biobank Cause);

"Service Provider Personnel" all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-contractor engaged in the performance of the Service Provider's obligations under this Agreement;

"Service Provider Representative" the representative appointed by the Service Provider pursuant to clause 12.7 (Representatives);

"Service Provider Software" software which is proprietary to the Service Provider (or an Affiliate of the Service Provider) and which is or will be used by the Service Provider for the purposes of providing the Services, including the software specified as such in Part B of Schedule 2 (Specification and Service Provider Solution);

"Service Provider Solution" the Service Provider's solution for the Services set out in Part B of Schedule 2 (Specification and Service Provider Solution);

"Service Provider System" the information and communications technology system used by the Service Provider in implementing and performing the Services including the Platform, the Software, the Service Provider Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding UK Biobank System);

"Service Provider Termination Event" (a) the Service Provider's level of performance constituting a Critical Performance Failure;

(b) the Service Provider committing a material Default which is irremediable;

(c) a Rectification Plan Failure;

(d) where a right of termination is expressly reserved in this Agreement, including pursuant to clause 17 (IPRs Indemnity);

- (e) the Service Provider committing a Default under any of the following clauses:
 - (i) clause 19 (Confidentiality); and/or
 - (ii) clause 20 (Data Protection); and/or
 - (iii) Schedule 9 (Data Processing Clauses);
- (f) an Insolvency Event occurring in respect of the Service Provider; or
- (g) UK Biobank has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations from the procurement procedure leading to the award of this Agreement;

"Supervisory Authority"	any governmental or regulatory authority responsible for enforcing any Data Protection Laws and any replacement or successor body or person for any such authority from time to time
"Target Performance Level"	the minimum level of performance for a Performance Indicator which is required by UK Biobank, as set out against the relevant Performance Indicator in Schedule 3 (Performance Levels);
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or (where UK Biobank exercises its rights pursuant to clause 4.1.2 or 4.1.3) any Extension Period or on earlier termination of this Agreement;
"Termination Assistance Notice"	has the meaning given in Schedule 8 (Exit Management);
"Termination Date"	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Termination Services"	the services and activities to be performed by the Service Provider pursuant to the Exit Plan, including any services as reasonably specified by UK Biobank pursuant to the Termination Assistance Notice or otherwise;
"Tests" and "Testing"	any tests required to be carried out under this Agreement, as further described in Schedule 6 (Testing Procedures) and "Tested" shall be

construed accordingly;

“Third Party COTS Software”

Third Party Software that:

- (a) the relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Service Provider save as to price; and
- (b) has a Non-trivial Customer Base,

including where indicated as such in Part B of Schedule 2 (Specification and Service Provider Solution);

“Third Party IPRs”

Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

“Third Party Software”

software which is proprietary to any third party (other than an Affiliate of the Service Provider) which in any case is, will be or is proposed to be used by the Service Provider for the purposes of providing the Services, including the software specified as such in Part B of Schedule 2 (Specification and Service Provider Solution);

“UK Biobank Assets”

UK Biobank Materials, UK Biobank infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to UK Biobank and which is or may be used in connection with the provision or receipt of the Services;

“UK Biobank Background IPRs”

- (a) IPRs owned by UK Biobank before the Effective Date, including IPRs contained in any of UK Biobank's Know-How, documentation, processes and procedures; and/or
- (b) IPRs created by UK Biobank independently of this Agreement

but excluding IPRs owned by UK Biobank subsisting in UK Biobank Software;

“UK Biobank Cause”

any breach by UK Biobank of any of UK Biobank Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by UK Biobank to which the Service Provider has given its prior consent; or
- (b) caused by the Service Provider, any Sub-contractor or any Service Provider Personnel;

“UK Biobank Data”

- (a) the data, text, drawings, diagrams, images or sounds (together with any database

made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (i) supplied to the Service Provider by or on behalf of UK Biobank; and/or
- (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Agreement; and/or

(b) data which is Processed and/or generated by Users, including their results data and relevant derived variables, which they are required to return to UK Biobank; and / or

(c) any Personal Data for which UK Biobank is the Controller;

“UK Biobank Materials”

UK Biobank Data together with any materials, documentation, information, programs and codes supplied by UK Biobank to the Service Provider, the IPRs in which:

(a) are owned or used by or on behalf of UK Biobank; and

(b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Service Provider Software, Third Party Software and Documentation relating to Service Provider Software or Third Party Software;

“UK Biobank Premises”

premises owned, controlled or occupied by UK Biobank and/or any which are made available for use by the Service Provider or its Sub-contractors for provision of the Services (or any of them);

“UK Biobank Representative”

the representative appointed by UK Biobank pursuant to clause 12.7 (Representatives);

“UK Biobank Requirements”

the requirements of UK Biobank set out in Schedules 2 (Specification and Service Provider Solution), 3 (Performance Levels) and 8 (Exit Management);

“UK Biobank Responsibilities”

the responsibilities of UK Biobank specified in this Agreement including any set out in Schedule 4 (UK Biobank Responsibilities);

“UK Biobank Software”

software which is owned by or licensed to UK Biobank (other than under or pursuant to this Agreement) and which is or will be used by the Service Provider for the purposes of providing the Services;

“UK Biobank System”

UK Biobank's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by UK Biobank or the

Service Provider in connection with this Agreement which is owned by UK Biobank or licensed to it by a third party and which interfaces with the Platform and / or the Service Provider System or which is necessary for UK Biobank to receive the Services;

“Updates”

in relation to any Software and/or any Deliverable means any patch, fix, release or version of such item which has been produced primarily to overcome defects or errors in, or to improve the operation of, that item;

“Users or End Users”

researchers authenticated by UK Biobank as entitled to access the UK Biobank Data through the Platform and who have entered into a material transfer agreement with UK Biobank, including the Research Partners; and

“Working Day”

any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2

Specification and Service Provider Solution

Part A – Specification

Part B – Service Provider Solution

- Service Provider Solution;
- Maintenance Schedule;
- Security measures with regard to the protection of UK Biobank data (including any Personal Data);
- Key Personnel and Key Roles;
- Key Sub-contractors; and
- Software (Specially Written Software, Service Provider Software and Third Party Software (including Third Party COTS Software)).

SCHEDULE 3

Performance Levels

1. Definitions

In this Schedule, the following definitions shall apply:

"Available"	has the meaning given in paragraph 1.1 of Part II of Annex 1 to Schedule 3 (Performance Levels);
"End User"	any person authorised by UK Biobank to use the Platform and/or the Services;
"Help Desk"	the single point of contact help desk set up and operated by the Service Provider for the purposes of this Agreement;
"Maintenance Schedule"	has the meaning given in clause 8.2;
"Non-Available"	in relation to the Platform, that the Platform is not Available;
"Operational Hours"	in relation to any Service, the hours for which that Service is to be operational being 9.00 am to 12.00 midnight, UK time;
"Performance Monitoring Report"	has the meaning given in paragraph 1.1 of Part B of Schedule 3 (Performance Levels);
"Performance Review Meeting"	the regular meetings between the Service Provider and UK Biobank to manage and review the Service Provider's performance under this Agreement;
"Satisfaction Survey"	has the meaning given in paragraph 5.1 of Part II of Annex 1 of Schedule 3 (Performance Levels);
"Service Incident"	a reported occurrence of a failure to deliver any part of the Platform or Services in accordance with UK Biobank Requirements or the Target Performance Levels;
"Severity 1 Service Incident (Critical)"	<p>a Service Incident which, in the reasonable opinion of UK Biobank:</p> <ul style="list-style-type: none">(a) constitutes a loss of the Service which prevents a large group of End Users from working;(b) has a critical impact on the activities of UK Biobank;(c) causes significant financial loss and/or disruption to UK Biobank; or(d) results in any material loss or corruption of UK Biobank Data; <p><i>Non-exhaustive examples:</i></p> <ul style="list-style-type: none">(e) a loss of power to a data centre causing failure

of Services; or

- (f) a failure of the Services to provide user authentication service;

"Severity 2 Service Incident (Major)"

a Service Incident which, in the reasonable opinion of UK Biobank has the potential to:

- (a) have a major (but not critical) adverse impact on the activities of UK Biobank and no workaround acceptable to UK Biobank is available;
- (b) have a major (but not critical) adverse impact on the activities of End Users and no workaround acceptable to UK Biobank or its End Users is available; or
- (c) cause a financial loss and/or disruption to UK Biobank which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;

Non-exhaustive examples:

- (d) corruption of organisational database tables; or
- (e) loss of ability to update UK Biobank Data;

"Severity 3 Service Incident (Minor)"

a Service Incident which, in the reasonable opinion of UK Biobank has the potential to:

- (a) have a major adverse impact on the activities of UK Biobank which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to UK Biobank;
- (b) have a minor or moderate adverse impact on the activities of UK Biobank; or
- (c) the potential to have a minor or moderate adverse impact on the provision of the Services to End Users;

Non-exhaustive example:

inability to access data for a class of customers;

"Support Request"

a request from an End User that is received by the Help Desk (or automated ticketing system) requiring support.

Non-exhaustive examples:

- (a) inability to access data for a single customer; or
- (b) Platform use query by End User.

“Platform Availability”

has the meaning given in paragraph 1.2 of Part II of Annex 1 to Schedule 3 (Performance Levels); and

“Platform Downtime”

any period of time during which any of the Platform is Non-Available.

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PART A

Performance Indicators

1. Performance Indicators

- 1.1 Annex 1 sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Service Provider.
- 1.2 The Service Provider shall monitor its performance against each Performance Indicator and shall send UK Biobank a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with paragraphs 2 and 4

2. Service Points

- 2.1 If the level of performance of the Service Provider during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Service Provider in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Service Provider during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Service Provider in respect of that Key Performance Indicator as set out in paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Service Provider in respect of a KPI Failure shall be the applicable number as set out in Annex 1.

3. Permitted Maintenance

The Service Provider shall be allowed to book a maximum of 2 hours Platform Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with UK Biobank (and no more than 4 hours Platform Downtime in any calendar quarter).

4. Service Credits

- 4.1 Schedule 7 (Charges and Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 4.2 UK Biobank shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B

Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within five (5) Working Days of the end of each Service Period, the Service Provider shall provide a report to the UK Biobank Representative which summarises the performance by the Service Provider against each of the Performance Indicators as more particularly described in paragraph 1.2 (the "**Performance Monitoring Report**").

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 1.1.2 for each Key Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Measurement Periods;
- 1.1.3 a summary of all Performance Failures that occurred during the Service Period;
- 1.1.4 whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- 1.1.5 which Performance Failures remain outstanding and progress in resolving them;
- 1.1.6 for any KPI Failures occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.1.7 the status of any outstanding Rectification Plan processes, including:
 - 1.1.7.1 whether or not a Rectification Plan has been agreed; and
 - 1.1.7.2 where a Rectification Plan has been agreed, a summary of the Service Provider's progress in implementing that Rectification Plan;
- 1.1.8 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- 1.1.9 relevant particulars of any aspects of the Service Provider's performance which fail to meet the requirements of this Agreement;
- 1.1.10 such other details as UK Biobank may reasonably require from time to time; and

Information in respect of previous Service Periods

- 1.1.11 a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;
- 1.1.12 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- 1.1.13 any scheduled Platform Downtime for Permitted Maintenance that has been agreed between UK Biobank and the Service Provider for the next Quarter.

2. Performance Records

- 2.1 The Service Provider shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Service Provider shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to UK Biobank upon UK Biobank's request. The records and documents of the Service Provider shall be available for inspection by UK Biobank and/or its nominee at any time and UK Biobank and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in paragraph 2.1 to maintain appropriate documents and records, the Service Provider shall provide to UK Biobank such supporting documentation as UK Biobank may reasonably require in order to verify the level of the performance of the Service Provider for any specified period.
- 2.3 The Service Provider shall ensure that the Performance Monitoring Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by UK Biobank are available to UK Biobank on-line and are capable of being printed.

3. Performance Verification

The UK Biobank reserves the right to verify Platform Availability and the Service Provider's performance under this Agreement against the Performance Indicators including by sending test transactions through the Platform or otherwise.

ANNEX 1

Key Performance Indicators

PART I: Key Performance Indicators

The Key Performance Indicators that shall apply to the Services shall be such of the indicators set out below as are set out below:

No.	Key Performance Indicator Title	Definition	Severity Levels	Service Points
KPI1	Platform Availability	See paragraph 1 of Part II of this Annex	Target Performance Level: 99.5% KPI Failure: less than 99.5% KPI Service Threshold: 95%	[0] [3] [10]
KPI2	Helpdesk Response Time	See paragraph 2 of Part II of this Annex	Response time: Target Performance Level: 4 hours KPI Failure: more than 4 hours KPI Service Threshold: 12 hours	[0] [1] [2]
KPI3	Incident Response Times	See paragraph 2 of Part II of this Annex	Severity 1 Service Incident: Target Performance Level: 1 hour KPI Failure: more than 1 hour KPI Service Threshold: 4 hours	[0] [3] [5]
			Severity 2 Service Incident: Target Performance Level: 4 hours KPI Failure: more than 4 hours KPI Service Threshold: 12 hours	[0] [2] [3]
			Severity 3 Service Incident:	

No.	Key Performance Indicator Title	Definition	Severity Levels	Service Points
			Incident: Target Performance Level: 24 hours KPI Failure: more than 24 hours KPI Service Threshold: 48 hours	[0] [2] [3]
KPI4	Fix Times	See paragraph 4 of Part II of this Annex	Severity 1 Service Incident:	
			Target Performance Level: 4 hours	[0]
			KPI Failure: more than 4 hours	[3]
			KPI Service Threshold: 12 hours	[5]
			Severity 2 Service Incident:	
			Target Performance Level: 24 hours	[0]
KPI4	Fix Times	See paragraph 4 of Part II of this Annex	KPI Failure: more than 24 hours	[2]
			KPI Service Threshold: 48 hours	[3]
			Severity 3 Service Incident:	
			Target Performance Level: 3 days	[0]
			KPI Failure: more than 3 days	[2]
			KPI Service Threshold: 5 days	[3]
KPI5	Satisfaction Survey Score)	See paragraph 5 of Part II of this Annex	Target Performance Level: 70%	[0]
			KPI Failure: less than 70%	[2]
			KPI Service Threshold: 30%	[5]

Part II: Definitions

1. Platform Availability

- 1.1 The Platform shall be Available (and **"Available"** shall be interpreted accordingly) when:
- 1.1.1 End Users are able to access and utilise all the functions of the Platform and/or; and
 - 1.1.2 the Platform is able to process UK Biobank Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis).
- 1.2 Platform Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Platform Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period (on a 24 x 7 basis); and

SD = total number of minutes of Platform Downtime, excluding Permitted Maintenance, in the relevant Service Period.

- 1.3 When calculating Platform Availability in accordance with this paragraph 1, Platform Downtime arising due to Permitted Maintenance that is carried out by the Service Provider in accordance with clause 8.3 (Maintenance) shall be subtracted from the total number of hours in the relevant Service Period, except where:
- 1.3.1 any Platform Downtime occurs as a result of Emergency Maintenance undertaken by the Service Provider; or
 - 1.3.2 where maintenance undertaken by the Service Provider exceeds 2 hours in any Service Period (or more than 4 hours in any calendar quarter).

2. Help Desk Response Times

- 2.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to acknowledge a Support Request (initiated either via telephone, email or web chat). For these purposes **"response"** shall mean acknowledgement of receipt of the Support Request. Support Requests receiving an automated response or placed into a queuing system shall be deemed not to have been responded to.
- 2.2 Measurement of Help Desk resolution times will be based on the time taken from receipt of the Support Request to resolve a Support Request. For these purposes **"resolve"** and **"resolution"** shall mean appropriate resolution of the Support Request to the satisfaction of UK Biobank and / or the End User, as applicable, each acting reasonably.
- 2.3 The Service Provider shall monitor the Help Desk response times and resolution times and shall provide the results of such monitoring to UK Biobank in accordance with the provisions of Part B of this Schedule. The Help Desk response times and resolution times will be measured in Operational Hours and the Key Performance Indicator is based on the Target Performance Level being achieved for 100% of Support Requests.

3. Incident Response Times

- 3.1 The **"Incident Response Time"** of a Service Incident is the period from the time that the Service Incident has been reported to the Service Provider until the time the Service

Provider has provided an initial response to UK Biobank and/or the End User (as applicable) to confirm receipt of the report and commencement of Service Incident investigation.

- 3.2 Incident Response Times for Service Incidents shall be measured 24x7 and the Key Performance Indicator is based on the Target Performance Level being achieved for 100% of Service Incidents.

4. **Fix Times**

- 4.1 The “**Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Service Provider to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:

- 4.1.1 the root cause of the Service Incident has been removed and the Platform or Services as applicable are being provided in accordance with the Services Description and Target Performance Levels; or

- 4.1.2 UK Biobank has been provided with a workaround in relation to the Service Incident deemed acceptable by UK Biobank.

- 4.2 Fix Times for Service Incidents shall be measured 24x7 and the Key Performance Indicator is based on the Target Performance Level being achieved for 100% of Service Incidents.

5. **Satisfaction**

- 5.1 In order to assess the level of performance of the Service Provider, UK Biobank may undertake satisfaction surveys in respect of Users or various groups of Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Performance Monitoring Report. The subject matter of Satisfaction Surveys may include:

- 5.1.1 the assessment by the End Users of the Service Provider’s performance against the agreed Key Performance Indicators; and/or

- 5.1.2 other suggestions for improvements to the Services.

- 5.2 The Satisfaction Survey will take the form of a web survey made available to End Users on a regular basis. The End User shall be asked to provide their assessment of:

- 5.2.1 Service Satisfaction: the End User shall be asked to register their level of satisfaction with the Platform service received (a client satisfaction score);

- 5.2.2 Service Usability: the End User shall be asked to provide an assessment of the level of effort required to use the Platform to achieve their research goals (a client effort score);

- 5.2.3 Service Promotion: the End User shall be asked to provide a rating of how likely they are to recommend the Platform to others users (a net promoter score); and

- 5.2.4 Support Satisfaction: on the basis that an End User has raised one or more support requests, the End User shall be asked to register their level of satisfaction with the support received and the resolution provided (a client satisfaction score).

- 5.3 Each score will be measured on a scale from 0 to 10, where 0 is the worst and 10 is the best, with equivalent weighting to create an aggregated Satisfaction Survey score of between 0 and 100%, where 0% is very poor and 100% is excellent satisfaction.

The results of such Satisfaction Surveys shall be reported by UK Biobank to the Service Provider for inclusion within the Performance Monitoring Report and the average score included in the KPI calculation.

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SCHEDULE 4

UK Biobank Responsibilities

UK Biobank shall:

1. perform those obligations of UK Biobank which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except for Part B of Schedule 2.1 (Specification and Service Provider Solution));
2. use its reasonable endeavours to provide the Service Provider with access to appropriate members of the UK Biobank's staff, as such access is reasonably requested by the Service Provider in order for the Service Provider to discharge its obligations throughout the Term and the Termination Assistance Period;
3. provide sufficient and suitably qualified staff to fulfil UK Biobank's roles and duties under this Agreement as defined in the Implementation Plan;
4. use its reasonable endeavours to provide such documentation, data and/or other information that the Service Provider reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to UK Biobank and is authorised for release by UK Biobank; and
5. procure for the Service Provider such agreed access and use of UK Biobank Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Service Provider to comply with its obligations under this Agreement, such access to be provided during UK Biobank's normal working hours on each Working Day or as otherwise agreed by UK Biobank (such agreement not to be unreasonably withheld or delayed).

SCHEDULE 5

Implementation Plan

1. INTRODUCTION

1.1 This Schedule:

1.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and

1.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Service Provider of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2. OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan for Phases 1 and 2 is set out in Annex 1.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Service Provider shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 24 (*UK Biobank Cause*)).

3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Service Provider shall submit a draft of the Detailed Implementation Plan to UK Biobank for approval within ten (10) Working Days of the Effective Date.

3.2 The Service Provider shall ensure that the draft Detailed Implementation Plan:

3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

3.2.2 without prejudice to its obligation to meet all Milestone Dates, is structured and designed to ensure Achievement of the ATP Milestone Date;

3.2.3 includes (as a minimum) the Service Provider's proposed timescales in respect of the following for each of the Milestones:

3.2.3.1 the completion of any design documents;

3.2.3.2 the completion of the build/configuration phase;

3.2.3.3 the completion of any Testing to be undertaken in accordance with Schedule 6 (*Testing Procedures*); and

3.2.3.4 training and roll-out activities; and

3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements.

3.3 Prior to the submission of the draft Detailed Implementation Plan to UK Biobank in accordance with Paragraph 3.1, UK Biobank shall have the right:

3.3.1 to review any documentation produced by the Service Provider in relation to the development of the Detailed Implementation Plan, including:

3.3.1.1 details of the Service Provider's intended approach to the Detailed Implementation Plan and its development;

- 3.3.1.2 copies of any drafts of the Detailed Implementation Plan produced by the Service Provider; and
 - 3.3.1.3 any other work in progress in relation to the Detailed Implementation Plan; and
 - 3.3.2 to require the Service Provider to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Service Provider, UK Biobank shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Service Provider in writing that it approves or rejects the draft Detailed Implementation Plan no later than five (5) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to UK Biobank.
- 3.5 If UK Biobank rejects the draft Detailed Implementation Plan:
 - 3.5.1 UK Biobank shall inform the Service Provider in writing of its reasons for its rejection; and
 - 3.5.2 the Service Provider shall then revise the draft Detailed Implementation Plan (taking reasonable account of UK Biobank's comments) and shall re-submit a revised draft Detailed Implementation Plan to UK Biobank for UK Biobank's approval within ten (5) Working Days of the date of UK Biobank's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If UK Biobank approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of UK Biobank's notice of approval.
- 4. **UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 Following the approval of the Detailed Implementation Plan by UK Biobank:
 - 4.1.1 the Service Provider shall submit a revised Detailed Implementation Plan to UK Biobank every 3 months starting 3 months from the Effective Date;
 - 4.1.2 without prejudice to Paragraph 4.14.1.1, UK Biobank shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Service Provider and the Service Provider shall submit a draft revised Detailed Implementation Plan to UK Biobank within 20 Working Days of receiving such a request from UK Biobank (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure); and
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Service Provider for approval in accordance with the procedure set out in Paragraph 3.
- 4.2 Save for any amendments which are of a type identified and notified by UK Biobank (at UK Biobank's discretion) to the Service Provider in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the Service Provider be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 24 (*UK Biobank Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by UK Biobank.

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ANNEX 1

OUTLINE IMPLEMENTATION PLAN

Milestone	Deliverables <i>(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)</i>	Duration <i>(Working Days)</i>	Milestone Date
1	Contract signature		Effective Date
2	Project Mobilisation: <ul style="list-style-type: none"> • Service Provider responsible for Project Definition Workshop to inform completion of Detailed Implementation Plan 	5	One week after Effective Date
3	Delivery of Detailed Implementation Plan as set out in Section 3 of Schedule 5 of the agreement	10	Two weeks after Effective Date
4 (Phase 1 ATP)	Phase 1 Beta Release Go-live: <ul style="list-style-type: none"> • Initial deployment of the UK Biobank Platform • Delivery of Phase 1 functionality as set out in Appendix B of the Specification • Ingestion and availability of the UK Biobank Data as set out in Appendix C of the Specification • On-boarding and access to the Platform for UK Biobank staff and WGS Main phase industry parties 		As soon as possible after Effective Date
5 (Phase 1 CPP)	Phase 1 Production Release Go-live: <ul style="list-style-type: none"> • Phase 1 Production release of the UK Biobank Platform • Delivery of Phase 1 functionality as set out in Appendix B of the Specification • Ingestion and availability of the UK Biobank Data as set out in Appendix C of the Specification • Successful completion of testing as set out in Section 5.3 of the Specification and Schedule 6 of the agreement • On-boarding and access to the Platform for UK Biobank staff and WGS Main phase industry parties 		As soon as possible after Effective Date, and in any event during Q3 2020
6 (Phase 2 ATP)	Phase 2 Pilot Release Go-live: <ul style="list-style-type: none"> • Delivery of the functionality required for Phase 2 as set out in 		As soon as possible following Phase 1 Production Release

Milestone	Deliverables <i>(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)</i>	Duration <i>(Working Days)</i>	Milestone Date
	<p>Appendix B of the Specification</p> <ul style="list-style-type: none"> • Ingestion and availability of the UK Biobank Data as set out in Appendix C of the Specification • On-boarding and access to the Platform for additional approved researchers as identified by UK Biobank as set out in Section 5.2 of the Specification. 		
7 (Phase 2 CPP)	<p>Phase 2 Production Release Go-live</p> <ul style="list-style-type: none"> • Delivery of the functionality required for Phase 2 as set out in Appendix B of the Specification • Ingestion and availability of the UK Biobank Data as set out in Appendix C of the Specification • Successful completion of testing as set out in Section 5.3 of the Specification and Schedule 6 of the agreement • General availability and access for all approved UK Biobank registered researchers (with on-boarding determined by User demand) 		As soon as possible following Phase 2 Pilot, and in any event during Q2 2021

SCHEDULE 6

Testing Procedures

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Component"	any constituent parts of the Platform or Services;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Severity Level"	the level of severity of a Test Issue, criteria for which are described in Annex 1;
"Test Certificate"	a certificate issued by UK Biobank when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Issue"	any variance or non-conformity of a Deliverable from its requirements (such requirements to be set out in the relevant Test Success Criteria);
"Test Issue Threshold"	in relation to the Tests applicable to readiness of the Operational Services or completion of a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as specified by UK Biobank for the Test Plan concerned;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 9;
"Test Plan"	<p>a plan:</p> <ul style="list-style-type: none">(a) for the Testing of Deliverables; and(b) setting out other agreed criteria related to the achievement of the Transition Date <p>as described further in paragraph 5;</p>
"Test Reports"	the reports to be produced by the Service Provider setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7;
"Test Strategy"	a strategy for the conduct of Testing as described further in paragraph 4;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in paragraph 6;
"Test Witness"	any person appointed by UK Biobank pursuant to paragraph 10;

2. RISK

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy UK Biobank's requirements for that Deliverable or Milestone; or
 - 2.1.2 affect UK Biobank's right subsequently to reject:
 - 2.1.2.1 all or any element of the Deliverables to which a Test Certificate relates; or
 - 2.1.2.2 any Milestone to which a Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of UK Biobank to Proceed) or Test Certificate, the Service Provider shall remain solely responsible for ensuring that:
- 2.2.1 the Platform and Service Provider Solution as designed, developed and configured is suitable for the delivery of the Services and meets UK Biobank Requirements;
 - 2.2.2 the Platform and Operational Services are implemented in accordance with this Agreement; and
 - 2.2.3 each Target Performance Level is met from the Operational Services Commencement Date.

3. TESTING OVERVIEW

- 3.1 All Tests conducted by the Service Provider shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Service Provider shall not submit any Deliverable for Testing:
- 3.2.1 unless the Service Provider is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 3.2.2 until UK Biobank has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Service Provider shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, UK Biobank shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between UK Biobank and the Service Provider regarding Testing shall be referred to the Dispute Resolution Procedure with each Party using its reasonable endeavours to expedite such process.

4. TEST STRATEGY

- 4.1 The Service Provider shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case, no later than ten (10) Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

4.2 The final Test Strategy shall include:

- 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
- 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
- 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;
- 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- 4.2.5 the procedure to be followed to sign off each Test;
- 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- 4.2.7 the names and contact details of UK Biobank's and the Service Provider's Test representatives;
- 4.2.8 a high-level identification of the resources required for Testing, including facilities, infrastructure, tools, personnel and UK Biobank and/or third-party involvement in the conduct of the Tests;
- 4.2.9 the technical environments required to support the Tests; and
- 4.2.10 the procedure for managing the configuration of the Test environments.

5. **TEST PLANS**

5.1 The Service Provider shall develop Test Plans and submit these for the approval of UK Biobank as soon as practicable but in any case, no later than ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Plan shall include as a minimum:

- 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested, for each Test, the specific Test Success Criteria to be satisfied;
- 5.2.2 a detailed procedure for the Tests to be carried out, including:
 - 5.2.2.1 the timetable for the Tests, including start/end dates;
 - 5.2.2.2 the Testing mechanism;
 - 5.2.2.3 dates and methods by which UK Biobank can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - 5.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - 5.2.2.5 the format and an example of Test progress reports and the process with which UK Biobank accesses daily Test Schedules;

- 5.2.2.6 the process which UK Biobank will use to review Test Issues and the Service Provider's progress in resolving these in a timely basis;
- 5.2.2.7 the Test Schedule;
- 5.2.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- 5.2.2.9 the process for escalating Test Issues from a re-Test situation to the taking of specific remedial action to resolve the Test Issue

5.3 UK Biobank shall not unreasonably withhold or delay its approval of the Test Plans provided that the Service Provider shall incorporate any reasonable requirements of UK Biobank in the Test Plans.

6. **TEST SUCCESS CRITERIA**

The Test Success Criteria for Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 5.

7. **TEST SPECIFICATION**

7.1 Following approval of the Test Plan, the Service Provider shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- 7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by UK Biobank and the extent to which it is equivalent to live operational data;
- 7.2.2 a plan to make the resources available for Testing;
- 7.2.3 Test scripts;
- 7.2.4 Test pre-requisites and the mechanism for measuring them; and
- 7.2.5 expected Test results including:
 - 7.2.5.1 a mechanism to be used to capture and record Test results; and
 - 7.2.5.2 a method to process the Test results to establish their content

8. **TESTING**

8.1 Before submitting any Deliverables for Testing the Service Provider shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Service Provider shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 10.

8.3 The Service Provider shall notify UK Biobank at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and UK Biobank shall ensure that the Test Witnesses attend the Tests except where UK Biobank has specified in writing that such attendance is not necessary.

- 8.4 UK Biobank may raise and close Test Issues during the Test witnessing process.
- 8.5 The Service Provider shall provide to UK Biobank in relation to each Test:
- 8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Service Provider's explanation of why those criteria have not been met;
 - 8.6.4 the Tests that were not completed together with the Service Provider's explanation of why those Tests were not completed;
 - 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not Tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 9; and
 - 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9. TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Service Provider shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Service Provider shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Service Provider shall make the Test Issue Management Log available to UK Biobank upon request.
- 9.3 UK Biobank shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Service Provider. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure with the Parties using reasonable endeavours to expedite the time scales entailed.

10. TEST WITNESSING

- 10.1 UK Biobank may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by UK Biobank each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Service Provider shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witness to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:

- 10.3.1 shall actively review the Test documentation;
- 10.3.2 will attend and engage in the performance of the Tests on behalf of UK Biobank so as to enable UK Biobank to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
- 10.3.3 shall not be involved in the execution of any Test;
- 10.3.4 shall be required to verify that the Service Provider conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by UK Biobank to assess whether the Tests have been achieved;
- 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 10.3.7 may require the Service Provider to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11. **OUTCOME OF TESTING**

- 11.1 UK Biobank shall issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria, then UK Biobank shall notify the Service Provider and:
 - 11.2.1 UK Biobank may issue a Test Certificate conditional upon the remediation of the Test Issues
 - 11.2.2 where the Parties agree that there is sufficient time, in accordance with the Implementation Plan, UK Biobank may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Service Provider to rectify the cause of the Test Issue and resubmit the Deliverables (or the relevant part) to Testing; or
 - 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in a Delay, then without prejudice to UK Biobank's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 28.1 (Rectification Plan Process).

12. **ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

- 12.1 UK Biobank shall issue a Milestone Achievement Certificate as soon as is reasonably practicable following:
 - 12.1.1 the issuing by UK Biobank of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to the Milestone concerned; and
 - 12.1.2 performance by the Service Provider to the reasonable satisfaction of UK Biobank of any other tasks identified in the Implementation Plan as associated with the Milestone concerned (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 12.2 The grant of a Milestone Achievement Certificate shall entitle the Service Provider to invoice for the Milestone Payment (if any) relating to that Milestone (when it becomes due) in accordance with Schedule 7 (Charging and Invoicing).

- 12.3 If a Milestone is not Achieved by the date set out in the Implementation Plan UK Biobank shall promptly issue a report to the Service Provider setting out:
- 12.3.1 the applicable Test Issues; and
 - 12.3.2 any other reasons for its non-Achievement.
- 12.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, UK Biobank shall issue the Milestone Achievement Certificate.
- 12.5 If there is one or more Material Test Issue(s), UK Biobank may refuse to issue the Milestone Achievement Certificate and, without prejudice to UK Biobank's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 26.1 (Rectification Plan Process).
- 12.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, UK Biobank may at its discretion (without waiving any rights in relation to the other options) choose to issue the Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless UK Biobank agrees otherwise (in which case the Service Provider shall submit a Rectification Plan for approval by UK Biobank within seven (7) Working Days of receipt of UK Biobank's report pursuant to paragraph 12.3).

SCHEDULE 7

Charging and Invoicing

PART A

Charging Mechanisms

1. MILESTONE PAYMENTS

- 1.1 On the Achievement of a Milestone the Service Provider shall be entitled to invoice UK Biobank for the Milestone Payment associated with that Milestone as set out in the Annex to this Schedule.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.

2. SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the Annex to this Schedule and shall be for the amount as specified in the Annex to this Schedule, as applicable.
- 2.2 Service Charges shall be invoiced by the Service Provider for each Service Period in arrear in accordance with the requirements of Part C.
- 2.3 If the relevant Service:
- 2.3.1 commences on a day other than the first day of a month; and/or
 - 2.3.2 ends on a day other than the last day of a month,
- the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 An invoice for a Service Charge shall not be payable by UK Biobank unless all adjustments relating to the Service Charges for the immediately preceding Service Period have been agreed.

3. END USER CHARGES

The Service Provider shall be entitled to charge Users the End User Charges for use of the Platform. The End User Charges as at the Effective Date are as set out in the Annex to this Schedule. The Service Provider shall be entitled to review and vary the End User Charges from time to time acting reasonably and [preferably] no more than annually. The Service Provider shall ensure that End User Charges are at all times fair and non-discriminatory as between Users and do not exceed the charges for use of platforms similar or equivalent to the Platform.

PART B

Adjustments to the Charges

1. CHANGES TO CHARGES

Where the Parties agree that a change to the Services or any obligation of the Service Provider under this Agreement requires a change to the Charges, such change shall be developed and agreed by the Parties in accordance with the applicable provisions of this Agreement and on the basis that the Service Provider's profit margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date. Time based Charges will be calculated on the basis of the most applicable of the day rates set out in the Annex.

2. SERVICE CREDITS

2.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 3 (Performance Levels).

2.2 For each Service Period:

2.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a [1%] deduction in the Service Charges; and

2.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is [1%]; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

2.3 The liability of the Service Provider in respect of Service Credits shall be subject to clause 24.2.2 (Financial and other Limits) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 3 (Performance Levels).

2.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

2.5 Service Credits shall be shown as a deduction from the amount due from UK Biobank to the Service Provider in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

PART C

Invoicing and Payment Terms

1. SERVICE PROVIDER INVOICES

- 1.1 The Service Provider shall prepare and provide to UK Biobank for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum, the details set out in paragraph 1.2 together with such other information as UK Biobank may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by UK Biobank then the Service Provider shall make such amendments as may be reasonably required by UK Biobank. If UK Biobank uses an e-invoicing system then the Service Provider shall instead comply with the requirements of that system.
- 1.2 The Service Provider shall ensure that each invoice is submitted in the correct format for UK Biobank's e-invoicing system, or that it contains the following information:
- 1.2.1 the date of the invoice;
 - 1.2.2 a unique invoice number;
 - 1.2.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.2.4 the correct reference for this Agreement;
 - 1.2.5 the reference number of the purchase order to which it relates;
 - 1.2.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.2.7 the pricing mechanism used to calculate the Charges (Fixed Price, Time and Materials etc);
 - 1.2.8 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.2.9 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.2.10 details of deductions that shall apply to the Charges detailed on the invoice;
 - 1.2.11 reference to any reports required by UK Biobank in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Service Provider for validation by UK Biobank, then to any such reports as are validated by UK Biobank in respect of the Services);
 - 1.2.12 a contact name and telephone number of a responsible person in the Service Provider's finance department in the event of administrative queries; and
 - 1.2.13 the banking details for payment to the Service Provider via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 1.3 The Service Provider shall invoice UK Biobank in respect of Services in accordance with the requirements of Part A. The Service Provider shall first submit to UK Biobank a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by UK Biobank, following which the Service Provider shall be entitled to submit its invoice.

- 1.4 Sufficient information in writing to enable UK Biobank reasonably to assess whether the Charges and other sums due from UK Biobank detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts, is required for each invoice.
- 1.5 The Service Provider shall submit all invoices via email to Purchasing@ukbiobank.ac.uk.
- 1.6 All Service Provider invoices shall be expressed in sterling or such other currency as shall be permitted by UK Biobank in writing.
- 1.7 UK Biobank shall regard an invoice as valid only if it complies with the provisions of this Part C. Where any invoice does not conform to UK Biobank's requirements set out in this Part C, UK Biobank shall return the disputed invoice to the Service Provider and the Service Provider shall promptly issue a replacement invoice which shall comply with such requirements.

2. **PAYMENT TERMS**

- 2.1 Subject to the relevant provisions of this Schedule, UK Biobank shall make payment to the Service Provider within thirty (30) days of receipt of a valid invoice by UK Biobank.
- 2.2 Unless the Parties agree otherwise in writing, all Service Provider invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Service Provider has specified on its invoice.

ANNEX

[To be populated from successful bid]

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SCHEDULE 8

Exit Management

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Exclusive Assets"	those Assets used by the Service Provider which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given in paragraph 3.1 of Schedule 8 (Exit Management);
"Exit Manager"	the person appointed by each Party pursuant to paragraph 2 of Schedule 8 (Exit Management) for managing the Parties' respective obligations under Schedule 8 (Exit Management);
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Service Provider set out in the letter in the agreed form from the Service Provider to UK Biobank of the same date as this Agreement;
"Non-Exclusive Assets"	those Assets (if any) which are used by the Service Provider in connection with the Services but which are also used by the Service Provider for other purposes of material value;
"Termination Assistance Period"	has the meaning given in paragraph 5.1.3 of Schedule 8 (Exit Management);
"Transferable Assets"	those of the Exclusive Assets which are capable of legal transfer to UK Biobank;
"Transferable Contracts"	the Sub-contracts, licences for Service Provider Software, licences for Third Party Software or other agreements which are necessary to enable UK Biobank or any Replacement Service Provider to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation and the Key Sub-contract with the Cloud Infrastructure Provider;
"Transferring Contracts"	has the meaning given in paragraph 6.2.3 of Schedule 8 (Exit Management).

2. EXIT MANAGER

Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Service Provider's Exit Manager shall be responsible for ensuring that the Service Provider and its employees, agents and Sub-contractors comply with this Schedule. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Service Provider shall provide to UK Biobank and/or its potential Replacement Service Providers (subject to the potential Replacement Service Providers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by UK Biobank of any invitation to tender and/or to facilitate any potential Replacement Service Providers undertaking due diligence:
- 3.1.1 details of the Service(s);
 - 3.1.2 an inventory of UK Biobank Data in the Service Provider's possession or control;
 - 3.1.3 to the extent permitted by applicable Law, all information relating to Services Employees required to be provided by the Service Provider under this Agreement; and
 - 3.1.4 such other material and information as UK Biobank shall reasonably require, (together, the **"Exit Information"**).
- 3.2 The Service Provider acknowledges that UK Biobank may disclose the Service Provider's Confidential Information to an actual or prospective Replacement Service Provider or any third party whom UK Biobank is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that UK Biobank may not under this paragraph 3.2 disclose any Service Provider's Confidential Information which is information relating to the Service Provider's or its Sub-contractors' prices or costs).
- 3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Service Provider shall be such as would be reasonably necessary to enable a third party to:
- 3.3.1 prepare an informed offer for those Services; and
 - 3.3.2 not be disadvantaged in any subsequent procurement process compared to the Service Provider (if the Service Provider is invited to participate).
4. **EXIT PLAN**
- 4.1 The Service Provider shall, no later than twenty (20) Working Days after the Effective Date, deliver to UK Biobank an Exit Plan which:
- 4.1.1 sets out the Service Provider's proposed methodology for achieving an orderly transition of the Services from the Service Provider to UK Biobank and/or its Replacement Service Provider on the expiry or termination of this Agreement;
 - 4.1.2 complies with the requirements set out in paragraph 4.2; and
 - 4.1.3 is otherwise reasonably satisfactory to UK Biobank.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 the mechanism for dealing with exit, including transfer and cessation processes and provision for the supply by the Service Provider of all such reasonable assistance as UK Biobank shall require to enable UK Biobank or its sub-contractors to provide the Services;

- 4.3.2 how the Services will transfer to the Replacement Service Provider and/or UK Biobank, including details of the processes, documentation, data transfer, systems migration, security and the segregation of UK Biobank's technology components from any technology components operated by the Service Provider or its Sub-contractors (where applicable);
 - 4.3.3 the scope of the Termination Services that may be required for the benefit of UK Biobank;
 - 4.3.4 a timetable and critical issues for providing the Termination Services; and
 - 4.3.5 any charges that would be payable for the provision of the Termination Services (which must be reasonable and proportionate, based on the day rates set out in the Annex to Schedule 7 (Charges and Invoicing) and calculated in accordance with the principles set out in paragraph 1 of Part C of Schedule 7 (Charges and Invoicing)), together with a capped estimate of such charges.
- 4.4 The Service Provider shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Service Provider shall submit the revised Exit Plan to UK Biobank for review and approval. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5. TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 UK Biobank shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Service Provider (a "**Termination Assistance Notice**") at least three (3) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 5.1.1 the date from which Termination Services are required;
 - 5.1.2 the nature of the Termination Services required; and
 - 5.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twelve (12) months after the date that the Service Provider ceases to provide the Services ("**Termination Assistance Period**").
- 5.2 UK Biobank shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Service Provider ceases to provide the Services and provided that it shall notify the Service Provider to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services are otherwise due to expire. UK Biobank shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Service Provider to such effect.

Termination Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as UK Biobank may require, the Service Provider shall:
- 5.3.1 continue to provide the Services (as applicable) and, if required by UK Biobank pursuant to paragraph 5.1, provide the Termination Services;

- 5.3.2 in addition to providing the Services and the Termination Services, provide to UK Biobank any reasonable assistance requested by UK Biobank to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to UK Biobank and/or its Replacement Service Provider;
 - 5.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to UK Biobank; and
 - 5.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels.
- 5.4 Without prejudice to the Service Provider's obligations under paragraph 5.3.3, if it is not possible for the Service Provider to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to UK Biobank, any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be agreed between the Parties in accordance the principles set out paragraph 4.3.5.

Termination Obligations

- 5.5 The Service Provider shall comply with all of its obligations contained in the Exit Plan.
- 5.6 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Service Provider shall:
- 5.6.1 cease to use UK Biobank Data;
 - 5.6.2 provide UK Biobank and/or the Replacement Service Provider with a complete and uncorrupted version of UK Biobank Data in electronic form (or such other format as reasonably required by UK Biobank);
 - 5.6.3 erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period all UK Biobank Data and promptly certify to UK Biobank that it has completed such deletion;
 - 5.6.4 return to UK Biobank such of the following as is in the Service Provider's possession or control:
 - 5.6.4.1 all copies of UK Biobank Software and any other software licensed by UK Biobank to the Service Provider under this Agreement;
 - 5.6.4.2 all materials created by the Service Provider under this Agreement in which the IPRs are owned by UK Biobank;
 - 5.6.4.3 any parts of the IT Environment and any other equipment which belongs to UK Biobank; and
 - 5.6.4.4 any items that have been on-charged to UK Biobank, such as consumables; and
 - 5.6.5 vacate any UK Biobank Premises.
- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the

other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

- 5.8 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by UK Biobank to the Service Provider in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Service Provider shall not, without UK Biobank's prior written consent:

- 6.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- 6.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- 6.1.3 terminate, enter into or vary any licence for software in connection with the Platform or Services.

- 6.2 UK Biobank shall provide written notice to the Service Provider setting out:

- 6.2.1 which, if any, of the Transferable Assets UK Biobank requires to be transferred to UK Biobank and/or the Replacement Service Provider ("**Transferring Assets**");

- 6.2.2 which, if any, of:

- 6.2.2.1 the Exclusive Assets that are not Transferable Assets; and

- 6.2.2.2 the Non-Exclusive Assets,

- UK Biobank and/or the Replacement Service Provider requires the continued use of; and

- 6.2.3 which, if any, of Transferable Contracts UK Biobank requires to be assigned or novated to UK Biobank and/or the Replacement Service Provider (the "**Transferring Contracts**"),

in order for UK Biobank and/or its Replacement Service Provider to receive and / or provide the Services or Replacement Services from the expiry of the Termination Assistance Period, or as UK Biobank may otherwise require. Where requested by UK Biobank and/or its Replacement Service Provider, the Service Provider shall provide all reasonable assistance to UK Biobank and/or its Replacement Service Provider to enable it to determine which Transferable Assets and Transferable Contracts UK Biobank and/or its Replacement Service Provider requires to provide the Services or Replacement Services.

- 6.3 With effect from the expiry of the Termination Assistance Period, the Service Provider shall sell the Transferring Assets to UK Biobank and/or its nominated Replacement Service Provider for a consideration equal to their Net Book Value, except where:

- 6.3.1 a Termination Payment is payable by UK Biobank to the Service Provider, in which case, payment for such Assets shall be included within the Termination Payment; or

- 6.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which

case UK Biobank shall pay the Service Provider the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

- 6.4 Risk in the Transferring Assets shall pass to UK Biobank or the Replacement Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to UK Biobank or the Replacement Service Provider (as appropriate) on payment for the same.
- 6.5 Where the Service Provider is notified in accordance with paragraph 6.2.2 that UK Biobank and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Service Provider shall as soon as reasonably practicable:
- 6.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by UK Biobank) for UK Biobank and/or the Replacement Service Provider to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 6.5.2 procure a suitable alternative to such assets and UK Biobank or the Replacement Service Provider shall bear the reasonable proven costs of procuring the same.
- 6.6 The Service Provider shall as soon as reasonably practicable assign or procure the novation to UK Biobank and/or the Replacement Service Provider of the Transferring Contracts. The Service Provider shall execute such documents and provide such other assistance as UK Biobank reasonably requires to effect this novation or assignment.
- 6.7 UK Biobank shall:
- 6.7.1 accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract; and
- 6.7.2 once a Transferring Contract is novated or assigned to UK Biobank and/or the Replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Service Provider does the same.
- 6.8 The Service Provider shall hold any Transferring Contracts on trust for UK Biobank until such time as the transfer of the relevant Transferring Contract to UK Biobank and/or the Replacement Service Provider has been effected.
- 6.9 The Service Provider shall indemnify UK Biobank (and/or the Replacement Service Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to UK Biobank (and/or Replacement Service Provider) pursuant to paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

7. CHARGES

- 7.1 During the Termination Assistance Period (or for such shorter period as UK Biobank may require the Service Provider to provide the Termination Services), UK Biobank shall pay the Charges to the Service Provider in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan without the prior agreement of UK Biobank). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied by agreement between the Parties in accordance the principles set out paragraph 4.3.5.
- 7.2 Except as otherwise expressly specified in this Agreement, the Service Provider shall not make any charges for the services provided by the Service Provider pursuant to, and UK Biobank shall not be obliged to pay for costs incurred by the Service Provider in relation

to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

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SCHEDULE 9

Data Processing Clauses

Explanatory note:

These are UK Biobank's standard data processing terms, to comply with Article 28 of the GDPR. Whilst UK Biobank considers that UK Biobank Data may not be Personal Data (as UK Biobank participants are not able to be re-identified from the data provided), these are the obligations with which the Service Provider must comply under the Agreement when processing UK Biobank Data (and any Personal Data contained therein).

1. DATA PROTECTION

- 1.1 UK Biobank authorises the Service Provider to Process the UK Biobank Data during the term of this Agreement for the purpose and to the extent described in **Annex 1** to this Schedule and as otherwise authorised or permitted under this Agreement from time to time.
- 1.2 In performing the Services and its other obligations under this Agreement the Service Provider will:
 - 1.2.1 comply with the Data Protection Laws;
 - 1.2.2 not cause UK Biobank to breach any obligation under the Data Protection Laws; and
 - 1.2.3 notify UK Biobank without undue delay if it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this **paragraph 1**, without prejudice to its obligations to comply with, or to any rights or remedies which UK Biobank may have for breach of, the Data Protection Laws or this **paragraph 1**.
- 1.3 The Service Provider will not engage or use any third party for the Processing of UK Biobank Data or permit any third party to Process UK Biobank Data without the prior written consent of UK Biobank.
- 1.4 If the Service Provider appoints a Sub-Processor, the Service Provider will ensure that, prior to the Processing taking place, there is a written contract in place between the Service Provider and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor the same terms as those imposed on the Service Provider in this **paragraph 1**. The Service Provider will procure that Sub-Processors will perform all obligations set out in this **paragraph 1** and the Service Provider will remain responsible and liable to UK Biobank for all acts and omissions of Sub-Processors as if they were its own.
- 1.5 The Service Provider will:
 - 1.5.1 Process the UK Biobank Data only on documented instructions (including without limitation this Agreement) from UK Biobank (unless the Service Provider or the relevant Sub-Processor is required to Process UK Biobank Data to comply with:
 - 1.5.1.1 European Union law or European Union member state law, to which the Service Provider is subject, or
 - 1.5.1.2 if the United Kingdom leaves the European Union, United Kingdom law to which the Service Provider is subject,

in which case the Service Provider will notify UK Biobank of such legal requirement prior to such Processing unless such law prohibits notice to UK Biobank on public interest grounds);

- 1.5.2 comply with any instruction(s) from UK Biobank to change or restrict Processing of UK Biobank Data through or otherwise in respect of any specific cloud storage node(s), with any requested changes being made no later than [28 days] after the documented instruction is received by the Service Provider from UK Biobank;
 - 1.5.3 immediately notify UK Biobank if, in its reasonable opinion, any instruction received from UK Biobank infringes any Data Protection Laws;
 - 1.5.4 without prejudice to **paragraph 1.5.1**, ensure that UK Biobank Data will only be used for the purpose and to the extent described in **Schedule 9 Annex 1**;
 - 1.5.5 without prejudice to **paragraph 1.5.4**, not without the prior written consent of UK Biobank:
 - 1.5.5.1 convert any UK Biobank Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data;
 - 1.5.5.2 use any UK Biobank Data for “big data” analysis or purposes; or
 - 1.5.5.3 match or compare any UK Biobank Data with or against any other Personal Data (whether the Service Provider’s or any third party’s);
 - 1.5.6 ensure that any individual authorised to Process UK Biobank Data accesses such UK Biobank Data strictly on a need to know basis as necessary to perform their role in the performance of this Agreement, and:
 - 1.5.6.1 is subject to confidentiality obligations equivalent to those set out in **clause 19** of this Agreement or is under an appropriate statutory obligation of confidentiality; and
 - 1.5.6.2 complies with this **paragraph 1**; and
 - 1.5.6.3 is appropriately reliable, qualified and trained in relation to their Processing of UK Biobank Data;
 - 1.5.7 keep all UK Biobank Data confidential in accordance with the provisions of **clause 19**, provided that in the event and to the extent only of any conflict between this **paragraph 1** and **clause 19**, this **paragraph 1** will prevail; and
 - 1.5.8 at the option of UK Biobank, securely delete or return to UK Biobank or transfer to any Replacement Service Provider (in the format required by UK Biobank) all UK Biobank Data promptly after the end of the provision of Services relating to Processing or at any time upon request, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.
- 1.6 Subject to **paragraph 1.7**, the Service Provider will not make a Restricted Transfer without UK Biobank’s prior written consent. If UK Biobank gives its prior written consent to a Restricted Transfer, before making that Restricted Transfer the Service Provider will demonstrate or implement, to UK Biobank’s satisfaction, appropriate safeguards for that Restricted Transfer in accordance with Data Protection Laws and will ensure that enforceable rights and effective legal remedies for Data Subjects are available. Such appropriate safeguards may include without limitation:
- 1.6.1 that the country or territory to which the Restricted Transfer is to be made ensures an adequate level of protection for Processing of Personal Data

pursuant to a valid adequacy decision made in accordance with Data Protection Laws;

- 1.6.2 the relevant Processor enters into an agreement with UK Biobank in the form of the standard contractual clauses (which are set out in Annex 2 below) for the transfer of personal data to processors established in third countries approved in accordance with Data Protection Laws, completed with such information as UK Biobank may reasonably require; or
- 1.6.3 the Restricted Transfer is to the United States of America and the relevant Processor has and maintains for the duration of the Processing a valid registration sufficient to protect the transfer under the United States Privacy Shield Framework.

If the appropriate safeguards demonstrated or implemented by the Service Provider (or the relevant Processor) in accordance with this **paragraph 1.6** are deemed at any time not to provide an adequate level of protection in relation to UK Biobank Data, the Service Provider will implement such alternative measures as may be required by UK Biobank to ensure that the relevant Restricted Transfer and all resulting Processing are compliant with Data Protection Laws.

- 1.7 **Paragraph 1.6** will not apply if the Service Provider or the relevant Sub Processor is required to make a Restricted Transfer to comply with:

- 1.7.1 European Union law or European Union member state law, to which the Service Provider is subject; or
- 1.7.2 if the United Kingdom leaves the European Union, United Kingdom law to which the Service Provider is subject,

in which case the Service Provider will notify UK Biobank of such legal requirement prior to such Restricted Transfer unless such law prohibits notice to UK Biobank on public interest grounds.

- 1.8 The Service Provider will:

- 1.8.1 implement, and assist UK Biobank to implement, technical and organisational measures at a minimum to the standard set out in Schedule 10 (Information Security Requirements) to ensure a level of security appropriate to the risk presented by Processing the UK Biobank Data, in particular from a Data Security Incident;
- 1.8.2 notify UK Biobank immediately if at any time the Service Provider or a Sub-Processor is, or ought to be, aware of any reason why it is unable to comply with **paragraph 1.8.1**, without prejudice to its obligation to comply with, or to any rights or remedies which UK Biobank may have for breach of, **paragraph 1.8.1**;
- 1.8.3 notify UK Biobank promptly after becoming aware of a reasonably suspected, "near miss" or actual Data Security Incident, including without limitation the nature of the Data Security Incident, the categories and approximate number of Data Subjects and UK Biobank Data records concerned, the likely consequences of the Data Security Incident and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but the Service Provider (and Sub-Processors) may not delay notification under this **paragraph 1.8.3** on the basis that an investigation is incomplete or ongoing;
- 1.8.4 promptly (and in any event within 72 hours) notify UK Biobank of any request that it receives for exercise of a Data Subject's rights under the Data

Protection Laws or communication or complaint that it receives from a Data Subject or Supervisory Authority or other third party in connection with UK Biobank Data;

- 1.8.5 provide reasonable assistance to UK Biobank in responding to requests for exercising Data Subjects' rights under the Data Protection Laws and communications and complaints from Data Subjects and Supervisory Authorities and other third parties in connection with UK Biobank Data, including without limitation by appropriate technical and organisational measures, insofar as this is possible;
- 1.8.6 not, without UK Biobank's prior written consent, make or permit any announcement in respect of a Data Security Incident or respond to any request for exercise of a Data Subject's rights under the Data Protection Laws or communication or complaint from a Data Subject or Supervisory Authority in connection with UK Biobank Data; and
- 1.8.7 assist UK Biobank in:
 - 1.8.7.1 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects;
 - 1.8.7.2 taking measures to address Data Security Incidents, including without limitation, where appropriate, measures to mitigate their possible adverse effects; and
 - 1.8.7.3 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 1.9 The Service Provider will:
 - 1.9.1 make available to UK Biobank all information necessary to demonstrate compliance with the obligations set out in this **paragraph 1**; and
 - 1.9.2 allow for and contribute to audits, including without limitation inspections, conducted by UK Biobank or another auditor mandated by UK Biobank.
- 1.10 The Service Provider will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of UK Biobank in relation to the UK Biobank Data, including without limitation as a minimum: (i) its name and contact details and details of its Data Protection Officer or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of UK Biobank; (iii) Restricted Transfers; (iv) a general description of the technical and organisational security measures referred to in **paragraph 1.8.1**; and (v) the same information in relation to any Sub-Processor, together with its name and contact details (together the "**Data Record**"). The Service Provider will promptly upon request securely supply a copy of the Data Record to UK Biobank.
- 1.11 Where, under this **paragraph 1**, the Service Provider is required to notify UK Biobank of any matter or thing, such notification will be marked for the attention of UK Biobank's Data Protection Officer and sent by e-mail to the following e-mail address: dpo@ukbiobank.co.uk
- 2. Wherever under this Agreement UK Biobank's consent is required before the Service Provider is permitted to do a particular act or thing, unless otherwise expressly provided, UK Biobank is entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

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ANNEX 1

UK Biobank Data

Subject matter of Processing	Processing of UK Biobank Data for the purpose of facilitating User access to UK Biobank Data for research purposes
Duration of Processing	The term of this Agreement
Nature of Processing	The provision of a managed informatics platform for data access and analysis (including provision of access by Users and storage of UK Biobank Data)
Purpose of Processing	Allowing researchers to bring their analyses to research data through implementation of a managed informatics platform for data access and analysis
Type of UK Biobank Data	<p>UK Biobank Data, which includes:</p> <p>UK Biobank participant data: Health and healthcare record data; self-report data; physical measures; questionnaire responses; biological assay data; imaging data; imaging derived measures; demographic data; activity data; remote monitoring data; phenotype data; genome data; genotyping array data; whole genome sequence data; exome data; cardiac data; pseudonymised participant identifiers; health outcome data; recruitment data and any data which is Processed and/or generated by Users, including their results data and relevant derived variables, which they are required to return to UK Biobank, all data generated by Users;</p> <p>User data: account/ log-in/ password details; contact details; user authorisation/ approval records/ status; access permissions; UK Biobank credentials; correspondence history; usage data (including time stamps); memory usage; download/ upload details; IP address; location and language; research outcome and analysis data; data relating to user-requested helpdesk services (including tickets logged, resolution activity details, telephone logs, e-mail/ webchat history, outcome and type of issue); approved access details; workspace details including permissions; details of invitations sent to other users; charging/billing details and records; credit card billing and/or institutional purchase details; code notebook details; pipeline details; user submitted tools/ programming languages; operating system; feedback and complaints; user-own code and data; authorisation connection records</p>
Categories of Data Subject	Users, UK Biobank participants

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ANNEX 2

Processor Standard Contractual Clauses

Explanatory note (for the avoidance of doubt this text box is not part of the EU Processor Clauses):

These are the EU Commission's approved model data transfer terms (for Restricted Transfers between controllers and processors). They are deemed to provide appropriate safeguards for Restricted Transfers, as required under the Data Protection Laws. Under clause 20 (and, in particular, clauses 20.6 and 20.7) of this Agreement, the clauses set out in this Annex 2 apply when a Restricted Transfer takes place. The 'data exporter' as defined in these clauses is UK Biobank, and the 'data importer' as defined in these clauses is the Service Provider, unless otherwise agreed in writing.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship
Unit C.3: Data protection

Commission Decision C(2010)593
Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: UK BIOBANK LIMITED

Address: Units 1 & 2 Spectrum Way, Adswood, Stockport, Cheshire, SK3 0SA

Tel.: [INSERT]; fax: [INSERT]; e-mail: [INSERT]

Other information needed to identify the organisation:

.....
(the data **exporter**)

And

Name of the data importing organisation: [INSERT]

Address: [INSERT]

Tel.: [INSERT]; fax: [INSERT]; e-mail: [INSERT]

Other information needed to identify the organisation:

.....
(the data **importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

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Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

¹ Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Obligations of the data importer²

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

² Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter alia*, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely the laws of England and Wales.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses³. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the laws of England and Wales.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

³ This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): [INSERT]

Position: [INSERT]

Address: [INSERT]

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

On behalf of the data importer:

Name (written out in full): [INSERT]

Position: [INSERT]

Address: [INSERT]

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.
The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):
UK Biobank complying with its obligations in this Agreement.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):
The Service Provider complying with its obligations in this Agreement.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):
The data subjects listed in Appendix 1 of Schedule 9 of this Agreement.

Categories of data

The personal data transferred concern the following categories of data (please specify):
The categories of personal data listed in Appendix 1 of Schedule 9 of this Agreement.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):
The categories of personal data listed in Appendix 1 of Schedule 9 of this Agreement.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The processing activities listed in Appendix 1 of Schedule 9 of this Agreement.

DATA EXPORTER

Name: **[INSERT]**

Authorised Signature

DATA IMPORTER

Name: **[INSERT]**

Authorised Signature

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

.....
.....
.....

ILLUSTRATIVE INDEMNIFICATION CLAUSE (OPTIONAL)

Liability

The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim⁴.

⁴ Paragraph on liabilities is optional.

SCHEDULE 10

Cloud Infrastructure Terms

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