

Software Licence, Software Support and Web Site Hosting Agreement

An Agreement

Dated 20 February 2023

Reference Number:- UKHSA

BETWEEN:

KPMD (IT Solutions) Ltd whose registered office is at Cooper Buildings, Arundel Street, Sheffield S1 2NS (hereinafter called "KPMD") of the one part; and

United Kingdom Health Security Agency, whose office is at Nobel House, 17 Smith Square, London SW1P 3HX (hereinafter called ('the Licensee') of the other part.

WHEREAS:

KPMD has agreed that it will supply and the Licensee accepts a non-exclusive and non-transferable Licence to use the Software subject to the Terms and Conditions of this Licence Agreement.

1 Definitions

- 1.1 'Software' shall mean the Software items, their configurations and the specific restrictions on their use listed in Schedule A of this Agreement, and any amendments, fixes or enhancements made available to the Licensee.
- 1.2 'Order' shall mean Licensee's Order for Software.
- 1.3 'Premises' shall mean the delivery address identified in the Order where the Software is to be located.
- 1.4 'Price' shall mean each and all of the various prices and charges referred to in the Order and Value Added Tax, which shall be charged at the rate ruling at the tax point.
- 1.5 'Acceptance' shall mean the confirmation by the Licensee that the Software has been installed and is demonstrably fully functional.
- 1.6 'Acceptance Tests' shall mean the tests and demonstrations, which are undertaken following installation which show that the Software is fully functional.
- 1.7 'Shrink Wrap Software' shall mean any package of Software with specific terms and conditions governing its use enclosed.
- 1.8 'Software Notices' shall mean communications from KPMD to the Licensee which KPMD may choose to make from time to time which detail any amendments, fixes or enhancements to the Software which are available to the Licensee.

2. Copyright

- 2.1 The copyright of the Software is owned by KPMD or by the identified copyright holder in the case of third party or shrink-wrapped software and copies may not be made by the Licensee or by any employee or agent or contractor of the Licensee or any other person for any purpose other than those exemptions contained in this agreement.
- 2.2 The Licensee may not sell or rent or grant or in any way transfer the rights to the Software granted under this agreement nor without prior written consent from KPMD permit persons other than KPMD staff to effect any modifications or changes to the Software.
- 2.3 The Licensee may not reverse engineer, decompile or disassemble or in any way use the know-how and other intellectual property rights in the Software in the development of any other systems.
- 2.4 Payment of the licence charge shall entitle the Licensee to a non-exclusive and non-transferable licence to use the Software. Under this licence the Software is defined as in use when it is loaded into temporary memory or installed on permanent storage media.
- 2.5 The licence granted hereunder shall extend to the documentation supplied by KPMD relating to the Software, the meaning of which expression shall include but not be limited to product descriptions and operating instructions. For the purposes of this Agreement the expression "Software" shall be deemed to include the related documentation.
- 2.6 In the event of any item of Software to be supplied by KPMD being a third party Software package with an enduser of other agreement or terms and conditions from the supplier and/or originator of that package, the Licensee shall be responsible for complying with such agreement or terms and conditions and for signing and returning to the said supplier and/or originator any acknowledgement or other form required by that supplier and/or originator.

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3. Duration and Termination

- 3.1 This Licence shall commence on the date of delivery of the Software and shall continue, subject to Condition 9 and the payment of the associated initial and subsequent annual licence charges, for an unlimited period.
- 3.2 Upon the termination of this Licence for whatsoever reason the Licensee shall return forthwith to KPMD the Software and related documentation together with all copies thereof or issue a written certificate stating that the same have been effectively destroyed and are incapable of any further use whatsoever.

4. Delivery:

- 4.1 KPMD will use reasonable efforts to meet the estimated delivery date stated in the Order, KPMD shall not be liable for any failure to make delivery by this date nor shall such failure entitle the Licensee to cancel the Order or refuse the delivery.
- 4.2 If there is more than one configuration of Software capable of independent operation to be supplied hereunder the Delivery of each configuration shall be treated as if made under a separate contract and failure to make any particular delivery shall not entitle the Licensee to refuse any other such delivery.

5. Installation and Acceptance:

- 5.1 Installation by KPMD may be requested and agreed with KPMD at the time of Order. In all other cases, installation of the Software shall be carried out by the Licensee.
- 5.2 Where KPMD are responsible for installation then the Licensee shall make arrangements to witness the Acceptance Tests undertaken by KPMD on completion of installation or shall perform any other such Acceptance Tests as have been agreed. On successful completion of Acceptance Tests then the Licensee representative shall immediately confirm Acceptance of the Software by means of a signed statement.
- 5.2 Where KPMD are not responsible for installation then Acceptance of the Software shall be deemed to occur 5 (five) days after the date of delivery unless the Licensee shall have notified KPMD in writing during that period that the Software is not acceptable and why it is not acceptable such Acceptance not to be unreasonably withheld.

6. Price and Payment

- 6.1 Payments of the Price shall be made in full within 30 days of the date of the delivery or in the event that the delivery of the Software shall be delayed due to any act or omission of the Licensee, its servants, agents or contractors then the amounts which otherwise would have become due shall be paid within 30 days of receipt of an invoice.
- 6.2 If the Licensee shall fail to make any payment within the time specified herein then in addition to the Price payable (and without prejudice to any other right of KPMD) interest shall accrue on a day to day basis on the amount outstanding from the due date in accordance with the late payment legislation (*Late Payment of Commercial Debts (Interest) Act 1998*).

7. Software Support

- 7.1 Notwithstanding any support otherwise identified and offered, KPMD will provide a support service to provide advice, bug corrections, enhancements and software upgrades under the terms of a separate Software Maintenance and Technical Support Agreement.

8. Warranty

- 8.1 Unless advised in writing to the contrary by KPMD, KPMD warrants that the Software shall substantially conform to its specification issued for general release by KPMD at the date of the Order or described in the product manuals supplied. In the event of any major non-conformity materially affecting its use KPMD shall use reasonable endeavours, without charge to the Licensee, to rectify the situation as described in the following subsections:-
- 8.1.1 For all Software items other than shrink wrapped Software, at KPMD exclusive option, either undertake repair or replacement or return the price paid;
- 8.1.2 For Software items for which KPMD is not the author KPMD will use reasonable endeavours to secure an amendment from KPMD's suppliers of the Software
- 8.2 Provided always for all Software other than those items identified in the Schedule as Shrink Wrap Software:-
- 8.2.1 such non-conformity being notified to KPMD in writing promptly after the same shall have become apparent and in any event within a period of ninety (90) days from the date of Acceptance;
- and
- 8.2.2 such non-conformity being demonstrable; and
- 8.2.3 the Software being properly and correctly maintained, having each and every amendment stated in all Software Notices issued after delivery of the Software incorporated;
- and

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8.2.4 no unauthorised addition to or modification of the Software being undertaken without the prior written consent of KPMD.

- 8.3 For all items of Shrink Wrap Software KPMD warrants the media upon which the Software is delivered is free from defect due to faulty material and workmanship for a period of one (1) month from the date of delivery. In the event of notification within the said period of such a defect and the return of the defective item to KPMD, KPMD will replace it on media free from such defect. The costs of despatch shall in each case be borne by the consignee.
- 8.4 No Warranty will apply if defects result from accident or abuse or misapplication.
- 8.5 An item of Software modified or replaced by KPMD is warranted by KPMD for such of the Software Warranty Period as shall not have expired at the date of replacement.
- 8.6 The immediately preceding sub-clause 7.5 shall be subject always to the provisions of Condition 11.3.

9 Confidentiality

- 9.1 The terms and conditions of this Agreement and all information disclosed by either party its servants agents or contractors to the other party in connection herewith are supplied in confidence and shall be treated by the other party as confidential and shall not without the prior written consent of the party disclosing such information be divulged to any person other than those persons to whom it is necessary to supply such information to enable the Software to be reasonably operated and maintained by the Licensee and the party to receive such information shall procure that the persons to whom such information is divulged shall themselves observe the requirements of this clause.
- 9.2 This obligation of confidentiality shall apply insofar and for so long as the said information has not become part of the public knowledge or literature other than by breach of this Agreement or has been lawfully received without obligation of non-disclosure from a third party or has not been created, as may be shown by documentary evidence, by the third party to receive the said information.
- 9.3 This Condition shall be of effect notwithstanding the performance or termination of this Agreement.
- 9.4 Nothing in this Condition shall be deemed or construed to prevent either party from disclosing the information provided by the other party to anybody as required by any Law, Enactment, Order, Regulation or other similar instrument of Her Majesty's Government.

10 Default

- 10.1 Either party may (without prejudice to its other rights against the other party) by written notice to the other party summarily suspend or terminate this Agreement in the event that the other party shall:
- 10.1.1 being a corporation go into liquidation whether voluntary, compulsory or under supervision or have Receiver appointed, or (being a partnership or individual) enter into any agreement with or for the benefit of its creditors or have a Receiving Order in Bankruptcy made against it; or
- 10.1.2 be in breach of the terms and condition of this Agreement and fail to rectify such breach within 30 days of receipt of written notice requiring it to do so.

11 Force Majeure

- 11.1 Neither party shall be liable to the other for any breach of this Agreement caused directly or indirectly by anything outside its reasonable control including (without limitation to the generality of the foregoing) war, hostilities, government action, breakdown, delay in transportation, any form of labour dispute, fire, flood or act of God, with the sole exception of Licensee's obligation to make payment under this Agreement.

12 Liability of KPMD:

- 12.1 KPMD shall be liable in respect of negligence for breach of contract or statutory duty for:-
- 12.1.1 loss or damage in respect of death or personal injury; and
- 12.1.2 direct physical damage to the Licensee's or any other property in or upon the Premises up to a maximum of £250,000.00 in respect of any one or series of connected events, and
- 12.1.3 for any deficiency in the suitability or fitness of the Software notified to KPMD prior to the date of acceptance for use either alone or with any other item provided always that such use either alone or with any other item is specifically referred to in this Agreement with all such details as KPMD require or which may reasonably be inferred from the specification of the Software issued for general release by KPMD and then limited to 100% of the price stated in the original Order for the Software as the case may be.
- 12.2 KPMD will not be liable for the following loss or damage however caused and even if foreseeable by KPMD:
- 12.2.1 economic loss, which shall include loss of profits, business, revenue goodwill, or anticipated savings;

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- 12.2.2 special, indirect or consequential loss (other than direct physical damage to tangible property under paragraph 11.1.2 above)
- 12.2.3 loss arising from any claim made against the Licensee by any other person; or
- 12.2.4 loss or damage arising from the Licensee's failure to fulfil its responsibilities or any matter under the control of the Licensee
- 12.2.5 except as is provided in paragraph 11.1 above

- 12.3 No guarantee or Warranty, expressed or implied, statutory or otherwise including (but not limited to) those of merchantability and fitness for a particular purpose will apply other than those contained herein.
- 12.4 KPMD's liability for any loss or damage caused by breach of the terms of this Agreement shall not exceed in aggregate the sum of the Licence Charges in respect of the licence granted save as stated in clause 11.1 of this Agreement.

- 13 Assignment**
- 13.1 The Licensee shall not assign or otherwise transfer in part or in whole any benefit or liability whatsoever under this Agreement without the prior written consent of an authorised signatory of KPMD.

- 14 Recruitment**
- 14.1 The Licensee shall not during the term of this Agreement or for six months thereafter canvass, solicit or employ any person who has in the previous six months been employed by KPMD or on behalf of KPMD in a sales, service or technical role unless KPMD shall specifically agree otherwise in writing with respect to any individual person.

- 15 Notices**
- 15.1 Any notice consent demand or the like required to be given under this Agreement shall be in writing and either delivered personally, sent by registered or similar post to the address of the other party as set out in the Order (or at such changed address as shall be notified to the other party for that purpose) and every such notice or the like shall be deemed to have been received in the case of personal delivery at the time of delivery or in the case of posting 24 hours after posting.

- 16 General**
- 16.1 All the terms and conditions of this Agreement are set out herein and no other terms or conditions shall apply, whether oral or in any separate Order, invoice, confirmation or otherwise.
- 16.2 No variation to this Agreement shall be effective unless and until accepted in writing by authorised signatories of KPMD and the Licensee.
- 16.3 The headings contained in this Agreement are for ease of reference only.
- 16.4 Any statement or representation not set out herein regarding the Software or its performance is accepted by the Licensee as being a bona fide opinion only which has not induced the Licensee into this Agreement and KPMD will not be liable for any error, omission or misstatement.
- 16.5 Any waiver by either party of a condition, sub-clause or paragraph of this Agreement shall not prevent such condition or sub-clause or paragraph from being valid and enforceable in all other instances.
- 16.6 The invalidity or unenforceability for any reason of any condition, sub-clause or paragraph of this Agreement or any part thereof shall not prejudice or affect the validity or enforceability of the remainder.
- 16.7 The provisions of conditions 1,2,8,13,15,16 and 17 shall survive and continue to have effect after termination for any reason whatsoever of this Agreement or after this Agreement becomes impossible of performance or is otherwise frustrated.

- 17 Jurisdiction**
- 17.1 The interpretation, validity and performance of this Agreement shall be governed in all respects in accordance with the Laws of England and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

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SCHEDULE A to Software Licence Contract No. UKHSA

Between

KPMD IT Solutions Ltd

and

United Kingdom Health Security Agency, Food and Environmental Proficiency Testing Unit (FEPTU)

SOFTWARE

EQA Programme Manager - executable software installed on client PCs

Microsoft SQL Server database containing tables, views, stored procedures and functions installed on a network server within the Licensee's office

Web services functionality within EQA Programme Manager but also hosted on a KPMD web server

Exclusions – third-party software including Microsoft SQL Server, Microsoft Access, Microsoft Word

Software Maintenance and Technical Support Agreement

1. GENERAL TERMS

1.1. Definitions

The following expressions shall have the following meanings: -

- "*KPMD*" – KPMD IT Solutions Limited, whose registered office is at Cooper Buildings, Arundel Street, Sheffield S1 2NS, UK.
- "*Licensee*" – United Kingdom Health Security Agency, whose head office is at Nobel House, 17 Smith Square, London, SW1P 3HX.
- "*Number of Users*" - the number of users specified in the Quotation who are authorised to use the Software.
- "*Order*" – initial purchase order (project number 104820) following the original full EC tender in the Official Journal of the European Union (reference number 187117 – 2007) and any subsequent purchase order issued by the Licensee for software and/or services from KPMD.
- "*Quotation*" - any quotation or proposal for the supply of Software or Services issued by KPMD.
- "*Services*" - the Services set out in this Software Maintenance and Technical Support Agreement.
- "*Site*" - the location for which the Software may be used, Food and Environmental Proficiency Testing Unit (FEPTU), 61 Colindale Ave, London NW9 5EQ.

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- "*Software*" – EQA Programme Manager software, provided by KPMD, including software in which KPMD has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, including any documentation, modifications, improvements or updates supplied to the Licensee under any Quotation/Order.
- "*Software Licence*" - the Software Licence supplied separately by KPMD.
- "*Licensed Equipment*" – Network server running Microsoft Windows Server. Client PCs running Microsoft Windows 10.

1.2. Incorporation Of Terms

These Terms shall apply to all Software and Services supplied by KPMD under any Order placed by the Licensee. In the event of any ambiguity between these terms and the provisions of the Terms and Conditions of Sale and the Software Licence Agreement, the terms of the relevant Agreement shall apply.

2. TERM

- 2.1. The term will start on 1st March 2023 and end on 29th February 2024.

3. FEES

- 3.1. The Service Fee is currently [REDACTED] plus Vat. This may increase if new functionality is added to the system at the request of the customer.
- 3.2. The Licensee will be invoiced for the Services annually in advance.
- 3.3. Travel and any accommodation expenses for additional services which are not covered by the terms of this Agreement will be charged at KPMD's then current rates.

4. PAYMENT

- 4.1. Without prejudice to the Terms if the Licensee is more than 30 days late in the payment of any sum due to KPMD pursuant to this Agreement or any other Agreement between KPMD and the Licensee KPMD may at its discretion suspend performance under this Agreement or any other related agreements after 10 days from the date of written notice of suspension.
- 4.2. Fees paid in advance, net of any amounts due to KPMD from the Licensee (under any agreements then in force) will be refunded to the Licensee on a pro rata basis in the event that Services provided hereunder are terminated for any reason other than non-payment of the fee.

5. DESCRIPTION OF SUPPORT AND MAINTENANCE SERVICES

- 5.1. Customer Support Services
- 5.1.1. KPMD will provide advice by telephone, letter, fax or e-mail on the use of the Software.
- 5.1.2. KPMD will use all reasonable endeavours to respond to requests for Software application advice within 3 working days.
- 5.2. Software Maintenance Services
- 5.2.1. KPMD will provide Software maintenance, which will be limited to the correction of errors in the Software, procedural documents and other basic information, supplied with the Software.
- 5.2.2. KPMD will periodically provide the Licensee with a report of all significant errors and corrections for the Software covered by this Agreement.
- 5.2.3. Errors discovered by the Licensee must be reported by a designated representative of the Licensee through the reporting mechanisms by KPMD and must include all required supplemental documentation.
- 5.2.4. KPMD will use all reasonable endeavours to respond to the Licensee with an action plan to resolve the problem within 5 working days of an adequately completed Report and production of all required supplemental documentation.
- 5.3. For the avoidance of all doubt Software Maintenance Services shall not include the diagnosis and rectification of any fault arising from:-
- 5.3.1. the improper use, operation or neglect of either the Software or the Licensed Equipment;
- 5.3.2. the modification of the Software or its merger (in whole or in part) with any other software;
- 5.3.3. unless otherwise agreed by KPMD in writing the use of the Software on equipment other than the Licensed Equipment;
- 5.3.4. the failure by the Licensee to use the software as previously advised by KPMD;
- 5.3.5. any repair, adjustment, alteration or modification of the Software by any person other than KPMD without KPMD's prior written consent;
- 5.3.6. any breach by the Licensee of its obligations under this Agreement or the Licence;

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- 5.3.7. the Licensee's failure to install and use on the Licensed Equipment in substitution for the previous release any new release of the Software;
- 5.3.8. the use of the Software for a purpose for which it was not designed; or
- 5.3.9. the failure by the Licensee to implement recommendations in respect of the solutions and faults previously advised by KPMD.
- 5.4. KPMD may on the request of the Licensee provide support notwithstanding that the fault results from any circumstances described in clause 5.3 above or that the support requested is not covered by the terms of this Agreement. KPMD shall in such circumstances be entitled to charge for such service at KPMD's rates from time to time for work undertaken on a time and materials basis or fixed quote at the discretion of KPMD.
- 5.5. Without prejudice to clauses 5.3 and 5.4 above KPMD shall be entitled to levy reasonable charges if support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been unnecessary.
- 5.6. KPMD reserves the right to terminate software support for specified Software products on 60 days notice. In the event that Software support is terminated for one or more of KPMD's Software products covered by this Agreement, this Agreement will automatically terminate as to such Software products and a pro rata proportion of any prepaid charges will be refunded in accordance with the terms of clause 4.2 above.

6. WARRANTY

- 6.1. KPMD warrants to the Licensee that it will perform the Services provided for in this Agreement with reasonable skill and care.
- 6.2. The Licensee shall give notice to KPMD as soon as it is reasonably able and in any event within 7 days on becoming aware of a breach of warranty.
- 6.3. Subject to clause 6.4 below KPMD shall remedy any breach of the warranty set out in clause 6.1 above by the provision of Services free of charge.
- 6.4. KPMD shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clauses 5.3 and 5.4 above.

7. TERMINATION

- 7.1. This Agreement may be terminated on any anniversary of the date of this Agreement by KPMD or the Licensee giving at least 30 days written notice to the other party such notice to take effect no sooner than the first anniversary or any subsequent anniversary of this Agreement.
- 7.2. KPMD may terminate this Agreement if the Licensee fails to comply with the Terms or any related agreement between KPMD and the Licensee.
- 7.3. The Licensee may terminate this Agreement if KPMD fails to comply with the Terms or any related agreement between KPMD and the Licensee provided that KPMD has been given 30 days prior written notice during which KPMD has failed to correct the breach where such breach is capable of remedy.
- 7.4. This Agreement shall be terminated with respect to any particular item of Software on the date any such Software Licence expires or the Licence is terminated for any reason.

8. SOFTWARE LICENCE

- 8.1. The Licensee has been granted a licence by KPMD in the terms of a separate Software Licence to use Software being supported under this Agreement and acknowledges that any replacements, improvements or additions to that Software provided under this Agreement will be subject to the terms and conditions of the Licence.

Website Hosting Agreement

1. GENERAL TERMS

- 1.1 DEFINITIONS - In these Conditions, the following expressions shall have the following meanings:

- **"Additional Items"** means any goods and/ or services that are provided by KPMD in addition to the Services;
- **"KPMD"** means KPMD IT Solutions Limited, whose registered office is at Cooper Buildings, Arundel Street, Sheffield S1 2NS, UK;
- **"Order"** means initial purchase order (project number 104820) following a full EC tender in the Official Journal of the European Union (reference number 187117 – 2007) and any subsequent purchase order issued by the Licensee for software and/or services from KPMD;

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- **"the Customer"** United Kingdom Health Security Agency, whose office is at Nobel House, 17 Smith Square, London SW1P 3HX;
 - **"the due date"** means the start of the annual hosting period 1st March 2023;
 - **"the Services"** means the services or combination of services that the Customer has ordered from KPMD and as set out in the order (or subsequently agreed in other applicable documents which forms part of the Order);
 - **"the standard support hours"** are 8.30 am to 6.00 pm Monday to Friday, except on days which are bank holidays in England;
 - **"Transgression"** shall mean any breach of contract, tort or other act of default, omission or statement of KPMD its employees, agents or subcontractors in respect of which KPMD is liable to the Customer;
 - **"Website"** means the Customer's Results-Data Entry and Reports Website to be hosted by KPMD on the Server as specified in the order (or subsequently agreed in other applicable documents which forms part of the Order).
- 1.2 Terms defined in the order (or subsequently agreed in other applicable documents which form part of the Order) have the same meanings in these terms and conditions.

2. THE SERVICES

- 2.1 KPMD shall provide the Services (being the hosting of the Customer's Website for laboratories participating in the customer's EQA schemes, to enter their results and view reports), to the Customer pursuant to these terms and conditions. No additions or modifications to or terms inconsistent with these terms and conditions shall be binding unless agreed in writing by KPMD. In the event of any inconsistency between these terms and conditions and any other document forming part of the Contract, these terms and conditions shall be paramount unless expressly referred to and varied with the consent of KPMD.
- 2.2 The Customer grants to KPMD for the duration of this Agreement a licence to host the Website on the Server.

3. KPMD OBLIGATIONS

- 3.1 KPMD shall provide the Services to the Customer with reasonable skill and care and in a professional manner. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Contract (whether by statute or otherwise) are hereby expressly excluded.
- 3.2 KPMD shall provide the Customer with a contact service within the standard support hours in order that it may notify KPMD of any interruptions or any other problems with the Service. KPMD shall use all reasonable endeavours to respond to the Customer's notification of interruptions or other problems and to rectify any problems with reasonable diligence.
- 3.3 KPMD shall use all reasonable endeavours to ensure that access to the Website is available at an uptime level of 95%. For the avoidance of doubt the uptime availability level does not include downtime attributable to:
- 3.3.1 hardware or telecommunications failures;
 - 3.3.2 interruptions to the flow of data to or from the internet,
 - 3.3.3 changes, updates or repairs to the network or software which KPMD uses as a platform to provide the Services,
 - 3.3.4 the effects of the failure or interruption of the Services provided by third parties;
 - 3.3.5 factors outside of KPMD's reasonable control;
 - 3.3.6 the Customer's actions or omissions (including without limitation, breach of the Customer's obligations set out in the Contract) or those of any third parties (including but not limited to breaks in the continuity of the electricity supply or of the telecoms link to KPMD's server); and
 - 3.3.7 interruptions to the Services resulting from any request by the Customer.
- 3.4 If the Service is suspended or interrupted KPMD shall use all reasonable endeavours to restore the Service with minimum delay.
- 3.5 If KPMD's order form states that a backup service is included, KPMD will make reasonable efforts to protect and backup data for the Customer, at least once every 24 hours but KPMD will not be liable for any lost, corrupted or destroyed data as a result of any suspension or interruption to the Service as a result of KPMD providing such backup service. KPMD does not guarantee the accuracy or regularity of the backup service. The Customer is also responsible for taking their own backups in connection with the Customer's use of the Services and the Customer is solely responsible for an independent backup of data stored on KPMD's, or any third party providers' server, and network. The retrieving of back up files by KPMD may be charged as an Additional Item.

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- 3.6 KPMD shall provide aggregate Bandwidth of up to 20 GB per Month (burstable) and the hosting fee is based on that Bandwidth. If KPMD becomes aware that the Customer's Website is using Bandwidth in excess of this, then KPMD will alert the Customer and the Customer shall pay an additional fee for such additional use based on KPMD's standard charge for the increased Bandwidth used.
- 3.7 If KPMD is requested to register or renew a domain name on behalf of the Customer, KPMD shall use all reasonable endeavours to do so. However, KPMD accepts no responsibility if, at the time of making the application for the registration or renewal, the domain name is no longer available, or the registration does not complete with the registry, for whatever reason. It is the customer's responsibility to contact KPMD to inform them to renew their domain name and check registrations complete.
- 3.8 If KPMD is requested to submit details of the Customer's Website to any global search engines KPMD shall make the appropriate applications to do so. However, KPMD will not be liable for any delays in the processing of applications or any failure by the search engine to process or accept the application.

4. CUSTOMERS OBLIGATIONS

- 4.1 The Customer undertakes that the Website shall not be used directly or indirectly for any Unlawful purpose and that the Content shall not be Unlawful. For the purpose of this Contract the term **"Unlawful"** means in breach of any law, regulations or codes of practice in force, from time to time, in any jurisdiction and shall include but is not limited to: - 4.1.1 civil and criminal offences of copyright and trademark infringement;
- 4.1.2 transmission or display or posting of abusive, indecent, obscene or pornographic material;
- 4.1.3 commission of any criminal offence (including deliberate transmission of computer viruses) including but not limited to, pursuant to the Computer Misuse Act 1990 or similar legislation in any country;
- 4.1.4 any transmission or display or posting of any material which is defamatory, libellous, offensive, abusive, or menacing character or which causes annoyance, inconvenience or needless anxiety to any other person;
- 4.1.5 transmission or display or posting of any material in breach of the Data Protection Act 1998 (or any replacing statute) dealing with data protection or similar legislation in any other country or of any material which is confidential or is a trade secret;
- 4.1.6 use of the Website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere;
- 4.1.7 the use of the Website for purposes generally deemed to be unacceptable, including spamming, hacking, phreaking, password cracking, pirated software, ROMs, emulators, or IP spoofing or providing "links" or "how to" information to such material;
- 4.1.8 misleading or misrepresentation.
- 4.2 The Customer will indemnify KPMD against all and any losses and costs that KPMD may incur as a result of any breach of Clause 4.1 above.
- 4.3 The Customer will ensure that that the Website complies with the laws, regulations and requirements of any country from which it can be accessed.
- 4.4 If KPMD has reasonable grounds for believing that there has been or that they may be a breach of this Agreement, and in particular a breach of Clause 4.1, KPMD reserves the right to monitor any and all communications passing through the Server in connection with the Service.
- 4.5 If the Website is used for any unlawful use KPMD may suspend or terminate the Services immediately and at the same time as suspension or termination occurs KPMD shall notify the Customer.
- 4.6 The Customer shall comply with KPMD's policies in respect of the Services and which are published at by KPMD.

5. TERM AND PRICE

- 5.1 This Agreement will continue until and unless either party terminates the Agreement by serving one month's written notice on the other party (the **"Term"**).
- 5.2 The Hosting fee for the Services shall be **£0** plus Vat per annum. KPMD reserves the right to increase the Hosting fee after providing the Customer with one month's written notice of the fee's increase.
- 5.3 The Customer shall pay the Hosting fee by the due date.
- 5.4 The standard charge for additional Bandwidth above that agreed shall be **£** per GB per month plus Vat.
- 5.5 KPMD reserves the right to terminate the Contract immediately if the Hosting fee is not received within 7 days of the due date.
- 5.6 Any Additional Items must be paid for within 30 days of the date of the invoice.
- 5.7 If all or part of the price for the Contract or any Additional Items remain unpaid after the due date KPMD shall be entitled to charge interest on any unpaid balance at 4% above HSBC plc lending base rate for the time being, such interest being paid in full together with the unpaid balance.

6. TERMINATION

- 6.1 KPMD shall be entitled to terminate the Contract forthwith and recover all losses or damage resulting to KPMD (including but without limitation to loss of profit or other consequential loss) if:
- 6.1.1 the Customer has a bankruptcy petition presented against him, or a bankruptcy order is made, if the Customer makes or seeks to make any composition or arrangement with his or its creditors, if the Customer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order, if an encumbrancer takes

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possession of any of the Customer's assets, or any of the Customer's assets are taken in execution or process of law, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for an administration order to be made in relation to the Customer, or if a receiver or administrative receiver is appointed over any of the Customer's assets (or any analogous event occurs to the Customer in its jurisdiction); or

6.1.2 the Customer fails to make any payment owed to KPMD on the due date as specified in Clause 5; or

6.1.3 the Customer is in breach of any contract with KPMD (including this Contract) and fails to remedy the same within seven working days of written notice requiring the same or immediately if the breach shall be not be capable of remedy.

6.2 Termination shall be without prejudice to the rights of any party accrued at the date of such termination.

6.3 Upon termination the Website shall be deleted from the Server, unless agreed otherwise by the parties.

7. INTELLECTUAL PROPERTY

7.1 Copyright in all software that is supplied by KPMD remains the property of KPMD or that of its licensor.

7.2 The Customer shall indemnify and keep KPMD indemnified from and against the consequences of KPMD suffering any claims of infringements of copyrights, patents, trademarks, industrial designs or other property rights arising from the provision of the Services.

7.3 In the event that any such infringement occurs or may occur, the Customer may request KPMD to modify and / or amend the Website or infringing part thereof so that the same becomes non-infringing and if KPMD agrees to modify and / or amend the Website KPMD shall be entitled to charge for the additional cost for making the modifications and /or amendments which shall be chargeable at KPMD's then current hourly rate.

7.4 The Customer warrants that it has obtained (and for future use, will obtain) all necessary consents, approvals and licences from any third party who has intellectual property rights incorporated as part of the Website, whether now or in the future.

8. PERFORMANCE AND FORCE MAJEURE

8.1 KPMD shall take all reasonable steps to perform its obligations under the Contract. KPMD shall not be liable for suspension or interruptions to the Service which shall not entitle the Customer to rescind the Contract.

8.2 Without prejudice to the generality of Clause 8.1, KPMD shall have no liability for any delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of computer hardware, software or parts thereof, telecoms connections or power supply or any other cause or causes beyond KPMD's reasonable control.

8.3 KPMD does not guarantee that the Customer or any third parties will be able to access the Website at any particular time. KPMD does not warrant that the Services will be uninterrupted (including but not limited to due to hackers), error, bug or virus free, but will use reasonable endeavours to maintain an uninterrupted Service during core working hours (being 08.30 to 18.30, on a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business). The Customer acknowledges that the need for routine maintenance and error correction may result in down time and that KPMD cannot control the timing or volume of attempts to access KPMD's server.

9. EXEMPTIONS AND EXCLUSIONS

9.1 KPMD shall not be liable to the Customer for any loss, injury or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, or the Services except as specified in Clause 9.3 or to the extent to which it is otherwise unlawful to exclude such liability.

9.2 Notwithstanding the generality of 9.1 above, KPMD expressly excludes liability for consequential loss, indirect damages, or corruption to other software or data, or for loss of profit, business, revenue, goodwill or anticipated savings.

9.3 KPMD accepts liability for death or personal injury to the extent that it results from the negligence of KPMD, its agents or its employees or authorised representatives.

9.4 To the extent that KPMD is held legally liable to the Customer for any single Transgression, KPMD's liability for the same shall not exceed the value of the Contract.

A number of Transgressions whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression.

10. NON-SOLICITATION OF STAFF

10.1 The Customer undertakes that it shall not during this Agreement and for a period of one-year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by KPMD in connection with the Contract.

11. WAIVER

11.1 Failure or neglect by KPMD to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of KPMD's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice KPMD's rights to take subsequent action.

12. NOTICES

12.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post or by facsimile or e-mail addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting or 12 hours after the time of transmission if by facsimile or e-mail.

Reference no:	UKHSA
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13.

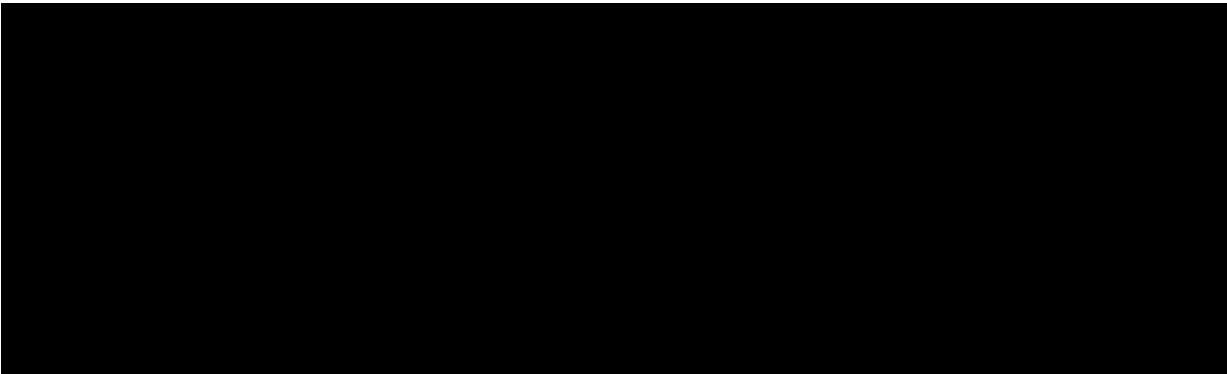
LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT
- 13.1

The Contract shall be governed in all respects by English Law and shall be subject to the jurisdiction of the English Courts.
The text of this Contract and these terms and conditions written in the English language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.
- 13.2

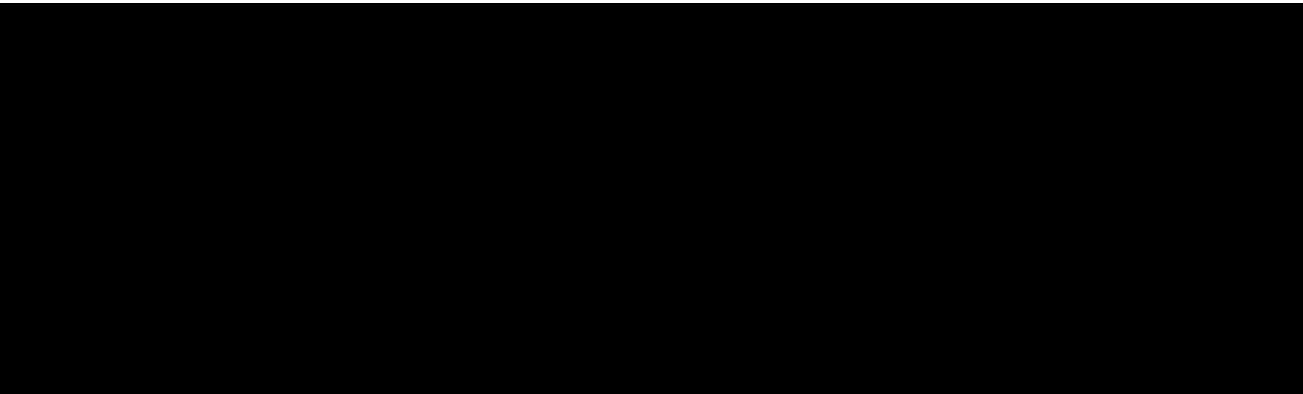
Save for statement or representations confirmed in writing in this Contract, no oral statements of whatsoever nature and by whomsoever made shall form part of the Contract. In contracting with KPMD the Customer acknowledges that he has not relied on any oral statements or representations made to him save those confirmed as aforesaid.
- 13.3

Clause headings are for convenience only and do not affect the construction of this document.

Total cost for Software Maintenance/Technical Support and Website Hosting is £22,128 (ex VAT).
Made up



Date Signed: 20/02/2023



Date Signed: 24/01/2023