

FOUNDATION FOR GENOMICS & POPULATION HEALTH TRADING AS “PHG FOUNDATION” – TERMS AND CONDITIONS FOR THE SUPPLY OF OUR SERVICES

Your attention is particularly drawn to the provisions of clause 9 (Limitation of liability).

1. About us

- 1.1 **Company details.** Foundation for Genomics & Population Health (company number 05823194), trading as “PHG Foundation” (**we** and **us**) is a company registered in England and Wales and our registered office is at 2 Worts Causeway, Cambridge, Cambs, CB1 8RN.
- 1.2 **Contacting us.** To contact us, telephone our team on 01223 761900 or email us at finance@phgfoundation.org. How to give us formal notice of any matter under the Contract is set out in clause 14.2.

2. Our contract with you

- 2.1 **Our contract.** These terms and conditions (**Terms**) and the statement of work (**Statement of Work**) apply to the supply of Services by us to the client named in the Statement of Work (**you**) (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 Words defined in the Statement of Work shall have the same meaning in these Terms, unless otherwise defined.
- 2.3 **Entire agreement.** The Contract is the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances and understandings between you and us, whether written or oral, relating to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

3. Statement of Work and its acceptance

- 3.1 **Statement of Work.** We shall produce a Statement of Work detailing the services that we are to provide, the timetable for performance, our charges and any other specific terms for such services that we have agreed. Please check the Statement of Work to ensure that the terms of the Statement of Work are complete and accurate.
- 3.2 **Acceptance.** The Contract shall only come into force once you have returned the signed Statement of Work to us and we have also signed. After we have issued you with a Statement of Work signed by both parties, the Contract shall become binding on both parties. We shall provide the Services from the date specified in the relevant Statement of Work.
- 3.3 No variation of the Statement of Work shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 3.4 The Statement of Work shall be part of this Contract and shall not form a separate contract between us.
- 3.5 Any descriptions of services, illustrations or similar on our website or otherwise made available by us are provided or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of this Contract nor have any contractual force.

4. Our obligations

- 4.1 We shall:

- 4.1.1 provide the Services using reasonable care and skill and in accordance with any specification set out in the Statement of Work;
 - 4.1.2 use reasonable endeavours to meet any performance dates specified in the Statement of Work, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract;
 - 4.1.3 on request provide progress reports and such information as the Client reasonably requires in relation to the Services; and
 - 4.1.4 comply with any additional responsibilities on our part as set out in the relevant Statement of Work.
- 4.2 We may use artificial intelligence (**AI**) tools to provide our services, for example, to produce a summary of our report to you.

5. Your obligations

- 5.1 You shall:
- 5.1.1 ensure that the terms of the Statement of Work are correct;
 - 5.1.2 co-operate with us in all matters relating to the Services;
 - 5.1.3 provide us, in a timely manner, with all information and materials as we may reasonably require to provide the Services and ensure that they are accurate and complete in all material respects;
 - 5.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - 5.1.5 comply with all applicable laws.
- 5.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 5.1 (**Your Default**):
- 5.2.1 we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract under clause 11 (Termination);
 - 5.2.2 we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
 - 5.2.3 it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

6. Charges and payment

- 6.1 In consideration of us providing the Services you must pay our charges (**Charges**) in accordance with this clause 6.
- 6.2 If you wish to change the scope of the Services after the date of the Statement of Work, and we agree to such change, we will modify the Charges accordingly.
- 6.3 Our Charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Charges.

- 6.4 Subject to any payment terms as are specified in the Statement of Work, we shall invoice you for half of our Charges on you and us entering into the Statement of Work and shall invoice you for the remaining balance on completion of the Services.
- 6.5 You shall pay each invoice submitted to you by us within 30 days of the invoice date to a bank account nominated in writing by us.
- 6.6 Without prejudice to any other right or remedy that we may have, if you fail to pay any sum due to us under the Contract by the due date:
- 6.6.1 you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment as well as debt recovery costs incurred by us. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 6.6.2 we may suspend all or part of the Services until payment has been made in full.
- 6.7 You shall pay all amounts due under the Contract to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Intellectual property rights

- 7.1 In this clause, the following definitions apply:

"Background Intellectual Property Rights" any Intellectual Property Rights, other than the Foreground Intellectual Property Rights, that are used in the course of, or in connection with the provision of the Services, including any Intellectual Property Rights in the Client Materials and the Supplier Materials.

"Client Materials" all documents, information, items and materials in any form, whether owned by you or a third party, which are provided by you to us in connection with the Services.

"Foreground Intellectual Property Rights" any Intellectual Property Rights in the Deliverables that arise or are developed by us specifically for you in the course of our provision of the Services, but excluding all Intellectual Property Rights in our tools and know-how used to prepare the Deliverables and excluding our Background Intellectual Property Rights.

"Intellectual Property Rights" shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Supplier Materials" all documents, information, items and materials in any form, whether owned by us or a third party, which are used by us in connection with the Services, including any tools and know-how used to prepare the Deliverables.

- 7.2 In relation to the Client Materials, you:

- 7.2.1 and your licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
- 7.2.2 grant to us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this Contract for the purpose of providing the Services to you.

- 7.3 In relation to the Deliverables:
- 7.3.1 we shall, to the extent we are lawfully able to do so, assign any Foreground Intellectual Property Rights that arise in any of the Deliverables to you with full title guarantee; and
 - 7.3.2 you shall grant to us a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy, modify and make full use of the Foreground Intellectual Property Rights that arise in any of the Deliverables for the purpose of providing our services.
- 7.4 In relation to the Supplier Materials and all our Background Intellectual Property Rights contained in the Deliverables, we:
- 7.4.1 and our licensors shall retain ownership of all Intellectual Property Rights in the Supplier Materials; and
 - 7.4.2 grant to you a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Supplier Materials as necessary to allow you to use the Services and Deliverables in your business.
- 7.5 We:
- 7.5.1 warrant that the receipt and use of the Services and the Deliverables by you shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - 7.5.2 shall not be liable for use of the Deliverables for any purpose other than that for which they were prepared and/or provided;
 - 7.5.3 shall not be in breach of the warranty at clause 7.5.1 to the extent the infringement arises from:
 - (a) the use of Client Materials in the development of, or the inclusion of Client Materials in, the Services or any Deliverable;
 - (b) any modification of the Services or any Deliverable, other than by us or on our behalf; and
 - (c) our compliance with your specifications or instructions.
- 7.6 You warrant that the receipt and use in the performance of this Contract by us, our agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 7.7 This clause 7 shall survive termination or expiry of the Contract.
- 8. Data protection**
- 8.1 We will use any personal information you provide to us to:
- 8.1.1 provide the Services; and
 - 8.1.2 process your payment for the Services.
- 8.2 We will process your personal information in accordance with our privacy policy, a copy of which is available at <https://www.phgfoundation.org/privacy-policy/>. The terms of our privacy policy are incorporated into this Contract.
- 8.3 You shall ensure that you have all necessary consents, notices and lawful bases in place to transfer any personal information to us during the Contract.

9. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 Whilst we use reasonable endeavours to include accurate and up to date information, we make no representations or warranties, express or implied, as to the accuracy or completeness of the Services or Deliverables. The Services and Deliverables may contain forward-looking information. Such information may be subject to significant uncertainties, including scientific, economic and financial factors.
- 9.2 In providing the Services and Deliverables under the Contract, we shall act merely in an advisory capacity and shall not, to the fullest extent permitted by law, be liable in any manner for any loss or damage (whether direct, indirect or consequential and whether economic or other) resulting from the implementation of or reliance on any actual or alleged advice or assistance provided by us in the performance of the Services.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 9.3.1 death or personal injury caused by negligence;
 - 9.3.2 fraud or fraudulent misrepresentation; and
 - 9.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.4 Subject to clause 9.3, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 9.4.1 loss of profits (including loss of anticipated savings);
 - 9.4.2 loss of business or business opportunity;
 - 9.4.3 loss of agreements or contracts;
 - 9.4.4 loss of use or corruption of software, data or information;
 - 9.4.5 loss of or damage to goodwill; and
 - 9.4.6 any indirect or consequential loss.
- 9.5 Subject to clause 9.3, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the total Charges paid under the Contract and the relevant Statement of Work.
- 9.6 Subject to clause 9.3, all conditions, warranties, representations or other terms that might otherwise be implied into this agreement by statute, common law or otherwise are excluded from the Contract.
- 9.7 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.8 We have obtained insurance cover in respect of our own legal liability. The limits and exclusions in this clause reflect the insurance cover we have been able to arrange and you are responsible for making your own arrangements for the insurance of any excess loss.
- 9.9 This clause 9 will survive termination of the Contract.

10. Confidentiality

- 10.1 We each undertake that we will not at any time during the Contract, and for a period of five years after the date of the Contract, disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 10.2.
- 10.2 We each may disclose the other's confidential information:
- 10.2.1 to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 10; and
 - 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

11. Termination, consequences of termination and survival

11.1 Termination

- 11.1.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving six weeks' notice in writing to the other party.
- 11.1.2 Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so;
 - (b) you fail to pay any amount due under the Contract on the due date for payment;
 - (c) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
 - (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

11.2 Consequences of termination

- 11.2.1 On termination of the Contract for whatever reason, you shall immediately pay to us all of our outstanding unpaid invoices and interest and, where no invoice has been

submitted for Services supplied, we may submit an invoice, which shall be payable immediately on receipt.

11.2.2 If we terminate the Contract without reason by giving you notice under clause 11.1.1, we will refund the price you have paid, less the charges reasonably and actually incurred by us in performing the Services up to the date of termination. If the Contract is terminated for any other reason by you or us, we shall not refund any sums you have already paid.

11.2.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

11.2.4 Termination of the Contract will not affect your or our rights, remedies, obligations or liabilities that have accrued up to the date of termination.

12. Events outside our control

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).

12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:

12.2.1 we will contact you as soon as reasonably possible to notify you; and

12.2.2 our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.

12.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel we will refund the price you have paid, less the charges reasonably and actually incurred by us in performing the Services up to the date of the occurrence of the Event Outside Our Control.

13. Non-solicitation

You must not attempt to procure services that are competitive with the Services from any of our directors, employees or consultants, whether as an employee or on a freelance basis, during the period that we are providing the Services to you and for a period of six months following termination of the Contract or on our completion of the Services (if earlier).

14. Communications between us

14.1 When we refer to "in writing" in these Terms, this includes email.

14.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.

14.3 A notice or other communication is deemed to have been received:

14.3.1 if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;

14.3.2 if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second working day after posting; or

- 14.3.3 if sent by email, at 10.00 am the next working day after transmission.
- 14.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 14.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.
- 15. General**
- 15.1 **The terms of the Statement of Work take precedence.** If there is an inconsistency between any of the provisions of these Terms and the provisions of a Statement of Work, the provisions of the Statement of Work shall prevail.
- 15.2 **Assignment and transfer.** Neither party shall assign, novate, transfer, subcontract, delegate or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party.
- 15.3 **Variation.** Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).
- 15.4 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.
- 15.5 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 15.6 **Third party rights.** The Contract is between you and us. No other person has any rights to enforce any of its terms.
- 15.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.