

# PERPETUAL LICENCE - TERMS & CONDITIONS

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## ARTICLE 1 DEFINITIONS & INTERPRETATION

### 1.1 Definitions.

In these Terms & Conditions:

- (a) “**Additional Services**” are defined in Section 4.7 [Additional Services];
- (b) “**Claims**” means any and all losses, liabilities, suits, actions, causes of actions, judicial or administrative proceedings, claims, demands, damages, penalties, fines, costs and expenses of whatsoever kind or character (including but not limited to all costs and fees for investigation and defence);
- (c) “**Default**” is defined in Section 14.1(a);
- (d) “**Documentation**” means:
  - (i) the online installation and configuration documentation;
  - (ii) the online user and administrator documents and videos;
  - (iii) the application-based context-sensitive help; and
  - (iv) the release notes,for the Software;
- (e) “**Error**” means a failure of the Software to conform in any material respect to the then-current Software Specifications. Error does not include a failure arising from Customer’s misuse, improper use, alteration, or damage to the Software, or Customer’s combining or merging the Software with any hardware or software not supplied by GenoLogics or identified by GenoLogics in writing as

compatible;

- (f) “**GenoLogics**” means GenoLogics Life Sciences Software Inc.;
- (g) “**Installation Date**” means the date on which GenoLogics completes the first installation of the Software at the Site for Production;
- (h) “**Intellectual Property**” means any and all:
  - (i) proprietary rights provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law, or any other applicable statutory provision or otherwise arising at law or in equity anywhere in the world, including, without limitation, trade secret law, that may provide a right in works, hardware, software, source code, object code, marks, ideas, formulae, algorithms, concepts, methodologies, techniques, inventions, or know-how, or the expression or use of them;
  - (ii) applications, registrations, licences, sublicences, agreements, or any other evidence of a right in any of the items specified in (i);
  - (iii) claims to moral rights; and
  - (iv) past, present, and future Claims, rights of recovery, royalties or other relief relating, referring, or pertaining to any of the items specified in (i), (ii) or (iii);
- (i) “**Licence**” is defined in Section 5.1 [Licence];
- (j) “**Licence Fee**” means the fee set out in the Quote for the grant of the Licence and the provision of Maintenance & Support for the Maintenance & Support Term;
- (k) “**Maintenance & Support**” is defined in Section 4.3 [Maintenance & Support];
- (l) “**Maintenance & Support Term**” means the period starting on the Installation Date and ending the number of months specified in the Quote later;
- (m) “**Major Release**” means a version of the Software that includes significant function and feature enhancements. A Major Release incorporates all prior Releases. A Major Release is identified by an increase in the major number of the version accompanied by the minor number being reset to zero (for example 8.8 to 9.0);
- (n) “**Minor Release**” means a version of the Software that includes updates, modifications, or corrections to the Software. Minor Release incorporates all prior Releases. Minor Releases are identified by an increase in the second set of digits of the version (for example 8.1.0 to 8.2.0);
- (o) “**Non-Production**” means Customer’s use of the Software for validation, workflow development and training purposes only and not for any commercial purpose;
- (p) “**Party**” means Customer or GenoLogics, as the context requires, and “**Parties**” means both Customer and GenoLogics;
- (q) “**Patch**” means a modification or addition to the Software by GenoLogics that corrects an Error. Patches are identified by an increase in the third set of digits of the version (for example 8.1.1 to 8.1.2);
- (r) “**Payment Terms**” means the payment terms set out in the Quote;
- (s) “**Production**” means the day-to-day use of the Software by Customer;
- (t) “**Quote**” means the quote that references these Terms & Conditions;
- (u) “**Releases**” means Major Releases, Minor Releases and Patches;
- (v) “**Site**” means the location, specified in the Quote at which the Software will be installed, and from which Customer will use the Software;
- (w) “**Software**” means:
  - (i) the GenoLogics proprietary software programs listed in the Quote;
  - (ii) all Releases;

- (iii) the third party software incorporated in GenoLogics' proprietary software;
  - (iv) the Documentation; and
  - (v) any modifications to, extracts from, derivative works of, or collective works including, any of the items described in (i), (ii), (iii) and (iv);
- (x) “**Software Specifications**” means the specifications for the Software that are effective as of the date of the Quote;
- (y) “**Terms & Conditions**” means these Perpetual Licence - Terms & Conditions and any signed written amendment to them; and
- (z) “**Warranty Period**” means the sixty (60) day period starting on the Installation Date.

## **1.2 Entire Agreement & Priority of Documents.**

The entire agreement between GenoLogics and Customer for the provision of the Software, the installation, integration and training, and the Subscription Services comprises the following documents, in descending order of precedence:

- (a) any written amendment to these Terms & Conditions signed by the Parties;
- (b) these Terms & Conditions; and
- (c) the Quote,

and if there is a conflict or inconsistency between the provisions of any of these documents, the provision in the higher ranked document shall be determinative to the extent of the conflict or inconsistency. The foregoing documents override any conflicting, amending or additional provisions in any Customer purchase order or other Customer document, all of which are rejected and are null and void.

## **1.3 Costs, Expenses and Risk.**

Except as expressly stated, each Party is solely responsible for all cost, expense and risk incurred by it and by any of its personnel, employees and agents in connection with the performance of its obligations.

## **1.4 Reasonable Efforts.**

Neither Party shall be liable to make more than a reasonable commercial effort to perform its obligations.

## **1.5 Headings.**

Headings have been inserted in these provisions for convenience of reference only and shall not affect their construction.

## **ARTICLE 2 CUSTOMER ACTIVITIES.**

### **2.1 Infrastructure.**

Customer shall ensure that the necessary Customer infrastructure, as set out in the Technical Requirements section of the Software Specifications, is in place so that GenoLogics can perform its obligations.

## **ARTICLE 3 INSTALLATION, TRAINING & INTEGRATION**

### **3.1 Software Installation.**

GenoLogics shall install the Software at the Site remotely.

### **3.2 Training & Integration.**

GenoLogics shall perform the integration, if any, and the training specified in the Quote.

## ARTICLE 4 MAINTENANCE & SUPPORT

### 4.1 Contact Point

During the Term:

- (a) GenoLogics shall maintain, and keep Customer advised of, a contact point (the “**Contact Point**”) for Error reporting.
- (b) Customer shall promptly notify GenoLogics, at the Contact Point, of all Errors that it wishes GenoLogics to address.

### 4.2 Definitions.

- (a) “**Business Hours**” means:
  - (i) if, as specified in the Quote, Customer has purchased Standard Support:
    - (1) if the Site is located in Canada, the USA, Mexico, Central or South America: 8:00 am to 5:00 pm Pacific, Monday to Friday, excluding statutory holidays in Canada; or
    - (2) if the Site is located anywhere else: 8:00 am to 5:00 pm GMT, Monday to Friday, excluding statutory holidays in England & Wales;
  - (ii) if, as specified in the Quote, Customer has purchased Extended Support: 8:00 am GMT to 5:00 pm Pacific, Monday to Friday, excluding statutory holidays in England & Wales and excluding statutory holidays in Canada.
- (b) “**Important Problem**” means an Error which materially affects Production but for which a work-around exists such that the Production can substantially continue; and
- (c) “**Stopper**” means a severe Error in the Software that causes the Software to fail or to substantially cease Production and for which no workaround exists and work cannot continue.

### 4.3 Maintenance & Support.

During the Term, GenoLogics shall provide maintenance and support for the Software (the “**Maintenance & Support**”) as follows:

- (a) *Releases.*
  - (i) GenoLogics shall provide Customer with all Releases that GenoLogics makes available to its customers and does not separately price or market.
  - (ii) GenoLogics shall install all Releases in Customer's Production environment.
  - (iii) Customer shall be solely responsible for installing Releases in Customer's Non-Production environment.
- (b) *Error Corrections.*
  - (i) Severity 1: Stopper.
    - (1) During Business Hours, GenoLogics shall acknowledge a Stopper within two (2) hours of it being reported to the Contact Point.
    - (2) Outside Business Hours, GenoLogics shall acknowledge a Stopper that is reported to the Contact Point within two (2) hours of the commencement of the next working day.
    - (3) GenoLogics shall commence resolution of the Stopper within one (1) hour of acknowledgement, and shall continue until the “Stopper” is resolved or GenoLogics provides a work-around. Where reasonably necessary and commercially reasonable, GenoLogics may work outside of Business Hours to resolve the Stopper.
  - (ii) Severity 2: Important Problem.  
GenoLogics shall, during Business Hours:

- (1) acknowledge an Important Problem within two (2) hours of the Important Problem being reported to the Contact Point;
  - (2) commence resolution of the Important Problem within four (4) hours of such acknowledgement; and
  - (3) shall use commercially reasonable efforts until the Important Problem is resolved.
- (iii) Severity 3: Low.

All problems that are not Stoppers or Important Problems, including without limitation Errors in the Non-Production environment, minor Errors that do not materially affect Production, and Documentation correction requests, are “Low”. GenoLogics shall log Low problems and use commercially reasonable efforts to correct Low problems during Business Hours, but does not guarantee response or resolution time.

#### **4.4 Standard of Maintenance & Support.**

In providing the Maintenance & Support, GenoLogics shall:

- (a) use reasonable commercial efforts to minimize disruption to Customer’s activities;
- (b) be deemed to have commenced resolution of an Error when it logs in the reported Error and commits personnel and resources to correct, or work around, the Error;
- (c) use commercially reasonable efforts to respond to and correct verifiable and reproducible Errors when reported to GenoLogics;
- (d) not be liable to provide Maintenance & Support for Errors that Customer does not report to the Contact Point; and
- (e) once it has provided Customer with a Patch, include the Patch in the next Minor Update.

#### **4.5 Limitations on Maintenance & Support.**

GenoLogics:

- (a) shall support and maintain only the current Major Release and the immediately previous Major Release;
- (b) may change the API from time to time, but shall continue to support the previous version of any API changed, discontinued or deprecated for twelve (12) months after the change, discontinuation, or deprecation;
- (c) may, with prior written notice to Customer, cease Maintenance & Support, and may vary or charge additional fees for Maintenance & Support, for Releases older than the current Major Release and immediately previous Major Release; and
- (d) shall not be liable to provide Maintenance & Support for any software other than the Software.

#### **4.6 Backups.**

Customer is responsible for all back-ups of, including but not limited to, projects, sample meta-data, configuration, custom scripts and uploaded content.

#### **4.7 Additional Services.**

During the Term, in addition to the installation, integration and training activities associated with the first installation of the Software, as set out in the Quote, GenoLogics shall, if the Parties agree in writing, subject to the payment of applicable fees, provide installation of Software (other than the first installation of the Software), education, consulting or other professional services (collectively the “**Additional Services**”).

## ARTICLE 5 LICENCE

### 5.1 License.

- (a) Subject to these Terms & Conditions, GenoLogics grants to Customer, as of the Installation Date, a non-exclusive, non-transferable, limited, perpetual license (the “**Licence**”) to:
  - (i) use the executable (object) code form of the Software to the maximum number of operating copies and named users, and at the Site in a Production environment, specified in the Quote;
  - (ii) make and use one (1) copy of the executable (object) code form of the Software in a Non-Production environment only; and
  - (iii) make one (1) copy of the executable (object) code form of the Software for back-up purposes, to be used only if the Production copy of the Software is lost, corrupted or destroyed, in which case Customer may make one (1) additional copy to replace the back-up copy.
- (b) Customer acknowledges that it is not licensed:
  - (i) to use the Software on any additional processor or equipment; or
  - (ii) to use the Software for the business of any other entity other than Customer, and any such additional use shall require an additional license from GenoLogics.
  - (iii) to use the source code version of the Software.
  - (iv) to transfer the Software from the Site to another location without the prior written consent of GenoLogics, which shall not be unreasonably withheld, conditioned, or delayed.

### 5.2 Notices.

Customer shall not obliterate, alter or remove any proprietary or Intellectual Property notices from the Software and shall reproduce on any copies of the Software that Customer is authorized to make, all notices as they appear on the Software being copied.

### 5.3 Licence Restrictions.

Customer shall not copy, except as permitted by Paragraph 5.1(a), adapt, transcribe, merge, reverse engineer, reverse assemble, reverse compile, sublicense, distribute, market, rent, lease, transfer or otherwise dispose of, or use as part of a service bureau, any part of the Software.

### 5.4 Intellectual Property in the Software.

Customer acknowledges that except for the limited Licence granted under Section 5.1 [Licence]:

- (a) it acquires no right, title or interest in or to the Intellectual Property in the Software; and
- (b) all proprietary and Intellectual Property rights, title and interest including copyright in and to the original and all copies of the Software shall be and remain that of GenoLogics and third party licensors.

### 5.5 Ownership of Improvements.

- (a) *Creation of Improvements.* Immediately upon creation, Customer expressly and irrevocably assigns to GenoLogics all right, title and interest in and to all Intellectual Property in and to all improvements to the Software that Customer conceives (collectively the “**Improvements**”). For greater certainty, Improvements do not include scripts developed by, or on behalf of, Customer using the Software’s APIs.
- (b) *Disclosure of Improvements.* Customer shall promptly disclose to GenoLogics all Improvements during the Term.
- (c) *Assistance in Recordation.* Customer shall, at GenoLogics’ expense, provide reasonable

commercial assistance, including the execution of documents, as is necessary for GenoLogics to evidence its sole Intellectual Property in and to all of the Improvements.

#### **5.6 Ownership of Scripts and Customer Data.**

GenoLogics acknowledges that it acquires no right, title or interest in and to any Intellectual Property in or to any of the scripts developed by, or on behalf of, Customer using the Software's APIs, or in or to any of Customer's data that is stored, or accessed by, the Software.

### **ARTICLE 6 FEES & PAYMENT**

#### **6.1 Invoices.**

GenoLogics shall issue an invoice to Customer for each amount due.

#### **6.2 Fees & Taxes.**

During the Term, Customer shall:

- (a) pay GenoLogics:
  - (i) the Subscription Fees;
  - (ii) the installation, integration and training fees set out in the Quote;
  - (iii) the fee agreed by the Parties for Additional Services, if any;
  - (iv) the travel expenses agreed by the Parties; and
  - (v) all taxes (including sales, use, property, excise, value added and gross receipts but not including taxes based on GenoLogics' income), import duties and fees and charges of any kind levied or imposed by any federal, provincial, state or local governmental entity in connection with the foregoing items;
- (b) make all payments not in good faith dispute net thirty days (N/30) of the date of the invoice in the currency specified in the Quote;
- (c) where payment is made by wire or other electronic funds transfer, be solely responsible for any bank or other fees charged, and will reimburse GenoLogics for any such fees; and
- (d) promptly notify GenoLogics in writing of any amounts in dispute.

#### **6.3 Arrears.**

If Customer fails to pay any amount not in good faith dispute when due, GenoLogics may, without prejudice to any other remedy, stop or suspend its performance on written notice to Customer, alter payment terms, and charge interest on all overdue amounts at the rate of one percent (1.0%) per month compounded monthly (12.68% per year), or if less, the maximum rate allowed by law. Upon demand, Customer shall pay all such interest charges and all reasonable collection fees, including reasonable legal expenses.

#### **6.4 Audit.**

While Customer has the Software under its care or control, Customer shall, every twelve (12) months, permit GenoLogics and its representatives and agents to conduct an annual audit of Customer's relevant records and computer systems in order to verify Customer's compliance with the Terms & Conditions. Such audits shall be conducted, during Customer's normal working hours with reasonable advance notice, at Customer's place of business and where the Software licensed to Customer is, or was, located. GenoLogics shall pay for the cost of the audit unless GenoLogics reasonably determines from the audit that Customer has materially breached the Terms & Conditions, in which case Customer shall pay the cost of the audit and all additional amounts owed to GenoLogics as determined by the audit. For greater certainty, a material breach of the Terms & Conditions includes, but is not limited to:

- (a) Customer's use of more than the authorized number of operating copies of the Software; or

- (b) Customer exceeding the authorized maximum number of named users for the Software, by more than ten percent (10%).

## **ARTICLE 7 WARRANTIES**

### **7.1 Software Warranty.**

GenoLogics warrants that:

- (a) the Software shall perform in all material respects in accordance with the Software Specifications;
- (b) the Software does not contain any virus, worm, virus macro, Trojan horse, or other component designed to permit unauthorized access, disable, erase, or otherwise harm the Software, or any element of it;
- (c) the Software does not contain any Spy-ware (“Spy-ware” means any software that covertly gathers user information through Customer’s Internet connection without Customer’s knowledge, or which monitors Customer’s use of the Software, unless requested and authorized in writing by Customer for support purposes). For greater certainty, “Spyware” does not include the analytics platform that GenoLogics uses to provide anonymous aggregated data about, or related to, Customer’s usage of the Software;
- (d) it has the right to license to Customer all Intellectual Property in and to the Software; and
- (e) it is not aware of any claims by third parties that the Software, or any part of it, infringes the Intellectual Property rights of those third parties as of the Installation Date,

### **7.2 Services Warranty.**

GenoLogics warrants that the installation, integration, training and Maintenance & Support shall be performed by persons who have the qualifications, knowledge, skill and ability to perform these activities.

### **7.3 Warranty Period Remedy.**

GenoLogics warrants that during the Warranty Period, it shall promptly remedy any failure to meet the warranties set out in Section 7.1 [Software Warranties], and if it is unable to do so to the satisfaction of Customer, acting reasonably, within ninety (90) days of the end of the Warranty Period, Customer may return to GenoLogics, or certify the destruction of, all copies of the Software, following which GenoLogics shall promptly refund to Customer the full amount of the Licence Fee.

### **7.4 Post Warranty Period Remedy.**

GenoLogics warrants that, after the Warranty Period, if the Software fails to meet the warranties set out in Section 7.1 [Software Warranties], GenoLogics shall remedy such failure in accordance with ARTICLE 4 [Maintenance & Support].

### **7.5 WARRANTY EXCLUSIONS.**

THE WARRANTIES SET OUT IN SECTIONS 7.1 [SOFTWARE WARRANTIES], 7.2 [SERVICES WARRANTY], 7.3 [WARRANTY PERIOD REMEDY], AND 7.4 [POST WARRANTY PERIOD REMEDY] ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE FOREGOING, GENOLOGICS DOES NOT WARRANT THAT SOFTWARE SHALL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF SOFTWARE SHALL BE FREE FROM INTERRUPTION OR ERRORS.

### **7.6 WARRANTY RESTRICTIONS.**

GENOLOGICS SHALL HAVE NO OBLIGATION TO REPAIR OR REPLACE SOFTWARE



DAMAGED BY ACCIDENT OR OTHER EXTERNAL CAUSE, OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN GENOLOGICS.

## **ARTICLE 8    INFRINGEMENT INDEMNIFICATION**

### **8.1    Infringement Indemnification.**

If any part of the Software becomes the subject of a Claim of infringement of any third party Intellectual Property or if GenoLogics or Customer determines that such a Claim is likely or imminent, GenoLogics shall:

- (a) procure for Customer the right to continue using the Software;
- (b) rework the Software to make it non-infringing; or
- (c) substitute other software or documentation, as applicable, of similar capability within a commercially reasonable period;

but if none of the above options are available on a basis that GenoLogics finds commercially reasonable, GenoLogics shall notify Customer that it is terminating the agreement between the Parties, in which case:

- (d) Customer shall return to GenoLogics, or certify the destruction of, all copies of the Software;
- (e) GenoLogics shall refund to Customer the total amount of pre-paid Licence Fees applicable to the remainder of the Term; and
- (f) subject to Section 8.2 [Qualifications] and ARTICLE 10 [Limitations of Liability], GenoLogics shall defend or settle the Claim and shall pay all damages and costs finally awarded against Customer after all appeals, and any and all costs reasonably and directly incurred by Customer.

### **8.2    Qualifications.**

GenoLogics' obligations under Section 8.1 [Infringement Indemnification] are subject to Customer's strict compliance with all of the following:

- (a) Customer must give GenoLogics prompt written notice of the Claim, access to all Customer information reasonably necessary to defend or settle the Claim, and complete authority to defend, negotiate and settle the Claim, provided the settlement does not impose liability on Customer;
- (b) Customer must not settle or compromise the Claim without GenoLogics' written consent; and
- (c) the Claim must not be based on:
  - (i) Customer's use of the Software other than in accordance with the provisions of the Terms & Conditions;
  - (ii) Customer's use of an altered version of the Software, unless the alteration was by GenoLogics;
  - (iii) Customer's use of a version of the Software other than the current Release and the immediately preceding Release, provided GenoLogics has made a current version available to Customer; or
  - (iv) the use of the Software in combination with hardware or software not provided by GenoLogics or approved in writing by GenoLogics.

### **8.3    Entire Liability for Infringement of Intellectual Property.**

THIS ARTICLE 8 STATES THE ENTIRE OBLIGATIONS OF GENOLOGICS AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

## ARTICLE 9 CONFIDENTIALITY

### 9.1 Definitions.

- (a) “**Confidential Information**” means any information that has been created, discovered, or developed by or for a Disclosing Party, or that has been made known to Disclosing Party. Confidential Information of GenoLogics includes, but is not limited to, the Software. To be protected, Confidential Information that is disclosed:
  - (i) in writing, must be marked “Confidential” or “Proprietary”;
  - (ii) by delivery of items, or by access to a database, must be identified as “Confidential” or “Proprietary”;
  - (iii) be of a nature that a reasonable person would (in all the circumstances) consider confidential; or
  - (iv) orally or visually, must at the time of disclosure be identified as confidential and memorialized in writing by the Disclosing Party within fifteen (15) days of the date of first disclosure;
- (b) “**Disclosing Party**” means the Party disclosing its Confidential Information; and
- (c) “**Receiving Party**” means the Party receiving the Confidential Information of the other Party.

### 9.2 Obligations.

- (a) Disclosing Party shall treat all of Disclosing Party’s Confidential Information as confidential.
- (b) Receiving Party shall protect the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own Confidential Information of like kind but in no case with less than reasonable care.
- (c) Receiving Party shall not use the Confidential Information of the Disclosing Party, except in connection with the performance of the Receiving Party’s obligations under, or as permitted by, these Terms & Conditions (collectively the “**Purpose**”).

### 9.3 Return of Information.

- (a) Upon expiration or termination of the Maintenance & Support Term, or upon the written instruction of the Disclosing Party, the Receiving Party shall:
  - (i) return or destroy all of the Disclosing Party’s Confidential Information; and
  - (ii) provide a certificate, signed by a senior officer of the Receiving Party, attesting to such return or destruction.
- (b) A Receiving Party shall be deemed to have destroyed electronic Confidential Information when it executes an application or operating system-level, commercially reasonable permanent delete function on it. Despite the foregoing, each Receiving Party may retain one copy of the Disclosing Party’s Confidential Information for archival purposes.

### 9.4 Responsibility and Indemnity.

Each Receiving Party shall be responsible to the Disclosing Party for any disclosure of Confidential Information that is not permitted by the Terms & Conditions to the extent caused by the Receiving Party and for any failure by the Receiving Party to comply with the Terms & Conditions. Each Receiving Party shall defend, indemnify and hold harmless the Disclosing Party, from and against any and all Claims arising out of any breach by the Receiving Party of this ARTICLE 9.

### 9.5 Ownership of Confidential Information.

Except for the limited right to use the Disclosing Party’s Confidential Information for the Purpose, the Disclosing Party does not grant Receiving Party any right, title or interest in or to Disclosing Party’s Confidential Information.

## **9.6 Exceptions.**

The obligations of confidentiality set out in this ARTICLE 9 shall not apply in respect of uses or disclosures of Confidential Information where:

- (a) the Disclosing Party consents in writing;
- (b) a Receiving Party can establish with documentary evidence that, other than as a result of a breach of the Terms & Conditions, the Confidential Information:
  - (i) is available in the public domain;
  - (ii) was disclosed to it by a third party without violating confidentiality obligations; or
  - (iii) was already known by it or was subsequently developed by it without any use of Confidential Information,
- (c) where required by applicable regulatory authorities or by judicial or administrative process or timely disclosure requirements imposed by law or by stock exchange policies, if the Receiving Party first provides to the Disclosing Party prompt notice of the required disclosure, maintains confidentiality to the greatest extent permissible and takes such steps as may be reasonable in the circumstances to allow the Disclosing Party to seek a protective order with respect to the confidentiality of the information required to be disclosed.

## **9.7 Equitable Relief.**

Each Receiving Party acknowledges that, if it breaches its obligations under this ARTICLE 9, money damages would be inadequate to remedy such breach. Accordingly, the Disclosing Party shall be entitled to seek, and a court of competent jurisdiction may grant, specific performance and injunctive or other equitable relief as a remedy for any breach of the Terms & Conditions, and the Receiving Party waives any right that a bond be posted in connection with the granting of the injunctive or other equitable relief. Such remedy shall be in addition to all other remedies, including money damages, available to the Disclosing Party at law or in equity.

## **ARTICLE 10 LIMITATIONS OF LIABILITY**

### **10.1 NO INDIRECT DAMAGES.**

EXCEPT FOR BREACH OF ITS OBLIGATIONS UNDER ARTICLE 9 [CONFIDENTIALITY], TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT) IN CONNECTION WITH OR ARISING UNDER THE AGREEMENT BETWEEN THE PARTIES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, EVEN IF CAUSED BY THAT PARTY'S NEGLIGENCE AND EVEN IF IT HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

### **10.2 LIMITS ON LIABILITY.**

EXCEPT FOR CLAIMS BASED ON FRAUD, INTENTIONAL MISCONDUCT, BREACH OF ITS OBLIGATIONS UNDER ARTICLE 9 [CONFIDENTIALITY] AND, IN THE CASE OF CUSTOMER, BREACH OF THE LICENCE, TO THE EXTENT PERMITTED BY LAW, IF FOR ANY REASON A PARTY BECOMES LIABLE TO THE OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT INCLUDING NEGLIGENCE), INCURRED IN CONNECTION WITH OR ARISING UNDER THE AGREEMENT BETWEEN THE PARTIES, THE AGGREGATE LIABILITY OF THAT PARTY FOR ALL DAMAGES, INJURY, AND LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GENOLOGICS DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS, LESS THE AMOUNT OF ANY DAMAGES ALREADY PAID.

## **ARTICLE 11 TERM**

### **11.1 Term.**

The Terms & Conditions shall be effective from the effective date specified in the Quote until terminated under ARTICLE 14 [Termination].

## **ARTICLE 12 DISPUTE RESOLUTION**

### **12.1 Arbitration.**

All disputes, claims and controversies arising out of or in connection with the agreement between the Parties shall be finally settled by arbitration.

### **12.2 Place of Arbitration.**

- (a) For all Customers in Canada, the USA, Mexico, Central and South America, the place of arbitration shall be New York, New York, USA.
- (b) For all Customers in Europe, the Middle East and Africa, the place of arbitration shall be London, England.
- (c) For all other Customers, the place of arbitration shall be Singapore.

### **12.3 Arbitration Confidential.**

The Parties shall keep the arbitration confidential.

### **12.4 Language of Arbitration.**

- (a) The language of the arbitration shall be English.
- (b) If any document submitted as evidence in the arbitration is in a language other than English, the Party submitting the document shall, at its expense, provide a certified translation of the document.

### **12.5 Decision Binding.**

All determinations arising out of the arbitral process shall be final and binding upon the Parties.

### **12.6 Services Uninterrupted.**

Except for disputes relating to the Intellectual Property rights of a Party or to Confidential Information, each Party shall continue to perform its obligations during the resolution of any dispute or disagreement, including during any period of arbitration.

## **ARTICLE 13 FORCE MAJEURE**

### **13.1 Definition.**

“**Force Majeure**” means any contingency beyond the reasonable control of a Party, including acts of God, fires, floods, wars, sabotage, civil unrest, accidents, labour disputes (other than those with the employees of the Party claiming Force Majeure), government laws, rules and regulations, whether valid or invalid, except that lack of funds or credit shall not constitute a Force Majeure.

### **13.2 Effect of Force Majeure.**

Neither Party shall be responsible or liable for any delay or failure to perform due to Force Majeure if the affected Party:

- (a) notifies the other Party as soon as practicable in the circumstances of the nature and anticipated duration of the Force Majeure event as well as the steps it intends to take to overcome the Force Majeure event; and

- (b) takes all reasonable steps to prevent and minimize the delay or failure to perform.

## ARTICLE 14 TERMINATION

### 14.1 Definitions.

In this ARTICLE 15:

- (a) “**Default**” means any of the following:
  - (i) a Party is in material breach of ARTICLE 9 [Confidentiality];
  - (ii) a Party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the Party and is not dismissed within thirty (30) days following commencement;
  - (iii) the Software is seized under any legal process or confiscated; or
  - (iv) a Party is in Material Breach and does not remedy the breach within thirty (30) days of receipt of a notice from the other Party specifying the breach; and
- (b) “**Material Breach**” includes, but is not limited to:
  - (i) Customer failing to pay any amount not in dispute when due; or
  - (ii) GenoLogics failing to provide Maintenance & Support.

### 14.2 Termination for Default.

If there is a Default, the Party not in Default may immediately terminate the agreement between the Parties on written notice to the Party in Default, in which case:

- (a) the Party not in Default may claim any remedies which it may have at law or in equity;
- (b) the Party in Default shall pay all reasonable attorney’s fees and disbursements incurred by the Party not in Default as a result of the termination.

### 14.3 Effect of Termination.

If the agreement between the Parties is terminated under Section 14.2 [Termination for Default]:

- (a) **Payable on Termination.** Customer shall be liable to pay GenoLogics only for the Maintenance & Support and Additional Services provided, and the installation, integration, and training completed, as of the date of termination. For greater certainty, where the Additional Services are to be performed in discrete phases, Customer shall be liable to pay only for each discrete phase that has been completed.
- (b) **Non-exclusive Remedy.** The right of either Party to terminate is not an exclusive remedy, and each Party shall be entitled, alternatively or cumulatively, to damages for breach of the agreement between the Parties, to an order requiring performance of the obligations of the other Party, or to any other remedy available under the laws of any applicable jurisdiction.

### 14.4 Termination.

On termination:

- (a) **Survival.** The following provisions shall survive:
  - (i) ARTICLE 1 [Definitions & Interpretation];
  - (ii) ARTICLE 5 [Licence];
  - (iii) ARTICLE 6 [Fees & Payment];
  - (iv) Section 7.5 [Warranty Exclusions] and Section 7.6 [Warranty Restrictions];

- (v) ARTICLE 8 [Infringement Indemnification];
  - (vi) ARTICLE 9 [Confidentiality];
  - (vii) ARTICLE 10 [Limitations of Liability];
  - (viii) ARTICLE 12 [Dispute Resolution];
  - (ix) ARTICLE 13 [Force Majeure];
  - (x) this ARTICLE 14 [Termination]; and
  - (xi) ARTICLE 15 [Miscellaneous].
- (b) **Return of Confidential Information.** The provisions of Section 9.3 [Return of Confidential Information] shall apply.
- (c) **Return of Software.** Customer shall immediately cease use of, and shall return, the Software, and any copies of it, to GenoLogics and shall certify in writing to GenoLogics that Customer has done so.

## ARTICLE 15 MISCELLANEOUS

### 15.1 Client References.

During the Term, Customer shall permit GenoLogics to include Customer's name on GenoLogics' customer list.

### 15.2 Complete Agreement.

These Terms & Conditions and the Quote are the complete and exclusive statement of the agreement between the parties and supersede and merge all prior representations, proposals, understandings and all other agreements, oral or written, express or implied, between the parties relating to the subject matter hereof. Neither the Terms & Conditions nor the Quote may be modified or altered except by written instrument duly executed by both parties. The parties acknowledge that the Terms & Conditions are intended to supersede and replace any pre-printed terms which may be included on any other commercial documentation exchanged between them including, without limitation, purchase orders, order acknowledgements and invoices.

### 15.3 Assistance in Recordation.

Customer shall, at GenoLogics' expense, provide reasonable commercial assistance, including the execution of documents, as is necessary for GenoLogics to evidence its sole Intellectual Property in and to the Documentation and the Software (excluding any licensed third party software incorporated in the GenoLogics' proprietary software) and to all Improvements.

### 15.4 Relationship.

Nothing in the agreement between the Parties shall make or be construed to make GenoLogics and Customer partners or agents of each other or to create any other relationship by which the acts of any Party may bind the others or result in any liability to the other.

### 15.5 Notices.

Any notice, request, payment or communication (collectively, any "**Notice**") by either GenoLogics or Customer to the other shall be made in writing and delivered personally or by confirmed receipt email, registered mail, first-class postage fees prepaid, return receipt requested, to the addresses first set out above, or at such other address as either Party may designate from time to time. Any Notice shall be deemed to have been received at the time it is personally delivered, or at the time it is received by email, or on the 5th business day following the date on which it is dispatched by registered mail.

## **15.6 Governing Law.**

The agreement between the Parties, and all matters arising out of or in connection with it, shall be governed by:

- (a) if the business address of Customer is in Canada, the USA, Mexico, Central or South America: the laws of New York and the United States of America;
- (b) if the business address of Customer is in Europe, the Middle East or Africa: the laws of England and Wales; or
- (c) for all other Customers: the laws of Singapore.

## **15.7 UN Convention on the International Sale of Goods.**

The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply in any way to the agreement between the Parties or any matters arising from it or otherwise to create any rights or to impose any duties or obligations on any Party to it.

## **15.8 Enforceability.**

If any provision of the agreement between the Parties shall be held to be invalid, illegal or unenforceable under any applicable statute or rule of law, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

## **15.9 Government End-Users.**

The Software is commercial computer software. If Customer is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, and transfer of the Software shall be governed by the Terms & Conditions in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. GenoLogics asserts that it has developed the Software solely at private expense. All other use is prohibited.

## **15.10 Export Compliance.**

Customer acknowledges that the Software may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not, and shall not allow any third-party to, remove or export from the United States or allow the export or re-export of any part of the Software or any direct product of it:

- (a) into (or to a national or resident of) any embargoed or terrorist-supporting country;
- (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals or U.S. Government's Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>);
- (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or
- (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

## **15.11 Assignment.**

- (a) Customer shall not assign the agreement with GenoLogics, or any of its rights under the agreement to a third party without the prior written consent of GenoLogics, which shall not be unreasonably withheld, conditioned or delayed.
- (b) GenoLogics may, on written notice to Customer, assign the agreement with the Customer to a purchaser of all, or substantially all, of its assets.
- (c) GenoLogics may, on written notice to Customer, assign its right to payment under the agreement

with the Customer to a financial institution.

**15.12 Non-Waiver.**

The waiver or failure of either Party to exercise in any respect any right provided for in the agreement between the Parties shall not be deemed a waiver of any further right under it.

**15.13 Enurement.**

The agreement between the Parties shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

(End of Terms & Conditions)